

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Health Services Administration, Communicable and Environmental Disease Services

SUBJECT: Communicable and Environmental Diseases

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 68-1-103, 68-1-104, and 21 C.F.R. Part 1240

EFFECTIVE DATES: June 21, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule 1200-14-01-.36: These amendments will allow for the sale of some turtles, which is currently prohibited. The proposed amendments establish guidelines that allow the Commissioner of Health to remove, destroy, quarantine, or take any appropriate samples of the turtle if the turtle is unlawfully imported, sold or is contaminated with salmonella or other organisms that may cause or have caused disease. Additionally, the amendments provide a caution statement to deter/alert parents and people with weak immune systems to the health risks associated with turtles. The amendments also require receipts containing the caution statement to be provided to the buyer by the seller of the turtles, and requires sellers to keep track of their acquisitions and dispositions of turtles.

New Rule 1200-14-01-.37: The new rule requires pre-kindergarten schools, daycare centers, and childcare centers with turtles on their premises to notify parents of the associated health risks.

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 federal, 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 businesses.**

These rules do not affect compliance or reporting requirements for small businesses.

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

These rules do not affect schedules or reporting requirements for small businesses.

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

These rules do not consolidate or simplify compliance or reporting requirements for small businesses.

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

These rules do not establish performance standards for small businesses.

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

These rules do not stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Health Services Administration, Communicable and Environmental Disease Services

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

These rules affect all Tennessee residents wishing to purchase or sell turtles.

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

These rules amendments require that vendors engaged in the sale of turtles issue receipts to purchasers, and that they maintain records of the acquisition and disposition of their inventory of turtles. They do not contain any new reporting requirements, or other administrative costs required for compliance with the proposed rule amendments.

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

Small business will be permitted by the proposed rule amendments to sell some turtles; consumers will be largely unaffected.

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

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

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

Federal: These rules are consistent with the FDA requirements regarding the sale of turtles..

State: These rules are consistent with those in several neighboring states.

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

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

Impact on Local Governments

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

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

16

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

For Department of State Use Only

Sequence Number: 03-13-16
Rule ID(s): 6145
File Date: 3/23/16
Effective Date: 6/21/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission:	Department of Health
Division:	Health Services Administration, Communicable and Environmental Disease Services
Contact Person:	Mary Kennedy
Address:	710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 253-4878
Email:	Mary.Kennedy@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
1200-14-01	Communicable and Environmental Diseases
Rule Number	Rule Title
1200-14-01-.36	Sale of Turtles Prohibited
1200-14-01-.37	Turtles in Pre-Kindergarten Schools, Daycare Centers, and Childcare Centers

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
HEALTH SERVICES ADMINISTRATION
COMMUNICABLE AND ENVIRONMENTAL DISEASE SERVICES**

**CHAPTER 1200-14-01
COMMUNICABLE AND ENVIRONMENTAL DISEASES**

TABLE OF CONTENTS

1200-14-01-.01	Definition of Terms	1200-14-01-.23	Employment as a Foodhandler Restricted in Certain Cases
1200-14-01-.02	Reportable Diseases	1200-14-01-.24	Exclusion From School for Special Diseases
1200-14-01-.03	Repealed	1200-14-01-.25	Local Authorities May Make Additional Requirements
1200-14-01-.04	Repealed	1200-14-01-.26	Obstructing Local Health Officers or Departmental Representatives
1200-14-01-.05	Repealed	1200-14-01-.27	Enforcement
1200-14-01-.06	Duties of Physicians	1200-14-01-.28	Repealed
1200-14-01-.07	Repealed	1200-14-01-.29	Immunization Against Certain Diseases Prior to School Attendance in Tennessee
1200-14-01-.08	Tuberculosis Cases Restricted	1200-14-01-.30	Rabies
1200-14-01-.09	Persons Admitted to Hospitals or Nursing Homes Designated to Accept State-Sponsored Tuberculosis Patients	1200-14-01-.31	Public Rabies Vaccination Clinics
1200-14-01-.10	Scope of Payment for Tuberculosis Patients	1200-14-01-.32	Authorized Rabies Vaccine Sources and Types
1200-14-01-.11	Infectious Tuberculosis	1200-14-01-.33	Rabies Vaccination Schedule of Dogs and Cats
1200-14-01-.12	Repealed	1200-14-01-.34	Rabies Vaccination Certificate
1200-14-01-.13	Persons Eligible for In-Patient and Out-Patient Services	1200-14-01-.35	Turtles, Tortoises, and Terrapins
1200-14-01-.14	Persons with Legal Residence Outside of Tennessee	1200-14-01-.36	Sale of Turtles Prohibited <u>Sale of Turtles</u>
		1200-14-01-.37	<u>Turtles in Pre-Kindergarten Schools, Daycare Centers and Childcare Centers</u>
1200-14-01-.15	General Measures for the Effective Control of Reportable Diseases	1200-14-01-.38	Sale of Turtles for Scientific, Educational, or Food Purposes Exempted
1200-14-01-.16	Minimum Periods of Communicability	1200-14-01-.39	Sale of Turtles Outside of Tennessee Exempted
1200-14-01-.17	Confidentiality	1200-14-01-.40	39 <u>39</u> Repeal of the Conflicting Regulations
1200-14-01-.18	Repealed	1200-14-01-.41	40 <u>40</u> Validation and Endorsement of Regulations
1200-14-01-.19	Repealed	1200-14-01-.42	41 <u>42</u> Repealed
1200-14-01-.20	Concurrent Disinfections	1200-14-01-.43	42 <u>43</u> Repealed
1200-14-01-.21	Terminal Disinfection		
1200-14-01-.22	Sale of Milk and Milk Products Forbidden in Certain Cases		

1200-14-01-.01 DEFINITION OF TERMS.

- (1) For the purpose of these regulations the terms used herein are defined as follows:
- (a) Carrier - A person who harbors, or who is reasonably believed by the Commissioner, health officer, or designee to harbor a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.
 - (b) Case – An instance of an individual or group of individuals who have contracted a reportable disease, health disorder or condition under investigation by CEDS.
 - (c) CEDS – Communicable and Environmental Disease Services in the Bureau of Health Services Administration of the Tennessee Department of Health, or its successor agency.
 - (d) Commissioner - Means the Commissioner of the Tennessee Department of Health or a designated representative.

Authority: T.C.A. § 68-8-105. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977. Amendment filed April 20, 1987; effective June 4, 1987.

1200-14-01-.35 TURTLES, TORTOISES, AND TERRAPINS.

- (1) "Turtle" means any reptile of the order Chelonia.
- (2) "Institution" means a school, college, university, research laboratory or other facility having a bonafide research or teaching interest in turtles. Zoos supported by public funds are also defined as "institutions".

Authority: T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-1023 and 53-1109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.

~~1200-14-01-.36 SALE OF TURTLES PROHIBITED.~~

Forn

~~It shall be unlawful for a person to sell, barter, exchange or otherwise transfer any turtle as a pet, or to import or cause to be imported any type of turtle in the State of Tennessee for such purposes.~~

1200-14-01-.36 Sale of Turtles.

(1) Except as otherwise provided in this chapter, it shall be unlawful to import, sell, barter or otherwise exchange or distribute to the public, any live turtle(s) with a carapace length of less than four (4) inches. This includes offering them for adoption or for free with or without the purchase of pet supplies (e.g., turtle tanks, food, etc.).

Forn

Forn

Forn

(2) It shall be unlawful to sell turtles to anyone under eighteen (18) years of age.

(3) The Commissioner or the Commissioner's designated representative may order the removal to institutions for scientific or educational purposes, exportation, or humane destruction of any turtle(s) that are unlawfully imported, sold, bartered, exchanged or offered for sale or distribution to the public in violation of paragraph (1) and/or paragraph (2) above.

Forn

Forn

Forn

(4) The Commissioner or the Commissioner's designated representative may quarantine turtles or take samples of tank water or any other appropriate samples of or from turtles offered for sale or distribution for the purpose of testing for salmonella or other organisms which may cause or have caused disease in humans. The Commissioner or the Commissioner's designated representative may order the immediate removal to institutions for scientific or educational purposes, exportation, or humane destruction of any turtle(s) found contaminated with salmonella or other organisms which may cause or have caused disease in humans.

Forn

Forn

Forn

Forn

Forn

(5) The following warning shall be posted conspicuously for buyer information at every display of turtles for retail sale or distribution or where the public may come in contact with turtles:

CAUTION: Children under 5 years old and people with weak immune systems (such as chemotherapy patients or those with HIV/AIDS) should avoid contact with reptiles. These people can get very sick from a germ, called salmonella, that reptiles carry. Reptiles include lizards, snakes, alligators and turtles. Wash hands thoroughly after handling turtles or material that had contact with turtles. Do not allow water or any other substance that had contact with turtles to come in contact with food or areas where food is prepared. Do not bathe turtles or clean their tanks in your kitchen or bathroom and do not have

Forn

Forn

Forn

Forn

Forn

Forn

Forn

close contact with turtles which could allow direct contamination of the mouth (e.g., kissing, etc.).

Forn

(6) Receipts and record keeping required:

(a) For each sale of turtle(s) at retail, a sales receipt shall be issued by the seller to the purchaser at the time of the sale. The sales receipt shall have printed legibly on its front or shall be accompanied by an informational sheet with the warning statement contained in paragraph (5) above.

Forn

(b) The seller shall keep a complete record of all purchases, losses and other dispositions of turtles. The Commissioner or the Commissioner's designated representative may request these records at any time.

Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-1-104.

Forn

Forn

Authority: ~~T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-102 and 53-1109.~~ **Administrative History:** ~~Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.~~

Forn

Multi

1200-14-01-37 Turtles in Pre-Kindergarten Schools, Daycare Centers and Childcare Centers.

Forn

It shall be unlawful for any pre-kindergarten school, daycare center, or childcare center to have turtles on their premises unless such school, daycare center or childcare center shall have given the parents of enrolled children written guidance conforming with the language set forth in Rule 1200-14-01-36(5).

Forn

Forn

Forn

Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-1-104.

Forn

Forn

Forn

1200-14-01-387 SALE OF TURTLES FOR SCIENTIFIC, EDUCATIONAL, OR FOOD PURPOSES EXEMPTED.

Rule 1200-14-01-36 does not apply to the sale of turtles to institutions for scientific or educational purposes, nor to the sale of turtles for food purposes.

Authority: T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-1023 and 53-1109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.

1200-14-01-398 SALE OF TURTLES OUTSIDE OF TENNESSEE EXEMPTED.

Wholesale establishments in Tennessee dealing in the sale of turtles shall not be prohibited from selling turtles to other wholesale or retail establishments outside of the State of Tennessee.

Authority: T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-102 and 53-1109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.

1200-14-01-4039 REPEAL OF THE CONFLICTING REGULATIONS.

All rules, regulations, and by-law of the State Department of Public Health previously adopted which are in conflict with the provisions of these regulations are hereby repealed.

Authority: T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-1023 and 53-1109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.

1200-14-01-~~4140~~ VALIDATION AND ENDORSEMENT OF REGULATIONS.

If for any reason regulation or part of a regulation shall be held to be unconstitutional or invalid, then that fact shall not invalidate any other part of these regulations, but the same shall be enforced without reference to the part so held to be invalid.

Authority: T.C.A. §§ 49-1769, 53-607, 53-621, 53-905, 53-1023 and 53-1109. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed March 31, 1977; effective May 2, 1977.

1200-14-01-.41 REPEALED.

Authority: T.C.A. §§ 4-5-202, 37-1-403(G), 68-1-103, 68-1-106, 68-10-101, 68-10-112, 68-10-113, and 68-29-107. **Administrative History:** Original Rule filed April 20, 1987; effective June 4, 1987. Amendment filed December 16, 1991; effective January 30, 1992. Amendment filed March 31, 2000; effective June 14, 2000. Emergency rule filed October 8, 2009; effective through April 6, 2010. Repeal filed December 29, 2009; effective March 29, 2010.

1200-14-01-.42 REPEALED.

Authority: T.C.A. §§ 4-5-202, 68-1-103 and 68-1-104. **Administrative History:** Original rule filed July 10, 1995; effective November 28, 1995. Emergency rule filed October 8, 2009; effective through April 6, 2010. Repeal filed December 29, 2009; effective March 29, 2010.

* 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)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 09/21/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

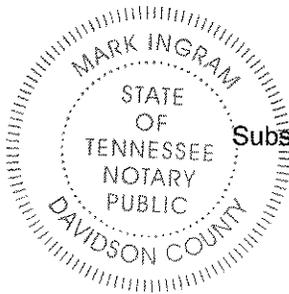
Date: Sept 21, 2015

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: September 21, 2015

Notary Public Signature: Mark Ingram

My commission expires on: May 6, 2019

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

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

3/15/2016
Date

Department of State Use Only

RECEIVED
2016 MAR 23 PM 3:50
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Mental Health and Substance Abuse Services

DIVISION: Substance Abuse Services

SUBJECT: Lists of Controlled Substances

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-4-103; 33-1-302; 33-1-303; 33-1-305; 33-1-309; 39-17-403; and 21 U.S.C 812

EFFECTIVE DATES: June 2, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The lists of controlled drugs for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.) and T.C.A. §§ 39-17-406, 39-17-408, 39-17-410, 39-17-412, 39-17-414, and 39-17-416.

0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants.

0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP.

0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine, narcotic drugs, anabolic steroids, and hallucinogenic substances.

0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.

0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants.

0940-06-01-.06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.

0940-06-01-.07 names controlled substances within Schedule VII including butyl nitrite and any isomer of butyl nitrite.

0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.

0940-06-01-.09 names chemical preparations excluded from controlled substances.

0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.

0940-06-01-.11 names prescription products excluded from controlled substances.

0940-06-01-.12 names anabolic steroid products excluded from controlled substances.

0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

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.

See attached memo.



**STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES**

6th FLOOR, ANDREW JACKSON BUILDING
500 DEADERICK STREET
NASHVILLE, TENNESSEE 37243

BILL HASLAM
GOVERNOR

E. DOUGLAS VARNEY
COMMISSIONER

MEMORANDUM

TO: E. Douglas Varney
Commissioner, TDMHSAS

FROM: Kurt Hippel
Director of Legislation and Rules, TDMHSAS

DATE: November 12, 2015

RE: Public Hearing for 0940-06-01 Controlled Substances rulemaking activity

On Thursday, November 12, 2015, the Tennessee Department of Mental Health and Substance Abuse Services ("the Department") held a public hearing re: proposed changes to Rules Chapter 0940-06-01 Controlled Substances. The Department did not receive any oral or written comments during this public hearing or during the time period designated for accepting comments re: Rules Chapter 0940-06-01 Controlled Substances.

Regulatory Flexibility Addendum

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

These rules will not affect small businesses. Although, some pharmacies qualify as small businesses, the changes to the controlled substances schedules promulgated by these rules should not change the daily operations of those pharmacies.

Economic Impact Statement

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

These rules will not affect small businesses.

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

These rules will not affect reporting, recordkeeping, or other administrative costs of small businesses.

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

These rules will not affect small businesses.

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

There is no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rules.

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

These rules compare favorably with the federal controlled substances schedules as T.C.A. § 39-17-403 requires the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) to schedule substances if those substances have been designated as controlled substances by federal regulations promulgated by the U.S. Department of Justice Drug Enforcement Administration (DEA), unless TDMHSAS, upon agreement with the Tennessee Department of Health (TDH), decides otherwise.

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

These rules will not affect small businesses.

Impact on Local Governments

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

TDMHSAS estimates that these rules will not have a projected financial impact on local governments.

2

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

For Department of State Use Only

Sequence Number: 03-02-16
Rule ID(s): 6131
File Date: 3/4/16
Effective Date: 6/2/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Division of Substance Abuse Services
Contact Person:	R. Kurt Hippel, Director, Office of Legislation and Rules
Address:	500 Deaderick Street, 5 th Floor, Andrew Jackson Building
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@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
0940-06-01	Controlled Substances
Rule Number	Rule Title
0940-06-01-.01	Controlled Substances in Schedule I
0940-06-01-.02	Controlled Substances in Schedule II
0940-06-01-.03	Controlled Substances in Schedule III
0940-06-01-.04	Controlled Substances in Schedule IV
0940-06-01-.05	Controlled Substances in Schedule V
0940-06-01-.06	Controlled Substances in Schedule VI
0940-06-01-.07	Controlled Substances in Schedule VII
0940-06-01-.08	Non-Narcotic Substances Excluded from Controlled Substances
0940-06-01-.09	Chemical preparations excluded from Controlled Substances
0940-06-01-.10	Veterinary anabolic steroid implant products excluded from Controlled Substances
0940-06-01-.11	Prescription products excluded from Controlled Substances
0940-06-01-.12	Anabolic steroid products excluded from Controlled Substances
0940-06-01-.13	Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

**Department of State
Division of Publications**

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

For Department of State Use Only

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

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Division of Substance Abuse Services
Contact Person:	R. Kurt Hippel, Director, Office of Legislation and Rules
Address:	500 Deaderick Street, 5 th Floor, Nashville, TN
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@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
0940-06-01	Controlled Substances
Rule Number	Rule Title
0940-06-01-.01	Controlled Substances in Schedule I
0940-06-01-.02	Controlled Substances in Schedule II
0940-06-01-.03	Controlled Substances in Schedule III
0940-06-01-.04	Controlled Substances in Schedule IV
0940-06-01-.05	Controlled Substances in Schedule V
0940-06-01-.06	Controlled Substances in Schedule VI
0940-06-01-.07	Controlled Substances in Schedule VII
0940-06-01-.08	Non-Narcotic Substances Excluded from Controlled Substances
0940-06-01-.09	Chemical preparations excluded from Controlled Substances
0940-06-01-.10	Veterinary anabolic steroid implant products excluded from Controlled Substances
0940-06-01-.11	Prescription products excluded from Controlled Substances
0940-06-01-.12	Anabolic steroid products excluded from Controlled Substances
0940-06-01-.13	Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

(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>)

0940-06-01-.01 Controlled Substances in Schedule I.

- (1) Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

- (2) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation. For the purposes of subparagraph (ii) ~~(hh)~~ 3-Methylfentanyl, only, the term isomer includes the optical and geometric isomers.
 - (a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidnyl]-N-phenylacetamide)..... 9815
 - (b) Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)..... 9821
 - (c)~~(b)~~ Acetylmethadol..... 9601
 - (d)~~(e)~~ Allylprodine..... 9602
 - (e)~~(d)~~ Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol; levomethadyl acetate; or LAAM)..... 9603
 - (f) ~~(e)~~ Alphameprodine..... 9604
 - (g) ~~(f)~~ Alphamethadol..... 9605
 - (h) ~~(g)~~ Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)..... 9814
 - (i) ~~(h)~~ Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyll]-N-phenylpropanamide) 9832
 - (j) ~~(i)~~ Benzethidine..... 9606
 - (k) ~~(j)~~ Betacetylmethadol..... 9607
 - (l) ~~(k)~~ Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyll]-N-phenylpropanamide)..... 9830
 - (m) ~~(l)~~ Beta-hydroxy-3-methylfentanyl 9831
Other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyll]-N-phenylpropanamide
 - (n) ~~(m)~~ Betameprodine..... 9608
 - (o) ~~(n)~~ Betamethadol..... 9609
 - (p) ~~(o)~~ Betaprodine..... 9611
 - (q) ~~(p)~~ Clonitazene..... 9612
 - (r) ~~(q)~~ Dextromoramide..... 9613
 - (s) ~~(r)~~ Diampromide..... 9615

(t) (s)	Diethylthiambutene.....	9616
(u) (t)	Difenoxin.....	9168
(v) (u)	Dimenoxadol.....	9617
(w) (v)	Dimepheptanol.....	9618
(x) (w)	Dimethylthiambutene.....	9619
(y) (x)	Dioxaphetyl butyrate.....	9621
(z) (y)	Dipipanone.....	9622
(aa) (z)	Ethylmethylthiambutene.....	9623
(bb) (aa)	Etonitazene.....	9624
(cc) (bb)	Etoxidine.....	9625
(dd) (cc)	Furethidine.....	9626
(ee) (dd)	Hydroxypethidine.....	9627
(ff) (ee)	Ketobemidone.....	9628
(gg) (ff)	Levomoramide.....	9629
(hh) (gg)	Levophenacymorphan.....	9631
(ii) (hh)	3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).....	9813
(ij) (ii)	3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide).....	9833
(kk) (jj)	Morpheridine.....	9632
(ll) (kk)	MPPP (1-methyl-4-phenyl-4-propionoxypiperidine).....	9661
(mm) (ll)	Noracymethadol.....	9633
(nn) (mm)	Norlevorphanol.....	9634
(oo) (nn)	Normethadone.....	9635
(pp) (oo)	Norpipanone.....	9636
(qq) (pp)		

Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide)	9812
(rr) (qq) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine).....	9663
(ss) (rr) Phenadoxone.....	9637
(tt) (ss) Phenampromide.....	9638
(uu) (tt) Phenomorphan.....	9647
(vv) (uu) Phenoperidine.....	9641
(ww) (vv) Piritramide.....	9642
(xx) (ww) Proheptazine.....	9643
(yy) (xx) Propерidine.....	9644
(zz) (yy) Propiram.....	9649
(aaa) (zz) Racemoramide.....	9645
(bbb) (aaa) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).....	9835
(ccc) (bbb) Tilidine.....	9750
(ddd) (ccc) Trimeperidine.....	9646
 (3) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
(a) Acetorphine.....	9319
(b) Acetyldihydrocodeine.....	9051
(c) Benzylmorphine.....	9052
(d) Codeine methylbromide.....	9070
(e) Codeine-N-Oxide.....	9053
(f) Cyprenorphine.....	9054
(g) Desomorphine.....	9055
(h) Dihydromorphine.....	9145
(i) Drotebanol.....	9335

(j)	Etorphine (except hydrochloride salt).....	9056
(k)	Heroin.....	9200
(l)	Hydromorphenol.....	9301
(m)	Methyldesorphine.....	9302
(n)	Methyldihydromorphine.....	9304
(o)	Morphine methylbromide.....	9305
(p)	Morphine methylsulfonate.....	9306
(q)	Morphine-N-Oxide.....	9307
(r)	Myrophine.....	9308
(s)	Nicocodeine.....	9309
(t)	Nicomorphine.....	9312
(u)	Normorphine.....	9313
(v)	Pholcodine.....	9314
(w)	Thebacon.....	9315

(4) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers, is possible within the specified chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(a)	Alpha-ethyltryptamine.....	7249
	Other names: etryptamine, Monase; [alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET; ET; Trip	
(b)	Alpha-methyltryptamine.....	7432
	Other name: AMT	
(c)	4-Bromo-2,5-dimethoxy-amphetamine.....	7391
	Other names: 4-Bromo-2,5-dimethoxy-[alpha]-methylphenethylamine; 4-bromo-2,5-DMA	
(d)	4-Bromo-2,5-dimethoxyphenethylamine.....	7392
	Other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; Nexus	
(e)	2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7536
	Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36	
(f)	Bufotenine.....	7433
	Other names: 3-([beta]-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine	
(g)	2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7537
	Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82	

(h)	Diethyltryptamine.....	7434
	Other names: N,N-Diethyltryptamine; DET	
(i)	2,5-Dimethoxyamphetamine.....	7396
	Other names: 2,5-Dimethoxy-[alpha]-methylphenethylamine; 2,5-DMA	
(j)	2, 5-Dimethoxy-4-ethylamphet-amine.....	7399
	Other name: DOET	
(k)	2, 5 Dimethoxy-4-(n)-propylthiophenethylamine.....	7348
	Other name: 2C-T-7	
(l)	Dimethyltryptamine.....	7435
	Other name: DMT	
(m)	Ethylamine analog of phencyclidine.....	7455
	Other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE	
(n)	Ibogaine.....	7260
	Other names: 7-Ethyl-6,6[beta],7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2]azepino[5,4-b]indole; Tabenanthe iboga.	
(o)	2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....	7538
	Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Gimbi-5	
(p)	Lysergic acid diethylamide.....	7315
	Other name: LSD	
(q)	Mescaline.....	7381
	Other name: Constituent of "Peyote" cacti	
(r)	4-Methoxyamphetamine.....	7411
	Other names: 4-methoxy-[alpha]-methylphenethylamine; paramethoxyamphetamine; PMA	
(s)	5-Methoxy-3,4-methylenedioxy-amphetamine.....	7401
(t)	5-Methoxy-N,N-diisopropyltryptamine.....	7439
	Other name: 5-MeO-DIPT	
(u)	5-methoxy-N,N-dimethyltryptamine.....	7431
	Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT	
(v)	4-Methyl-2, 5-dimethoxy-amphetamine.....	7395
	Other names: 4-methyl-2,5-dimethoxy-[alpha]-methylphenethylamine; DOM; STP	
(w)	3,4-Methylenedioxyamphetamine.....	7400
(x)	3,4-Methylenedioxymethamphetamine.....	7405
	Other name: MDMA	
(y)	3,4-Methylenedioxy-N-ethylamphetamine.....	7404
	Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA	
(z)	3,4-Methylenedioxy-N-methylcathinone.....	7540

Other names: Methylone

(aa)	N-Ethyl-3-piperidyl benzilate.....	7482
(bb)	N-Hydroxy-3,4-methylenedioxyamphetamine..... Other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-hydroxy MDA	7402
(cc)	N-methyl-3-piperidyl benzilate.....	7484
(dd)	Parahexyl..... Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b, d]pyran; Synhexyl	7374
(ee)	Peyote..... Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Lamair, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant its seeds or extracts. (Interprets 21 USC 812 (c), Schedule 1 (c) (12)(o))	7415
(ff)	Psilocybin (constituent of magic mushrooms).....	7437
(gg)	Psilocyn (constituent of magic mushrooms)	7438
(hh)	Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine)..... Other names: PCPy, PHP	7458
(ii)	1-[1-(2-Thienyl)cyclohexyl]pyrrolidine..... Other names: TGPY	7473
(jj)	4- Methylmethcathinone	1248
	Other names: mephedrone; methpadrone; 4-MMC	
(kk)	3,4-Methylenedioxyprovalerone..... Other names: MDPV	7535
(ll)	2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).....	7509
(mm)	2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).....	7508
(nn)	2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).....	7519
(oo)	2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).....	7518
(pp)	2-[4-Ethylthio-2,5-dimethoxyphenyl]ethanamine (2C-T-2).....	7385
(qq)	2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	7532
(rr)	2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).....	7517
(ss)	2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	7521
(tt)	2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)	7524
(uu)	Thiophene analog of phencyclidine..... Other names: 1-[1-(2-thienyl)cyclohexyl]-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP	7470
(vv)	3,4,5-Trimethoxyamphetamine.....	7390

(ww)	(1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers	7144
	(Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole)	
(xx)	[1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers.....	7011
	(Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole(yy).....	N-(1-
	adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers.....	7048
	(Other names: APINACA; AKB48)	
(5)	Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical designation:	
(a)	Gamma-hydroxybutyric acid.....	2010
	Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate	
(b)	Mecloqualone.....	2572
(c)	Methaqualone.....	2565
(6)	Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:	
(a)	Alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers.....	7546
	Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one	
(b)	Alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers	7545
	Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one	
(c)	Aminorex.....	1585
	Other names: aminoxophen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine	
(d)	Butylone, its optical, positional, and geometric isomers, salts and salts of isomers.....	7541
	Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one	
(e)	Cathinone.....	1235
	Other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; norphedrone; constituent of <i>catha edulis</i> or "Khat" plant	
(f)	3-Fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers	1233
	Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one	

- (g) 4-Fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers 1238
Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one
- (h) Fenethylamine 1503
- (i) Methcathinone 1237
Other names: 2-(methylamino)-propiofenone; alpha-(methylamino) propiofenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiofenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432); its salts, optical isomers and salts of optical isomers
- (j) (+/-) *cis*-4-Methylaminorex (*cis* isomer) 1590
Other name: (+/-)-*cis*-4,5 dihydro-4-methyl-5-phenyl-2-oxazolamine
- (k) 4-Methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers 1249
Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one
- (l) 4-Methyl-alpha-pyrrolidinopropiofenone, its optical, positional, and geometric isomers, salts and salts of isomers 7498
Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiofenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one
- (m) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers 1258
Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one
- (n) N-Benzylpiperazine 7493
Other names: BZP; 1-benzylpiperazine
- (o) N-Ethylamphetamine 1475
- (p) N,N-Dimethylamphetamine 1480
Other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine
- (q) Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers 1246
Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one
- (r) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers 7542
Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one
- (7) Cannabimimetic agents. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (a) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497) 7297
- (b) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) 7298

(c)	1-Pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678)	7118
(d)	1-Butyl-3-(1-naphthoyl)indole (JWH-073)	7173
(e)	1-Hexyl-3-(1-naphthoyl)indole (JWH-019)	7019
(f)	1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)	7200
(g)	1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)	6250
(h)	1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081)	7081
(i)	1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)	7122
(j)	1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398)	7398
(k)	<u>1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone (THJ-2201).....</u>	<u>7024</u>
(l) (k)	1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201).....	7201
(m) (l)	1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).....	7694
(n) (m)	1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4)	7104
(o) (n)	1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole 7008 (SR-18 and RCS-8)	7008
(p) (o)	1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH-203)	7203
(q)	<u>N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide.....</u>	<u>7048</u>
	Other names: APINACA; AKB48	
(r) (p)	<u>N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-</u> <u>carboxamide,</u> <u>its optical, positional, and geometric isomers, salts and salts of</u> <u>isomers</u>	<u>7012</u>
	Other names: AB-FUBINACA	
(s)	<u>N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-</u> <u>carboxamide.....</u>	<u>7031</u>
	Other names: AB-CHMINACA	
(t) (q)	<u>N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its</u> <u>optical, positional, and geometric isomers, salts and salts of isomers</u>	<u>7035</u>
	Other names: ADB-PINACA	
(u)	<u>N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide.....</u>	<u>7023</u>
	Other names: AB-PINACA	
(v) (r)	<u>Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and</u> <u>geometric isomers, salts and salts of isomers.....</u>	<u>7225</u>
	Other names: 5-fluoro-PB-22; 5F-PB-22	
(w) (s)	<u>Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric</u> <u>isomers, salts and salts of isomers</u>	<u>7222</u>

Other names: PB-22; QUPIC

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.02 Controlled Substances in Schedule II.

- (1) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, thebaine-derived butorphanol, nalmeferne, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

1.	Codeine.....	9050
2.	Dihydroetorphine.....	9334
3.	Ethylmorphine.....	9190
4.	Etorphine hydrochloride.....	9059
5.	Granulated opium.....	9640
6.	Hydrocodone.....	9193
7.	Hydromorphone.....	9150
8.	Metopon.....	9260
9.	Morphine.....	9300
10.	Opium extracts.....	9610
11.	Opium fluid.....	9620
12.	Oripavine.....	9330
13.	Oxycodone.....	9143
14.	Oxymorphone.....	9652
15.	Powdered opium.....	9639
16.	Raw opium.....	9600
17.	Thebaine.....	9333
18.	Tincture of opium.....	9630

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (2)(a) of this rule, except that

these substances shall not include the isoquinoline alkaloids of opium.

- (c) Opium poppy and poppy straw.
 - (d) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
 - (e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy)..... 9670
- (3) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted.
- (a) Alfentanil..... 9737
 - (b) Alphaprodine..... 9010
 - (c) Anileridine..... 9020
 - (d) Bezitramide..... 9800
 - (e) Carfentanil..... 9743
 - (f) Dextropropoxyphene (bulk, non dosage forms)..... 9273
 - (g) Dihydrocodeine..... 9120
 - (h) Diphenoxylate..... 9170
 - (i) Fentanyl..... 9801
 - (j) Isomethadone..... 9226
 - (k) Levo-alpha-acetylmethadol..... 9648
Other names: levo-alpha-acetylmethadol; levomethadyl acetate; LAAM
 - (l) Levomethorphan..... 9210
 - (m) Levorphanol..... 9220
 - (n) Metazocine..... 9240
 - (o) Methadone..... 9250
 - (p) Methadone-Intermediate; 4-cyano-2-dimethylamino-4,4-diphenyl butane..... 9254
 - (q) Moramide-Intermediate; 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid..... 9802
 - (r) Pethidine (meperidine)..... 9230
 - (s) Pethidine-Intermediate-A; 4-cyano-1-methyl-4-phenylpiperidine..... 9232

(t)	Pethidine-Intermediate-B; ethyl-4-phenylpiperidine-4-carboxylate.....	9233
(u)	Pethidine-Intermediate-C; 1-methyl-4-phenylpiperidine-4-carboxylic acid.....	9234
(v)	Phenazocine.....	9715
(w)	Piminodine.....	9730
(x)	Racemethorphan.....	9732
(y)	Racemorphan.....	9733
(z)	Remifentanil.....	9739
(aa)	Sufentanil.....	9740
(bb)	Tapentadol.....	9780
(4)	Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:	
(a)	Amphetamine, its salts, optical isomers, and salts of its optical isomers.....	1100
(b)	Methamphetamine, its salts, isomers, and salts of its isomers.....	1105
(c)	Phenmetrazine and its salts.....	1631
(d)	Methylphenidate.....	1724
(e)	Lisdexamfetamine, its salts, isomers, and salts of its isomers.....	1205
(5)	Depressants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
(a)	Amobarbital.....	2125
(b)	Glutethimide.....	2550
(c)	Pentobarbital.....	2270
(d)	Phencyclidine.....	7471
(e)	Secobarbital.....	2315
(6)	Hallucinogenic substances.	
(a)	Nabilone.....	7379
	Other names: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.	
(7)	Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:	
(a)	Immediate precursor to amphetamine and methamphetamine:	

1.	Phenylacetone.....	8501
	Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;	
(b)	Immediate precursors to phencyclidine (PCP):	
1.	1-phenylcyclohexylamine.....	7460
2.	1-piperidinocyclohexanecarbonitrile(PCC).....	8603
(c)	Immediate precursor to fentanyl:	
1.	4-anilino-N-phenethyl-4-piperidine (ANPP).....	8333

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.03 Controlled Substances in Schedule III.

- (1) Schedule III consists of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - (a) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1405
 - (b) Benzphetamine..... 1228
 - (c) Clorpheniramine..... 1645
 - (d) Clortermine..... 1647
 - (e) Phendimetrazine..... 1615
- (3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect in the central nervous system:
 - (a) Any compound, mixture, or preparation containing:
 1. Amobarbital..... 2126
 2. Secobarbital..... 2316
 3. Pentobarbital 2271
Or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(b)	Any suppository dosage form containing:	
	1. Amobarbital.....	2126
	2. Secobarbital.....	2316
	3. Pentobarbital.....	2271
	Or any salt of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.	
(c)	Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof. Examples include the following drugs:.....	2100
	1. Aprobarbital.....	2100
	2. Butabarbital (secbutabarbital).....	2100
	3. Butalbital.....	2100
	4. Butobarbital (butethal).....	2100
	5. Talbutal.....	2100
	6. Thiamylal.....	2100
	7. Thiopental.....	2100
	8. Vinbarbital.....	2100
(d)	Chlorhexadol.....	2510
(e)	Embutramide.....	2020
(f)	Gamma hydroxybutyric acid preparations. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under § 505 of the federal Food, Drug, and Cosmetic Act, codified in 21 U.S.C. § 301, et seq.....	2012
(g)	Ketamine, its salts, isomers, and salts of isomers.....	7285
	Other name: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone	
(h)	Lysergic acid.....	7300
(i)	Lysergic acid amide.....	7310
(j)	Methyprylon.....	2575
(k)	Perampanel, and its salts, isomers, and salts of isomers.....	2261
(l)	Sulfondiethylmethane.....	2600
(m)	Sulfonethylmethane.....	2605
(n)	Sulfonmethane.....	2610
(o)	Tiletamine and zolazepam or any salt of tiletamine or zolazepam.....	7295

1. Other name for a tiletamine-zolazepam combination product: Telazol®;
 2. Other name for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.
 3. Other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo[3,4-e],[1,4]-diazepin-7(1H)-one; flupyrzapon
- (4) Nalorphine..... 9400
- (5) Narcotic Drugs.
- (a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium..... 9803
 2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts..... 9804
 3. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amount..... 9807
 4. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amounts..... 9808
 5. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts..... 9809
 6. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts..... 9810
- (b) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:
1. Buprenorphine..... 9064
- (6) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters and ethers:
- (a) Anabolic steroids..... 4000
1. 3[alpha],17[beta]-dihydroxy-5a-androstane
 2. ——— Androstanedione (5[alpha]-androstan-3,17-dione)
 - 2.3- 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5a-androstane
 - 3.4- 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5a-androstane

- 4.5. 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene
- 5.6. 17[alpha]-methyl-[delta]1-dihydrotestosterone(17[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one
Other Names: (a.k.a. '17-[alpha]-methyl-1-testosterone'))
- 6.7. 17[alpha]-methyl-4-hydroxynandrolone(17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one)
- 7.8. 1-Androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene)
- 8.9. 1-Androstenediol (3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene)
- 9.10. 4-Androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene)
- 10.1. 5-Androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene)
- 11.2. 1-Androstenedione (5[alpha]-androst-1-en-3,17-dione)
- 12.3. 4-Androstenedione (androst-4-en-3,17-dione)
- 13.4. 5-Androstenedione (androst-5-en-3,17-dione)
- 14.5. 3[Beta],17[Beta]-dihydroxy-5a-androstane
- 15.6. 13[Beta]-ethyl-17[beta]-hydroxygon-4-en-3-one
16. Androstenedione (5[alpha]-androst-3,17-dione)
17. Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)
18. Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one)
19. Boldione (androst-1,4-diene-3,17-dione)
20. Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)
21. ~~Chlorotestosterone~~
- 21.2. Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one)
Other Names: 4-Chlorotestosterone
- 22.3. Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one)
- 23.4. [Delta]1-dihydrotestosterone (a.k.a.'1-testosterone') (17[Beta]-hydroxy-5[alpha]-androst-1-en-3-one)
- 24.5. Desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[Beta]-ol)
 Other name: madol
- 25.6. 4-Dihydrotestosterone (17[beta]-hydroxyandrost-3-one)
- 26.7. Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androst-3-one)
- 27.8. Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene)
- 28.9. Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-

4-en-3-one)

- 29_30- Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one)
- 30_4- Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan)
- 31_2- 4-Hydroxy-19-nortestosterone (4,17[beta]-dihydroxyestr-4-en-3-one)
- 32_3- 4-Hydroxytestosterone (4,17[beta]-dihydroxyandrost- 4-en-3-one)
- 33_4- Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)
- 34_5- Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)
- 35_6- Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-diene-3-one)
- 36_7- Methandranone
- 37_8- Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene)
- 38_9- Methandrostenolone
- 39_40- Methasterone (2[alpha],17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one)
- 40_4- Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one)
- 41_2- Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one)
- 42_3- Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one)
- 43_4- Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9,11-trien-3-one)
- 44_5- Mibolerone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyestr-4-en-3-one)
- 45_6- Nandrolone (17[beta]-hydroxyestr-4-en-3-one)
- 46_7- 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)
- 47_8- 19-Nor-4-androstenediol (3[alpha],17[beta]-dihydroxyestr-4-ene)
- 48_9- 19-Nor-4-androstenediol (3[beta],17[beta]-dihydroxyestr-4-ene)
- 49_50- 19-Nor-5-androstenediol (3[alpha],17[beta]-dihydroxyestr-5-ene)
- 50_4- 19-Nor-5-androstenediol (3[beta],17[beta]-dihydroxyestr-5-ene)
- 51_2- 19-Nor-4-androstenedione (estr-4-en-3,17-dione)
- 52_3- 19-Nor-5-androstenedione (estr-5-en-3,17-dione)
- 53_4- Norbolethone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one)
- 54_5- Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one)
- 55_6- Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one)
- 56_7- Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one)

- 57.8. Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-5[alpha]-androstan-3-one)
- 58.9. Oxymesterone (17[alpha]-methyl-4,17[beta]-dihydroxyandrost-4-en-3-one)
- 59.60. Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androstan-3-one)
- 60.4. Prostanazol (17[beta]-hydroxy-5[alpha]-androstan[3,2-c]pyrazole)
- 61.2. Stanolone (17[beta]-Hydroxy-5alpha-Androstan-3-One)
- 62.3. Stanazolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole)
- 63. Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one)
- 64.5. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone)
- 65.6. Testosterone (17[beta]-hydroxyandrost-4-en-3-one)
- 66.7. Tetrahydrogestrinone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4,9,11-trien-3-one)
- 67.8. Trenbolone (17[beta]-hydroxyestr-4,9,11-trien-3-one)

- (b) Any salt, ester, or isomer of a drug or substance described or listed in subparagraph (a), if such salt, ester, or isomer promotes muscle growth.
- (c) Anabolic steroids intended for administration to cattle or other non-human species are exempt from this rule unless such steroids are prescribed, dispensed, or distributed for human use.
- (d) Anabolic steroids with a combination of estrogens intended for administration to hormone deficient women are exempt from this rule unless such steroids are prescribed, dispensed, or distributed to women who are not hormone deficient.

(7) **Hallucinogenic Substances**

- (a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product..... 7369
Other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.04 Controlled Substances in Schedule IV.

- (1) Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
 - (a) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine

	sulfate per dosage unit.....	9167
(b)	Dextropropoxyphene dosage forms (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).....	9278
(3)	Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
(a)	Alfaxalone	2731
(b)	Alprazolam.....	2882
(c)	Barbital.....	2145
(d)	Bromazepam.....	2748
(e)	Camazepam.....	2749
(f)	Carisoprodol..... Other name: Soma®	8192
(g)	Chloral betaine.....	2460
(h)	Chloral hydrate.....	2465
(i)	Chlordiazepoxide.....	2744
(j)	Clobazam.....	2751
(k)	Clonazepam.....	2737
(l)	Clorazepate.....	2768
(m)	Clotiazepam.....	2752
(n)	Cloxazolam.....	2753
(o)	Delorazepam.....	2754
(p)	Diazepam.....	2765
(q)	Dichloralphenazone.....	2467
(r)	Estazolam.....	2756
(s)	Eszopiclone.....	N/A
(t)	Ethchlorvynol.....	2540
(u)	Ethinamate.....	2545
(v)	Ethyl Loflazepate.....	2758
(w)	Fludiazepam.....	2759
(x)	Flunitrazepam.....	2763

(y)	Flurazepam.....	2767
(z)	Fospropofol.....	2138
(aa)	Halazepam.....	2762
(bb)	Haloxazolam.....	2771
(cc)	Ketazolam.....	2772
(dd)	Loprazolam.....	2773
(ee)	Lorazepam.....	2885
(ff)	Lormetazepam.....	2774
(gg)	Mebutamate.....	2800
(hh)	Medazepam.....	2836
(ii)	Meprobamate.....	2820
(jj)	Methohexital.....	2264
(kk)	Methylphenobarbital (mephobarbital).....	2250
(ll)	Midazolam.....	2884
(mm)	Nimetazepam.....	2837
(nn)	Nitrazepam.....	2834
(oo)	Nordiazepam.....	2838
(pp)	Oxazepam.....	2835
(qq)	Oxazolam.....	2839
(rr)	Paraldehyde.....	2585
(ss)	Petrichloral.....	2591
(tt)	Phenobarbital.....	2285
(uu)	Pinazepam.....	2883
(vv)	Prazepam.....	2764
(ww)	Quazepam.....	2881
(xx)	Suvorexant.....	2223
(yy)	Temazepam.....	2925
(zz)	Tetrazepam.....	2886
(aaa)	Tramadol..... Other names: Ultram® and Ultracet®	9752

(bbb)	Triazolam.....	2887
(ccc)	Zaleplon.....	2781
(ddd)	Zolpidem.....	2783
(eee)	Zopiclone	2784
(4)	Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts, isomers (whether optical, positional, or geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:	
(a)	Fenfluramine.....	1670
(b)	Dexfenfluramine.....	1670
(5)	Lorcaserin. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:	
(a)	Lorcaserin.....	1625
(6)	Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:	
(a)	Cathine ((+)-norpseudoephedrine).....	1230
(b)	Diethylpropion.....	1610
(c)	Fencamfamin.....	1760
(d)	Fenproporex.....	1575
(e)	Mazindol.....	1605
(f)	Mefenorex.....	1580
(g)	Modafinil.....	1680
(h)	Pemoline (including organometallic complexes and chelates thereof).....	1530
(i)	Phentermine.....	1640
(j)	Pipradol.....	1750
(k)	Sibutramine.....	1675
(l)	SPA ((-)-1-dimethylamino-1,2-diphenylethane).....	1635
(7)	Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:	
(a)	Pentazocine.....	9709
(b)	Butorphanol (including its optical isomers).....	9720

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.05 Controlled Substances in Schedule V.

- (1) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.
- (2) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:
 - (a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
 - (b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
 - (c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
 - (d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - (e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - (f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (3) Stimulants. Unless specifically exempted or excluded, or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of the isomers:
 - (a) Pyrovalerone..... 1485
- (4) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances have a depressant effect on the central nervous system, including its salts:
 - (a) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]..... 2779
 - (b) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]..... 2746
 - (c) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]..... 2782

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.06 Controlled Substances in Schedule VI.

- (1) Marijuana..... 7360
- (2) Tetrahydrocannabinols..... 7370
- (3) Unless specifically excepted or unless listed in another schedule, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological

activity. Examples include the following drugs or their compounds regardless of numerical designation of atomic positions covered:

- (a) _____ 1 cis or trans tetrahydrocannabinol, and its optical isomers.
- (b) _____ 6 cis or trans tetrahydrocannabinol, and its optical isomers.
- (c) _____ 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.07 Controlled Substances in Schedule VII.

- (1) Butyl nitrite and any isomer of butyl nitrite

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.08 Non-narcotic Substances Excluded from Controlled Substances

- (1) Non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.09 Chemical preparations excluded from Controlled Substances

- (1) Chemical preparations listed in the most current edition of 21 C.F.R. 1308.24, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.10 Veterinary anabolic steroid implant products excluded from Controlled Substances

- (1) Veterinary anabolic steroid implant products listed in the most current edition of 21 C.F.R. 1308.26, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.11 Prescription products excluded from Controlled Substances

- (1) Prescription products listed in the most current edition of 21 C.F.R. 1308.32, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances

- (1) Anabolic steroid products listed in the most current edition of 21 C.F.R. 1308.34, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

- (1) Certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols listed in the most current edition of 21 C.F.R. 1308.35, are excluded from all schedules.

Authority: Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

Repeals

Chapter 0940-06-01 Controlled Substances is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

REPEAL

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

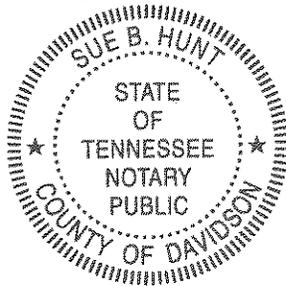
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services (board/commission/ other authority) on 12/10/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/15/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 11/12/2015



Date: 12/10/15

Signature: [Signature]

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

Subscribed and sworn to before me on: 12/10/15

Notary Public Signature: [Signature]

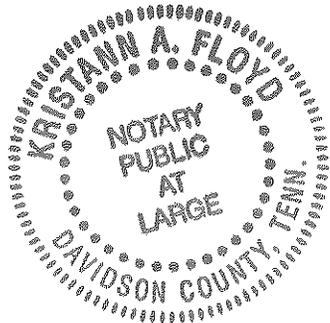
My commission expires on: May 8, 2017

Date: 17 Dec 15

Signature: [Signature]

Name of Officer: John J. Dreyzehner, MD, MPH

Title of Officer: Commissioner, Tennessee Department of Health



Subscribed and sworn to before me on: 12/17/15

Notary Public Signature: [Signature]

My commission expires on: 3/22/2016

**Rulemaking Hearing Rules
Tennessee Department of Mental Health and Substance Abuse Services
Chapter 0940-06-01**

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

2/19/2016

Date

Department of State Use Only

Filed with the Department of State on: 3/4/16

Effective on: 6/2/16

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2016 MAR -4 PM 1:53
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control Board

SUBJECT: Fossil-Fuel Fired Steam Generation

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-201-105

EFFECTIVE DATES: June 5, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Board is amending Rule 1200-03-16-.02, relating to fossil fuel-fired steam generators for which construction is commenced after April 3, 1972, and Rule 1200-03-16-.59, relating to industrial-commercial-institutional steam generating units. According to the Board, the rules are being amended to delete certain language made obsolete by revisions to applicable federal regulations. Certain existing language of each rule is being retained to preserve the validity of references set forth in other chapters of Division 1200-03.

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 verbal or written comments received at the public hearing or during the comment period.

Regulatory Flexibility Addendum

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

- (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 amendments to Rules 1200-03-16-.02 and 1200-03-16-.59 do not impact any small businesses. The general effect is beneficial in that businesses would not be subject to obsolete state regulations in addition to the current federal regulations.

- (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.

None.

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

The Board is not aware of any affected facility owned by an entity classified as a small business. The amendments to Rules 1200-03-16-.02 and 1200-03-16-.59 could prevent owners of affected facilities from being subject to both obsolete state and current federal regulations. There would be no effect on consumers.

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

None.

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

The provisions of Chapter 1200-03-16 are the state equivalent of federal regulations contained in 40 CFR Part 60. The amendments to Rules 1200-03-16-.02 and 1200-03-16-.59 serve to allow the Board to avoid requiring subject facilities to be subject to both obsolete state regulations and their current federal equivalents.

- (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.

Not applicable.

Impact on Local Governments

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

The Department anticipates that this amended rule will not have a financial impact on local governments.

3

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-03-16
Rule ID(s): 6132
File Date: 3/7/16
Effective Date: 6/5/16

filed
June 30
2017

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@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
1200-03-16	New Source Performance Standards
Rule Number	Rule Title
1200-03-16-.02	Fossil Fuel-Fired Steam Generating for which Construction is Commenced After April 3, 1973
1200-03-16-.59	Industrial-Commercial-Institutional Steam Generating Units

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

Chapter 1200-03-16
New Source Performance Standards

Amendments

Rule 1200-03-16-.02 Fuel Fired Steam Generators for Which Construction is Commenced After April 3, 1972 is amended by deleting it in its entirety and replacing it with the following so that, as amended, the rule shall read as follows:

1200-03-16-.02 Fuel Fired Steam Generators for Which Construction is Commenced After April 3, 1972.

(1) Applicability

(a) The affected facilities to which the provisions of this rule apply are:

1. Each fossil-fuel-fired steam generating unit of more than 73 mega watts heat input rate (250 million Btu per hour) commenced on or after April 3, 1972, and before November 6, 1988.
2. Each fossil-fuel and each fossil-fuel and wood-residue-fired steam generating unit capable of firing fossil fuel at a heat input rate of more than 73 megawatts (250 million Btu per hour) that commenced construction or modification after November 6, 1988.

(b) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this rule, shall not bring that unit under the applicability of this rule.

(c) ~~The requirements of subparts (5)(a)2(iv) and (v), subparagraphs (b), and (5)(d), and subpart (6)(f)4.(vi) of this rule are applicable to lignite-fired steam generating units that commenced construction or modification after November 6, 1988. Reserved.~~

(d) Any facility covered under Rule 1200-03-16-.03 is not covered under this rule.

(e) Any affected facility meeting the applicability requirements of ~~1200-03-16-.59~~ subparagraph (1)(a) of Rule 1200-03-16-.59 commencing construction, modification, or reconstruction after November 6, 1988 is not subject to this rule.

(2) Definitions. Reserved

~~(a) "Fossil fuel-fired steam generating unit" means a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.~~

~~(b) "Fossil fuel" means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.~~

~~(c) "Coal refuse" means waste products of coal mining, cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay and other organic and inorganic material.~~

~~(d) "Fossil fuel and wood residue-fired steam generating unit" means a furnace or boiler used in the process of burning fossil fuel and wood residue for the purpose of producing steam by heat transfer.~~

~~(e) "Wood residue" means bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.~~

(f) ~~“Coal” means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing Material. Designation D-388-77.~~

~~(Note: All references to ASTM in this rule refers to the American Society for Testing Materials. Copies of methods are available for purchase by writing to ASTM, 1916 Race Street, Philadelphia, PA 19103 or by writing to the Tennessee Division of Air Pollution Control, 701 Broadway, 4th Floor Customs House, Nashville, TN 37219. Be sure and specify which method is desired).~~

(3) ~~Standard for particulate matter and visible emissions.~~

(a) ~~On and after the date on which the performance test required to be conducted by 1200-3-16-.01(5)(g) is completed, no owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:~~

- ~~1. Contain particulate matter in excess of 43 nanograms per joule heat input (0.10 lb per million Btu) derived from fossil fuel or fossil fuel and wood residue.~~
- ~~2. For units described in part (1)(a)1. of this rule, exhibit greater than 20 percent opacity except that a maximum of 40 percent opacity shall be permissible for not more than 2 minutes in any hour.~~
- ~~3. For units described in part (1)(a)2. of this rule, exhibit greater than 20 percent opacity except for one six minute period per hour of not more than 27 percent opacity.~~

(4) ~~Standard for sulfur dioxide.~~

(a) ~~On and after the date on which the performance test required to be conducted by 1200-3-16-.01(5) is completed, no owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:~~

- ~~1. 340 nanograms per joule heat input (0.80 lb per million Btu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.~~
- ~~2. 520 nanograms per joule heat input (1.2 lb per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue.~~

(b) ~~When different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) shall be determined by proration using the following formula:~~

$$PS_{SO_2} = \frac{[y(340) + z(520)]}{(y + z)}$$

~~where:~~

~~PS_{SO_2} = is the prorated standard for sulfur dioxide when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired,~~

~~y = is the percentage of total heat input derived from liquid fossil fuel, and~~

~~z = is the percentage of total heat input derived from solid fossil fuel.~~

(c) ~~Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.~~

(5) ~~Standard for nitrogen oxides.~~

(a) ~~On and after the date on which the performance test required to be conducted by 1200-3-16-.01(5) is completed, no owner or operator subject to the provisions of this rule shall cause to be~~

discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides, expressed as NO₂ in excess of:

1. For units described in part (1)(a)1. of this rule:

- (i) 86 nanograms per joule heat input (0.20 lb per million Btu) derived from gaseous fossil fuel.
- (ii) 130 nanograms per joule heat input (0.30 lb per million Btu) derived from liquid fossil fuel.
- (iii) 300 nanograms per joule heat input (0.70 lb per million Btu) derived from solid fossil fuel (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).

2. For units described in part (1)(a)2. of this rule:

- (i) 86 nanograms per joule heat input (0.20 lb per million Btu) derived from gaseous fossil fuel or gaseous fossil fuel and wood residue.
- (ii) 130 nanograms per joule heat input (0.30 lb per million Btu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.
- (iii) 300 nanograms per joule heat input (0.70 lb per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).
- (iv) 260 nanograms per joule heat input (0.60 lb per million Btu) derived from lignite or lignite and wood residue (except as provided by part 2(v) of this subparagraph).
- (v) 340 nanograms per joule heat input (0.80 lb per million Btu) derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone fired unit.

(b) Except as provided under subparagraphs (c) and (d) of this paragraph when different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) is determined by proration using the following formula:

1. For units described in part (1)(a)1. of this rule:

$$PS_{NOx} = \frac{x(86)+y(130)+z(300)}{x+y+z}$$

where:

PS_{NOx} is the prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired;

x is the percentage of total heat input derived from gaseous fossil fuel;

y is the percentage of total heat input derived from liquid fossil fuel; and

z is the percentage of total heat input derived from solid fossil fuel (except lignite or a solid fossil fuel containing 25% by weight or more coal refuse).

2. For units described in part (1)(a)2. of this rule:

$$PS_{NOx} = \frac{w(260)+x(86)+y(130)+z(300)}{w+x+y+z}$$

where:

PS_{NOx} is the prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired;

w is the percentage of total heat input derived from lignite;

x is the percentage of total heat input derived from gaseous fossil fuel;

y is the percentage of total heat input derived from liquid fossil fuel; and

z is the percentage of total heat input derived from solid fossil fuel (except lignite).

- (c) When a fossil fuel containing at least 25 percent, by weight, of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for nitrogen oxides does not apply.
- (d) Cyclone-fired units which burn fuels containing at least 25 percent of lignite that is mined in North Dakota, South Dakota, or Montana remain subject to subpart (a)2.(v) of this paragraph regardless of the types of fuel combusted in combination with that lignite.
- (6) Emission and fuel monitoring.
- (a) Each owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen oxides emissions, and either oxygen or carbon dioxide except as provided in subparagraph (b) of this paragraph.
- (b) Certain of the continuous monitoring system requirements under subparagraph (a) of this paragraph do not apply to owners or operators under the following conditions:
1. For a fossil fuel-fired steam generator that burns only gaseous fossil fuel, continuous monitoring systems for measuring the opacity of emissions and sulfur dioxide emissions are not required.
 2. For a fossil fuel-fired steam generator that does not use a flue gas desulfurization device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under subparagraph (d) of this paragraph.
 3. Notwithstanding 1200-3-16-.01(8)(b), installation of a continuous monitoring system for nitrogen oxides may be delayed until after the initial performance tests under 1200-3-16-.01(5) have been conducted. If the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than 70 percent of the applicable standards in paragraph (5) of this rule, a continuous monitoring system for measuring nitrogen oxides emissions is not required. If the initial performance test results show that nitrogen oxide emissions are greater than 70 percent of the applicable standard, the owner or operator shall install a continuous monitoring system for nitrogen oxides within one year after the date of the initial performance tests under 1200-3-16-.01(5) and comply with all other applicable monitoring requirements under this rule.
 4. If an owner or operator does not install any continuous monitoring systems for sulfur oxides and nitrogen oxides, as provided under parts (b)1. and (b)3. or parts (b)2. and (b)3. of this paragraph a continuous monitoring system for measuring either oxygen or carbon dioxide is not required.
- (c) For performance evaluations under 1200-3-16-.01(8)(c) and calibration checks under 1200-3-16-.01(8)(d) the following procedures shall be used:
1. Reference Methods 6 or 7, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

2. ~~Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 as stated in the *Federal Register*, Vol. 48, No. 102, Wednesday, May 25, 1983, beginning on page 23608.~~
3. ~~For affected facilities burning fossil fuel(s), the span value for a continuous monitoring system measuring the opacity of emissions shall be 80, 90, or 100 percent and for a continuous monitoring system measuring sulfur oxides or nitrogen oxides the span value shall be determined as follows:~~

(In parts per million)

Fossil fuel	Span value for sulfur dioxide	Span value for nitrogen oxides
Gas	not applicable	500
Liquid	1,000	500
Solid	1,500	500
Combinations	$1,000y + 1,500z$	$500(x + y) + 1,000z$

where:

- x = the fraction of total heat input derived from gaseous fossil fuel, and
- y = the fraction of total heat input derived from liquid fossil fuel, and
- z = the fraction of total heat input derived from solid fossil fuel.

4. ~~All span values computed under part 3. of this subparagraph for burning combinations of fossil fuels shall be rounded to the nearest 500 ppm.~~
 5. ~~For a fossil fuel-fired steam generator that simultaneously burns fossil fuel and nonfossil fuel, the span value of all continuous monitoring systems shall be subject to the Technical Secretary's approval.~~
- (d) ~~Fuel analysis shall be conducted according to specifications provided by the Technical Secretary.~~
- (e) ~~For any continuous monitoring system installed under subparagraph (a) of this paragraph, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (ng/J, lb/million Btu):~~

1. ~~When a continuous monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the Technical Secretary shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used:~~

$$E = CF \left[\frac{20.9}{(20.9 - \%O_2)} \right]$$

where:

E, C, F, and %O₂ are determined under subparagraph (f) of this paragraph.

2. ~~When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used:~~

$$E = CF_c \left[\frac{100}{\%CO_2} \right]$$

where:

E , C , F_c , and $\%CO_2$ are determined under subparagraph (f) of this paragraph.

(f) ~~The values used in the equations under parts (e)1. and 2. of this paragraph are derived as follows:~~

1. ~~E = pollutant emissions, ng/J (lb/million Btu).~~
2. ~~C = pollutant concentration, ng/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each one-hour period by $4.15 \times 10^4 M$ ng/dscm per ppm ($2.59 \times 10^{-9} M$ lb/dscf per ppm) where M = pollutant molecular weight, g/g mole (lb/lb mole). $M = 64.07$ for sulfur dioxide and 46.01 for nitrogen oxides.~~
3. ~~$\% O_2$, $\% CO_2$ = oxygen or carbon dioxide volume (expressed as percent).~~
4. ~~F , F_c = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (F_c), respectively. Values of F and F_c are given as follows:~~

(i) ~~For anthracite coal as classified according to A.S.T.M. D 388-77, $F = 2.723 \times 10^{-7}$ dscm/J (10,140 dscf/million Btu) and $F_c = 0.532 \times 10^{-7}$ scm CO_2 /J (1,980 scf CO_2 /million Btu).~~

(ii) ~~For subbituminous and bituminous coal as classified according to A.S.T.M. D 388-77, $F = 2.637 \times 10^{-7}$ dscm/J (9,820 dscf/million Btu) and $F_c = 0.486 \times 10^{-7}$ scm CO_2 /J (1,810 scf CO_2 /million Btu).~~

(iii) ~~For liquid fossil fuels including crude, residual, and distillate oils, $F = 2.476 \times 10^{-7}$ dscm/J (9,220 dscf/million Btu) and $F_c = 0.384 \times 10^{-7}$ scm CO_2 /J (1,430 scf CO_2 /million Btu).~~

(iv) ~~For gaseous fossil fuels, $F = 2.347 \times 10^{-7}$ dscm/J (8,740 dscf/million Btu). For natural gas, propane, and butane fuels, $F_c = 0.279 \times 10^{-7}$ scm CO_2 /J (1,040 scf CO_2 /million Btu) for natural gas, 0.322×10^{-7} scm CO_2 /J (1,200 scf CO_2 /million Btu) for propane and 0.338×10^{-7} scm CO_2 /J (1,260 scf CO_2 /million Btu) for butane.~~

(v) ~~For bark $F = 2.589 \times 10^{-7}$ dscm/J (9,640 dscf/million Btu) and $F_c = 0.500 \times 10^{-7}$ scm CO_2 /J (1,840 scf CO_2 /million Btu). For wood residue other than bark $F = 2.492 \times 10^{-7}$ dscm/J (9,280 dscf/million Btu) and $F_c = 0.494 \times 10^{-7}$ scm CO_2 /J (1,860 scf CO_2 /million Btu).~~

(vi) ~~For lignite coal as classified according to A.S.T.M. D 388-77, $F = 2.659 \times 10^{-7}$ dscm/J (9,900 dscf/million Btu) and $F_c = 0.516 \times 10^{-7}$ scm CO_2 /J (1,920 scf CO_2 /million Btu).~~

5. ~~The owner or operator may use the following equation to determine an F factor (dscm/J or dscf/million Btu) on a dry basis (if it is desired to calculate F on a wet basis, consult the Technical Secretary) or F_c factor (scm CO_2 /J, or scf CO_2 /million Btu) on either basis in lieu of the F or F_c factors specified in part 4. of this subparagraph:~~

$$F = 10^{-6} \frac{[227.2(\%H) + 95.5(\%C) + 35.6(\%S) + 8.7(\%N) - 28.7(\%O)]}{GCV}$$

$$F_c = \frac{2.0 \times 10^{-5} (\%C)}{GCV \text{ (SI units)}}$$

$$F = 10^6 \frac{[3.64(\%H) + 1.53(\%C) + 0.57(\%S) + 0.14(\%N) - 0.46(\%O)]}{GCV \text{ (English units)}}$$

$$F_c = \frac{20.0(\%C)}{GCV \text{ (SI units)}}$$

$$F_c = \frac{321 \times 10^3 (\%C)}{GCV \text{ (English units)}}$$

- (i) ~~H, C, S, N, and O are content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired, using A.S.T.M. method D3178-74 or D3176 (solid fuels), or computed from results using A.S.T.M. methods D1137-53(75), D1945-64(76), or D1946-77 (gaseous fuels) as applicable.~~
- (ii) ~~GCV is the gross calorific value (kJ/kg, Btu/lb) of the fuel combusted, determined by the A.S.T.M. test methods D-2015-77 for solid fuels and D-1826-77 for gaseous fuels as applicable.~~
- (iii) ~~For affected facilities which fire both fossil fuels and nonfossil fuels, the F or F_c value shall be subject to the Technical Secretary's approval.~~

6. ~~For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue, the F or F_c factors determined by part (f)4. or (f)5. of this paragraph shall be prorated in accordance with the applicable formula as follows:~~

$$F = \sum_{i=1}^n X_i F_i \text{ or } F_c = \sum_{i=1}^n X_i (F_c)_i$$

where:

- X_i ~~= the fraction of total heat input derived from each type of fuel (e.g. natural gas, bituminous coal, wood residue, etc.)~~
- F_i or (F_c)_i ~~= the applicable F or F_c factor for each fuel type determined in accordance with parts (f)4. and (f)5. of this paragraph.~~
- n ~~= the number of fuels being burned in combination~~

(g) ~~For the purpose of reports required under 1200-3-16-.01(7)(c), periods of excess emissions that shall be reported are defined as follows:~~

1. ~~Opacity.~~

- (i) ~~For units defined in part (1)(a)1. of this rule, the Technical Secretary may specify any level he wishes so long as the level constitutes a violation under part (3)(a)2. of this rule.~~

(ii) ~~For units defined in part (1)(a)2. of this rule, excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 20 percent opacity, except that one six-minute average per hour of up to 27 percent opacity need not be reported.~~

2. ~~Sulfur dioxide. Excess emissions for affected facilities are defined as:~~

(i) ~~Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed the applicable standard under paragraph (4) of this rule.~~

3. ~~Nitrogen oxides. Excess emissions for affected facilities using a continuous monitoring system for measuring nitrogen oxides are defined as any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) exceed the applicable standards under paragraph (5) of this rule.~~

(7) ~~Test methods and procedures.~~

(a) ~~The Reference Methods in 1200-3-16-.01(5)(g) except as provided in 1200-3-16-.01(5)(b) shall be used to determine compliance with the standards as prescribed in Paragraphs (3), (4), and (5) of this rule as follows:~~

1. ~~Method 1 for selection of sampling site and sample traverses.~~

2. ~~Method 3 for gas analysis to be used when applying Reference Methods 5, 6, and 7.~~

3. ~~Method 5 for concentration of particulate matter and the associated moisture content.~~

4. ~~Method 6 for concentration of SO₂. Method 6A may be used whenever methods 6 and 3 data are used to determine the SO₂ emission on rate in ng/J, and~~

5. ~~Method 7 for concentration of NO_x.~~

(b) ~~For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Technical Secretary. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature of 160 ± 14°C (320 ± 25°F).~~

(c) ~~For Methods 6 and 7, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross-section or at a point no closer to the walls than 1 m (3.28 ft.). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.~~

(d) ~~For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.~~

(e) ~~For Method 7, each run shall consist of at least four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the samples shall constitute the run value.~~

(f) ~~For each run using the methods specified by parts (a)3., (a)4., and (a)5. of this paragraph, the emissions expressed in ng/J (lb/million Btu) shall be determined by the following procedure:~~

$$E = CF \left[\frac{(20.9)}{(20.9 - \%O_2)} \right]$$

where:

1. ~~E~~ = pollutant emission ng/J (lb/million Btu).
2. ~~C~~ = pollutant concentration, ng/dscm (lb/dscf), determined by Method 5, 6, or 7.
3. ~~Percent O₂~~ = oxygen content by volume (expressed as percent), dry basis. _____
 _____ Percent oxygen shall be determined by using the integrated or _____
 _____ grab sampling and analysis procedures of Method 3 as _____
 _____ applicable.

The sample shall be obtained as follows:

- (i) ~~For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Methods 6 and 7 determinations, respectively (subparagraph (7) (c) of this rule). For Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedures of Method 3.~~
- (ii) ~~For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Method 5 under subparagraph (b) of this paragraph. Method 4 shall be used for selection of the number of traverse points except that no more than 12 sample points are required.~~

4. ~~F~~ = a factor as determined in parts (f) 4, 5, or 6. of paragraph (6) of this rule.

- (g) ~~When combinations of fossil fuels or fossil fuel and wood residue are fired, the heat input, expressed in watts (Btu/hr), is determined during each testing period by multiplying the gross calorific value of each fuel fired (in J/kg or Btu/lb) by the rate of each fuel burned (in kg/sec or lb/hr). Gross calorific values are determined in accordance with A.S.T.M. methods D2015-77 (solid fuels), D240-76 (liquid fuels), or D1826-77 (gaseous fuels) as applicable. The method used to determine calorific value of wood residue must be approved by the Technical Secretary. The owner or operator shall determine the rate of fuels burned during each testing period by suitable methods and shall confirm the rate by a material balance over the steam generation system.~~

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

Rule 1200-03-16-.59 Industrial Commercial-Institutional Steam Generating Units is amended by deleting it in its entirety and replacing it with the following so that, as amended, the rule shall read as follows:

1200-03-16-.59 Industrial Commercial-Institutional Steam Generating Units

(1) Applicability and Definition of Affected Facility

- (a) The affected facility to which this rule applies is each industrial-commercial-institutional steam generating unit for which construction, modification, or reconstruction is commenced after November 6, 1988 and which has a heat input capacity from fuels combusted in the steam generating unit of more than 29 MW (100 million Btu/hour), ~~except as provided under subparagraph (b) through (f) of this paragraph.~~
- (b) ~~Coal-fired steam generating units meeting both the applicability requirements under this rule and the applicability requirements for rule 1200-3-16-.02 are subject to the particulate matter and nitrogen oxides standards under this rule and the sulfur dioxide standards under 1200-3-16-.02(4). Reserved~~
- (c) ~~Oil-fired steam generating units meeting both the applicability requirements under this rule and the applicability requirements for rule 1200-3-16-.02 are subject to the nitrogen oxides standards under this rule and the sulfur dioxide and particulate matter standards under rule 1200-3-16-.02. Reserved~~

- (d) ~~Steam generating units meeting the applicability requirements under this rule and the applicability requirements under rule 1200-3-16-.09 are subject to the particulate matter and nitrogen oxides standards under this rule and the sulfur dioxide standards under rule 1200-3-16-.09. Reserved~~
- (e) ~~Steam generating units meeting both the applicability requirements under this rule and the applicability requirements under rule 1200-3-16-.04 are subject to the nitrogen oxides and particulate matter standards under this rule. Reserved~~
- (f) ~~Steam generating units meeting the applicability requirements under rule 1200-3-16-.03 are not subject to this rule. Reserved~~
- (g) ~~Any affected facility meeting the applicability requirements of 1200-03-16-.59(4) subparagraph (a) of this paragraph commencing construction, modification, or reconstruction after November 6, 1988 is not subject to rule Rule 1200-03-16-.02.~~
- (2) ~~Definitions. As used in this rule, all terms not defined herein shall have the meaning given them in 1200-3-16-.01(4). Reserved~~
- (a) ~~"Annual capacity factor" means the ratio between the actual heat input to a steam generating unit from the fuels listed in subparagraph (4)(a) or (5)(a) of this rule, as applicable, during a calendar year and the potential heat input to the steam generating unit from all fuels had it been operated for 8,760 hours at the maximum design heat input capacity.~~
- (b) ~~"Byproduct/waste" means any liquid or gaseous substance produced at chemical manufacturing plants or petroleum refineries, except natural gas, distillate oil, or residual oil, which is combusted in a steam generating unit for heat recovery or for disposal. Gaseous substances with carbon dioxide levels greater than 50 percent or carbon monoxide levels greater than 10 percent are not byproduct/waste for the purposes of this rule.~~
- (c) ~~"Chemical manufacturing plants" means industrial plants which are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 28.~~
- (d) ~~"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388-77, Standard Specification for Classification of Coals by Rank. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures and coal-water mixtures, are included in this definition for the purposes of this rule.~~
- ~~(Note: All references to ASTM in this rule refers to the American Society for Testing Materials. Copies of methods are available for purchase by writing to ASTM, 1916 Race Street, Philadelphia, PA 19103 or by writing to the Tennessee Division of Air Pollution Control, 701 Broadway, 4th Floor Customs House, Nashville, TN 37219. Be sure and specify which method is desired).~~
- (e) ~~"Cogeneration system" means a power system which simultaneously produces both electrical (or mechanical) and thermal energy from the same energy source.~~
- (f) ~~"Combined cycle system" means a system where a gas turbine provides exhaust gas to a heat recovery steam generating unit.~~
- (g) ~~"Distillate oil" means fuel oils which contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oils number 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396-78, Standard Specifications for Fuel Oils.~~
- (h) ~~"Duct burner" means a device which combusts fuel and which is placed in the exhaust duct of a stationary gas turbine to allow the firing of additional fuel before the exhaust gas enters a heat recovery steam generating unit.~~
- (i) ~~"Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary and the EPA administrator, including those under this Division 1200-3 and the State~~

Implementation Plan, and any permit requirements established pursuant to this rule.

- (j) ~~“Fluidized bed combustion steam generating unit” means a device wherein fuel and solid sorbent are distributed onto or into a bed, or series of beds, of aggregate for combustion and these materials together with solid products of combustion are forced upward in the device by the flow of combustion air and the gaseous products of combustion.~~
- (k) ~~“Full capacity” means operation of the steam generating unit at 90 percent or more of the maximum steady-state design heat input capacity.~~
- (l) ~~“Heat input” means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated combustion air, recirculated flue gases, or gas turbine exhaust gases.~~
- (m) ~~“Heat release rate” means the steam generating unit design heat input capacity (in MW or Btu/hour) divided by the furnace volume (in cubic meters or cubic feet); the furnace volume is that volume bounded by the front furnace wall where the burner is located, the furnace side waterwall, and extending to the level just below or in front of the first row of convection pass tubes.~~
- (n) ~~“Heat transfer medium” means any material which is used to transfer heat from one point to another point.~~
- (o) ~~“High heat release rate” means a heat release rate greater than 730,000 J/sec-m³ (70,000 Btu/hour-ft³).~~
- (p) ~~“Lignite” means a type of coal classified as lignite A or lignite B by the American Society of Testing and Materials in ASTM D388-77, Standard Specification for Classification of Coals by Rank.~~
- (q) ~~“Low heat release rate” means a heat release rate of 730,000 J/sec m³(70,000 Btu/hour ft³) or less.~~
- (r) ~~“Mass feed stoker steam generating unit” means a steam generating unit where solid fuel is introduced directly into a retort or is fed directly onto a grate where it is combusted.~~
- (s) ~~“Maximum heat input capacity” means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit.~~
- (t) ~~“Municipal-type solid waste” means refuse, more than 50 percent of which is municipal-type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass and rock.~~
- (u) ~~“Natural gas” means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth’s surface, of which the principal hydrocarbon constituent is methane.~~
- (v) ~~“Oil” means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.~~
- (w) ~~“Petroleum refinery” means industrial plants which are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.~~
- (x) ~~“Process heater” means a device which is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.~~
- (y) ~~“Pulverized coal-fired steam generating unit” means a steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension. This includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units.~~

- (z) ~~“Residual oil” means crude oil, fuel oils number 1 and 2 which have a nitrogen content of greater than 0.05 weight percent, and all fuel oils number 4, 5 and 6 as defined by the American Society of Testing and Materials in ASTM D396-78, Standard Specifications for Fuel Oils.~~
- (aa) ~~“Spreader stoker steam generating unit” means a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.~~
- (bb) ~~“Steam generating unit” means a device which combusts any fuel or byproduct/waste to produce steam or to heat water or any other heat transfer medium. This term includes any municipal-type waste incinerator with a heat recovery steam generating unit or any steam generating unit which combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters.~~
- (cc) ~~“Steam generating unit operating day” means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.~~
- (dd) ~~“Wet scrubber system” means any emission control device which mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter or sulfur dioxide.~~
- (ee) ~~“Wood” means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.~~

(3) ~~Reserved~~

(4) ~~Standard for Particulate Matter~~

- (a) ~~On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which combusts coal or combusts mixtures of coal with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain particulate matter in excess of the following emission limits:~~
 1. ~~22 nanograms per joule (0.05 lb/million Btu) heat input:~~
 - (i) ~~If the affected facility combusts only coal, or~~
 - (ii) ~~If the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.~~
 2. ~~43 nanograms per joule (0.10 lb/million Btu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a legally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.~~
 3. ~~86 nanograms per joule (0.20 lb/million Btu) heat input if the affected facility combusts coal or coal and other fuels and~~
 - (i) ~~Has an annual capacity factor for coal or coal and other fuels of 30 percent (0.30) or less,~~
 - (ii) ~~Has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less,~~
 - (iii) ~~Has a legally enforceable requirement limiting operation of the affected facility to an annual capacity factor 30 percent (0.30) or less for coal or coal and other solid fuels, and~~

- ~~(iv) Construction of the affected facility commenced after June 19, 1984 and before November 6, 1988.~~
- ~~(b) On or after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which combusts wood, or wood with other fuels, except coal, shall cause to be discharged from that affected facility any gases which contain particulate matter in excess of the following emission limits:~~
- ~~1. 43 nanograms per joule (0.10 lb/million Btu) heat input if the affected facility has an annual capacity factor greater than 30 percent (0.30) for wood.~~
 - ~~2. 86 nanograms per joule (0.20 lb/million Btu) heat input if~~
 - ~~(i) The affected facility has an annual capacity factor of 30 percent (0.30) or less for wood,~~
 - ~~(ii) Is subject to a legally enforceable requirement limiting operation of the affected facility to an annual capacity factor 30 percent (0.30) or less for wood, and~~
 - ~~(iii) Has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less.~~
- ~~(c) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which combusts municipal-type solid waste or mixtures of municipal-type solid waste with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain particulate matter in excess of the following emission limits:~~
- ~~1. 43 nanograms per joule (0.10 lb/million Btu) heat input:~~
 - ~~(i) If the affected facility combusts only municipal-type solid waste, or~~
 - ~~(ii) If the affected facility combusts municipal-type solid waste and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.~~
 - ~~2. 86 nanograms per joule (0.20 lb/million Btu) heat input if the affected facility combusts municipal-type solid waste or municipal-type solid waste and other fuels; and~~
 - ~~(i) Has an annual capacity factor for municipal-type solid waste and other fuels of 30 percent (0.30) or less,~~
 - ~~(ii) Has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less,~~
 - ~~(iii) Has a legally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) for municipal-type solid waste, or municipal-type solid waste and other fuels, and~~
 - ~~(iv) Construction of the affected facility commenced after June 19, 1984 but before November 6, 1988.~~
- ~~(d) For the purposes of this paragraph, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal, wood, or municipal-type solid waste, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operated for 8,760 hours at the maximum design heat input capacity.~~
- ~~(e) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility subject to the particulate matter emission limits under subparagraphs (a), (b), or~~

(e) of this paragraph shall cause to be discharged into the atmosphere any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(5) Standard for Nitrogen Oxides

(a) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility subject to the provisions of this paragraph which combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of the following emission limits:

(Figures in parentheses represent lb/million Btu heat input)

Fuel/Steam generating unit type	Nitrogen Oxide ¹
(1) Natural gas and distillate oil, except (4):	
(i) Low heat release rate	43(0.10)
(ii) High heat release rate	86(0.20)
(2) Residual oil:	
(i) Low heat release rate	130(0.30)
(ii) High heat release rate	170(0.40)
(3) Coal:	
(i) Mass-feed stoker	210(0.50)
(ii) Spreader stoker and fluidized bed combustion	260(0.60)
(iii) Pulverized coal	300(0.70)
(iv) Lignite, except (v)	260(0.60)
(v) Lignite mined in North Dakota, South Dakota, or Montana and combusted in a slag tap furnace	340(0.80)
(vi) Coal-derived synthetic fuels	210(0.50)
(4) Duct burner used in a combined cycle system:	
(i) Natural gas and distillate oil	86(0.20)
(ii) Residual oil	170(0.40)

¹Emission limits nanograms per joule heat input.

- 86 nanograms per joule heat input (0.20 lb per million Btu) derived from gaseous fossil fuel.
- 130 nanograms per joule heat input (0.30 lb per million Btu) derived from liquid fossil fuel, liquid fossil fuel and wood residue, or gaseous fossil fuel and wood residue.

(b) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which simultaneously combusts mixtures of coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of a limit determined by use of the following formula:

$$E_{NO_x} = \frac{[(EL_{go} H_{go}) + (EL_{ro} H_{ro}) + (EL_c H_c)]}{H_t}$$

Where:

E_{NO_x} is the nitrogen oxides emission limit,

~~EL_{go} is the appropriate emission limit from subparagraph (a)(1) of this paragraph for combustion of natural gas or distillate oil,~~

~~H_{go} is the heat input from combustion of natural gas or distillate oil,~~

~~EL_{ro} is the appropriate emission limit from subparagraph (a)(2) of this paragraph for combustion of residual oil,~~

~~H_{ro} is the heat input from combustion of residual oil,~~

~~EL_c is the appropriate emission limit from subparagraph (a)(3) of this paragraph for combustion of coal,~~

~~H_c is the heat input from combustion of coal, and~~

~~H_t is the total heat input to the steam generating unit from combustion of coal, oil, and natural gas.~~

~~(c) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever comes first, no owner or operator of an affected facility which simultaneously combusts coal or oil, or a mixture of these fuels with natural gas, and wood, municipal-type solid waste, or any other fuel shall cause to be discharged into the atmosphere any gases which contain nitrogen oxides in excess of the emission limit for the coal or oil, or mixture of these fuels with natural gas combusted in the affected facility, as determined pursuant to subparagraph (a) or (b) of this paragraph, unless the affected facility has an annual capacity factor for coal or oil, or mixture of these fuels with natural gas of 10 percent (0.10) or less and is subject to a legally enforceable requirement which limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less of coal, oil, or a mixture of these fuels with natural gas.~~

~~(d) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which simultaneously combusts natural gas with wood, municipal-type solid waste, or other solid fuel, except coal, shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of 130 nanograms per joule (0.30 lb/million Btu) heat input unless the affected facility has an annual capacity factor for natural gas of 10 percent or less and is subject to a legally enforceable requirement which limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for natural gas.~~

~~(e) On and after the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, no owner or operator of an affected facility which simultaneously combusts coal, oil, or natural gas with byproduct/wastes shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of an emission limit determined by the following formula unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a legally enforceable requirement which limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less:~~

$$E_{NO_x} = \frac{[(EL_{go} H_{go}) + (EL_{ro} H_{ro}) + (EL_c H_c)]}{H_t}$$

~~Where:~~

~~EN_{ox} is the nitrogen oxides emission limit,~~

~~EL_{go} is the appropriate emission limit from subparagraph (a)(1) of this paragraph for combustion of natural gas or distillate oil,~~

~~Hgo~~ — is the heat input from combustion of natural gas, distillate oil and gaseous byproduct/waste.

~~ELro~~ — is the appropriate emission limit from subparagraph (a)(2) of this paragraph for combustion of residual oil,

~~Hro~~ — is the heat input from combustion of residual oil and/or liquid byproduct/waste.

~~ELc~~ — is the appropriate emission limit from subparagraph (a)(3) of this paragraph for combustion of coal.

~~Hc~~ — is the heat input from combustion of coal, and

~~Ht~~ — is the total heat input to the steam generating unit from combustion of natural gas, oil, coal, and byproduct/waste.

~~(f) — Any owner or operator of an affected facility which combusts byproduct/waste with either natural gas or oil may petition the Technical Secretary within 180 days of the initial startup of the affected facility to establish a nitrogen oxides emission limit which shall apply specifically to that affected facility when the byproduct/waste is combusted. The petition shall include sufficient and appropriate data, as determined by the Technical Secretary, such as nitrogen oxides emissions from the affected facility, waste composition (including nitrogen content), and combustion conditions to allow the Technical Secretary to confirm that the affected facility is unable to comply with the emission limits in subparagraph (e) of this paragraph and to determine the appropriate emission limit for the affected facility.~~

~~1. — Any owner or operator of an affected facility petitioning for a facility specific nitrogen oxides emission limit pursuant to this section shall:~~

~~(i) — Demonstrate compliance with the emission limits for natural gas and distillate oil in subparagraph (a)1 or for residual oil in subparagraph (a)2 of this paragraph, as appropriate, by conducting a 30-day performance test as provided in subparagraph (6)(e) of this rule. During the performance test only natural gas, distillate oil, or residual oil shall be combusted in the affected facility; and~~

~~(ii) — Demonstrate that the affected facility is unable to comply with the emission limits for natural gas and distillate oil in subparagraph (a)1 or for residual oil in subparagraph (a)2 of this paragraph, as appropriate, when gaseous or liquid byproduct/waste is combusted in the affected facility under the same conditions and using the same technological system of emission reduction applied when demonstrating compliance under subpart (i) of this part.~~

~~2. — The nitrogen oxides emission limits for natural gas or distillate oil in part (a)1 or for residual oil in part (a)2 of this paragraph, as appropriate, shall be applicable to the affected facility until and unless the petition is approved by the Technical Secretary. If the petition is approved by the Technical Secretary, a facility specific nitrogen oxides emission limit will be established at the nitrogen oxides emission level achievable when the affected facility is combusting coal, oil, natural gas and byproduct/waste in a manner which the Technical Secretary determines to be consistent with minimizing nitrogen oxides emissions.~~

~~(6) — Reserved~~

~~(7) — Compliance and Performance Testing for Particulate Matter and Nitrogen Oxides Reserved~~

~~(a) — The particulate matter emission standards and opacity limits under paragraph (4) of this rule apply at all times except during periods of startup, shutdown, or malfunction. The nitrogen oxides emission standards under paragraph (5) of this rule apply at all times.~~

- ~~(b) Compliance with the particulate matter emission standards under paragraph (4) of this rule shall be determined through performance testing as described in subparagraph (d) of this paragraph.~~
- ~~(c) Compliance with the nitrogen oxides emission standards under paragraph (5) of this rule shall be determined through performance testing as described in subparagraph (e) or (f) of this paragraph.~~
- ~~(d) The following procedures and reference methods are used to determine compliance with the standards for particulate matter emissions under paragraph (4) of this rule.~~
- ~~1. Method 3 is used for gas analysis when applying Method 5, Method 5B, or Method 17.~~
 - ~~2. Method 5, Method 5B, or Method 17 shall be used to measure the concentration of particulate matter as follows:
 - ~~(i) Method 5 shall be used at affected facilities without wet flue gas desulfurization (FGD) systems; and~~
 - ~~(ii) Method 17 may be used at facilities with or without wet scrubber systems provided that the stack gas temperature does not exceed a temperature of 160°C (320°F). The procedures of sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after a wet FGD system. Do not use Method 17 after wet FGD systems if the effluent is saturated or laden with water droplets.~~
 - ~~(iii) Method 5B is to be used only after wet FGD systems.~~~~
 - ~~3. Reference Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes may be approved by the Technical Secretary or when necessitated by process variables or other factors.~~
 - ~~4. For Reference Method 5, the temperature of the sample gas in the probe and filter holder is monitored and is maintained at 160°C (320°F).~~
 - ~~5. For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the sampling location.~~
 - ~~6. For each run using Method 5, Method 5B, or Method 17, the emission rate expressed in nanograms per joule heat input is determined using:
 - ~~(i) The oxygen or carbon dioxide measurements and particulate matter measurements obtained under this section,~~
 - ~~(ii) The dry basis Fc factor, and~~
 - ~~(iii) The dry basis emission rate calculation procedure contained in Reference Method 19 (as specified in 1200-3-16-.01(5)(g)19).~~~~
 - ~~7. Reference Method 9 is used for determining the opacity of stack emissions.~~
- ~~(e) To determine compliance with the emission limits for nitrogen oxides required under paragraph (5) of this rule, the owner or operator of an affected facility shall conduct the performance test as required under 1200-3-16-.01(5) using the continuous system for monitoring nitrogen oxides under paragraph (9) of this rule.~~
- ~~1. For the initial compliance test, nitrogen oxides from the steam generating unit are monitored for 30 successive steam generating unit operating days and the 30-day average emission rate is used to determine compliance with the nitrogen oxides emission standards under paragraph (5) of this rule. The 30-day average emission rate is~~

calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

2. ~~Following the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, the owner or operator of an affected facility which fires coal or which fires residual oil having a nitrogen content greater than 0.30 weight percent shall determine compliance with the nitrogen oxides emission standards under paragraph (5) of this rule on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxides emission data for the preceding 30 steam generating unit operating days.~~
 3. ~~Following the date on which the initial performance test is completed or is required to be completed under 1200-3-16-.01(5), whichever date comes first, the owner or operator of an affected facility which has a heat input capacity greater than 73 MW (250 million Btu/hour) and which fires natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the nitrogen oxides standards under paragraph (5) of this rule on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxide emission data for the preceding 30 steam generating unit operating days.~~
 4. ~~Following the date on which the initial performance test is completed or required to be completed under 1200-3-16-.01(5), whichever date comes first, the owner or operator of an affected facility which has a heat input capacity of 73 MW (250 million Btu/hour) or less and which fires natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the nitrogen oxides standards under paragraph (5) of this rule through the use of a 30-day performance test when requested by EPA. During periods when performance tests are not requested by EPA, nitrogen oxides emissions data collected pursuant to parts 1 or 2 of subparagraph (9)(g) of this rule are used to calculate a 30-day rolling average emission rate on a daily basis and to prepare excess emission reports, but will not be used to determine compliance with the nitrogen oxides emission standards. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxides emission data for the preceding 30 steam generating unit operating days.~~
 5. ~~If the owner or operator of an affected facility which fires residual oil does not sample and analyze the residual oil for nitrogen content, as specified in subparagraph (10)(e) of this rule, the requirements of part (e)3. of this paragraph apply and the provisions of part (e)4. of this paragraph are inapplicable.~~
- (f) ~~To determine compliance with the emission limit for nitrogen oxides required by part (5)(a)4. of this rule for duct burners used in combined cycle systems, the owner or operator of an affected facility shall conduct the performance test required under 1200-3-16-.01(5) using the nitrogen oxides and oxygen measurement procedures in Reference Method 20. During the performance test, one sampling site shall be located as close as practical to the exhaust of the turbine, as provided by in Reference Method 20. A second sampling site shall be located at the outlet to the steam generating unit. Measurements of nitrogen oxides and oxygen shall be taken at these two sampling sites simultaneously during the performance test. The nitrogen oxides emission rate from the combined cycle system shall be calculated by subtracting the nitrogen oxides emission rate measured at the sampling site at the outlet from the turbine from the nitrogen oxides emission rate measured at the sampling site at the outlet from the steam generating unit.~~

(8) ~~Reserved~~

(9) ~~Emission Monitoring for Particulate Matter and Nitrogen Oxides~~

(a) ~~The owner or operator of an affected facility subject to the opacity standard under paragraph (4)~~

~~of this rule shall install, calibrate, maintain and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. Units that burn only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 0.32 lb/MMBtu heat input or less are not required to conduct opacity or sulfur dioxide emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.~~

- ~~(b) Except as provided in subparagraphs (g), (h), and (i) of this paragraph, the owner or operator of an affected facility subject to the nitrogen oxides standard of subparagraph (5)(a) of this rule shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.~~
- ~~(c) The continuous monitoring systems required under subparagraph (b) of this paragraph shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.~~
- ~~(d) The 1-hour average nitrogen oxides emission rates measured by the continuous nitrogen oxides monitor required by subparagraph (b) of this paragraph and required under 1200-3-16-.01(8)(h) shall be expressed in nanograms per joule or lb/million Btu heat input and shall be used to calculate the average emission rates under paragraph (5) of this rule. The 1-hour averages shall be calculated using the data points required under 1200-3-16-.01(5)(8). At least 2 data points must be used to calculate each 1-hour average.~~
- ~~(e) The procedures under rule 1200-3-16-.01(8) shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

 - ~~1. For affected facilities burning coal, wood or municipal-type solid waste, the span value for a continuous monitoring system for measuring opacity shall be between 60 and 80 percent.~~
 - ~~2. For affected facilities burning coal, oil, or natural gas, the span value for nitrogen oxides is determined as follows:~~~~

Fuel	Span values for nitrogen oxides (PPM)
Natural gas	500
Oil	500
Coal	1,000
Combination	$500(x + y) + 1,000z$

Where:

x is the fraction of total heat input derived from natural gas;

y is the fraction of total heat input derived from oil, and

z is the fraction of total heat input derived from coal.

- ~~3. All span values computed under subparagraph (e)(2) of this paragraph for burning combinations of regulated fuels are rounded to the nearest 500 ppm.~~
- ~~(f) When nitrogen oxides emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be~~

~~obtained by using standby monitoring systems, Reference Method 7, Reference Method 7A, or other approved reference methods to provide emission data for a minimum of 75 percent of the operating hours in each steam-generating unit operating day, in at least 22 out of 30 successive steam-generating unit operating days.~~

~~(g) The owner or operator of an affected facility which has a heat input capacity of 73 MW (250 million Btu/hour) or less, and which has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, or any mixture of these fuels, greater than 10 percent (0.10) shall:~~

- ~~1. Comply with the provisions of subparagraphs (b), (c), (d), and (f) and parts (e)2., (e)3., of this paragraph, or~~
- ~~2. Monitor steam-generating unit operating conditions and predict nitrogen oxides emission rates as specified in a plan submitted pursuant to subparagraph (10)(c) of this rule.~~

~~(h) The owner or operator of an affected facility which is subject to the nitrogen oxides standards of part (5)(a)4. of this rule is not required to install or operate a continuous monitoring system to measure nitrogen oxides emissions.~~

~~(i) The owner or operator of an affected facility described below is not required to install or operate a continuous in-stack monitoring system for nitrogen oxides provided that the following criteria are met:~~

- ~~1. The facility combusts, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;~~
- ~~2. The facility has a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and~~
- ~~3. The facility is subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less.~~

~~(10) Reporting and Record Keeping Requirements~~

~~(a) The owner or operator of each affected facility shall submit notification of the date of initial startup. This notification shall include:~~

- ~~1. Identification of the fuels to be combusted in the affected facility, and~~
- ~~2. The design heat input capacity and, if applicable, a copy of any legally enforceable requirement which limits the annual capacity factor for any fuel or mixture of fuels listed in paragraph (4), or for any fuel or mixture of fuels listed in paragraph (5) of this rule.~~
- ~~3. (Reserved)~~
- ~~4. (Reserved)~~

~~(b) For facilities subject to the particulate matter and nitrogen oxides emission limits under paragraph (4) and (5) of this rule, the performance test data from the initial performance test and the performance evaluation of the continuous emission monitors shall be submitted to the Technical Secretary by the owner or operator of the affected facility.~~

~~(c) The owner or operator of each affected facility subject to the nitrogen oxides standard of paragraph(5) of this rule who seeks to demonstrate compliance with those standards through the monitoring of steam-generating unit operating conditions pursuant to the provisions of part (9)(g)2. of this rule shall submit to the Technical Secretary for approval a plan which identifies the~~

~~operating conditions to be monitored under part (9)(g)2. of this rule and the records to be maintained under subparagraph (j) of this paragraph. This plan shall be submitted to the Technical Secretary for approval within 360 days of the initial startup of the affected facility. The plan shall:~~

- ~~1. Identify the specific operating conditions to be monitored and the relationship between these operating conditions and nitrogen oxides emission rates (i.e., nanograms per joule or pounds per million Btu heat input). Steam-generating unit operating conditions include, but are not limited to, degree of staged combustion (i.e., the ratio of primary air to secondary and/or tertiary air) and the level of excess air (i.e., flue gas oxygen level);~~
 - ~~2. Include the data and information which the owner or operator used to identify the relationship between nitrogen oxides emission rates and these operating conditions;~~
 - ~~3. Identify how these operating conditions, including steam-generating unit load, will be monitored under subparagraph (9)(g) of this rule on an hourly basis by the owner or operator during the period of operation of the affected facility; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate; and the type and format of the records of these operating conditions, including steam-generating unit load, that will be maintained by the owner or operator under subparagraph (10)(j) of this rule. If the plan is approved, the owner or operator shall maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam-generating unit load, identified in the plan.~~
- ~~(d) The owner or operator of an affected facility shall record and maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor for coal, oil, natural gas, wood, and municipal-type solid waste for each calendar quarter.~~
- ~~(e) For affected facilities which fire residual oil having a nitrogen content of 0.3 weight percent or less; have heat input capacities of 73 MW (250 million Btu/hour) or less; and monitor nitrogen oxides emissions or steam-generating unit operating conditions pursuant to subparagraph (9)(g) of this rule, the owner or operator shall maintain records of the nitrogen content of the oil fired in the affected facility and calculate the average fuel nitrogen content on a per-calendar quarter basis. The nitrogen content shall be determined using ASTM Method D3431-80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons, or fuel specification data obtained from fuel suppliers. If residual oil blends are being fired, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.~~
- ~~(f) For facilities subject to the opacity standard under paragraph (4) of this rule, the owner or operator shall maintain records of opacity.~~
- ~~(g) For facilities subject to nitrogen oxides standards under paragraph (5) of this rule, the owner or operator shall maintain records of the following information for each steam-generating unit operating day:~~
- ~~1. Calendar date.~~
 - ~~2. The average hourly nitrogen oxides emission rates (nanograms per joule or lb per million Btu heat input) measured or predicted.~~
 - ~~3. The 30-day average nitrogen oxide emission rates (nanogram per joule or lb per million Btu heat input) calculated at the end of the steam-generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam-generating unit operating days.~~
 - ~~4. Identification of the steam-generating unit operating days when the average nitrogen oxide emission rates are in excess of the nitrogen oxides emissions standards under paragraph (5) of this rule with the reasons for such excess emissions as well as a description of corrective actions taken.~~

5. ~~Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.~~
 6. ~~Identification of the times when emissions data have been excluded from the calculation of average emission rates and the reasons for excluding the data.~~
 7. ~~Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.~~
 8. ~~Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system.~~
 9. ~~Description of any modifications to the continuous monitoring system which could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.~~
- (h) ~~The owner or operator of any affected facility in any category listed below in subparagraphs (h)1. and (h)2. of this paragraph is required to submit excess emission reports for any calendar quarter during which there are excess emissions from the affected facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period.~~
1. ~~Any affected facility subject to the opacity standards under subparagraph (4)(e) of this rule or to the operating parameter monitoring requirements under subpart (i) of rule 1200-3-16-01(8).~~
 2. ~~Any affected facility which is subject to the nitrogen oxides standard of paragraph (4) of this rule; fires natural gas, distillate oil, or residual oil with a nitrogen content of 0.3 percent or less; and has a heat input capacity of 73 MW (250 million Btu/hour) or less, and is required to monitor nitrogen oxides emissions on a continuous basis pursuant to part (9)(g)1. of this rule or steam generating unit operating conditions pursuant to part (9)(g)2. of this rule.~~
 3. ~~For the purpose of paragraph (4) of this rule, excess emissions are defined as all 6-minute periods during which the average opacity exceeds the opacity standards under subparagraph (4)(e) of this rule.~~
 4. ~~For purposes of part (9)(g)1. of this rule, excess emissions are defined as any calculated 30-day rolling average nitrogen oxides emission rate, as determined pursuant to subparagraph (7)(e) of this rule, which exceeds the applicable emission limits in paragraph (5) of this rule.~~
- (i) ~~The owner or operator of any affected facility subject to the continuous monitoring requirements for nitrogen oxides pursuant to paragraph (9) of this rule shall submit a quarterly report containing the information recorded pursuant to subparagraph (b) of this paragraph.~~
- (j) ~~(Reserved)~~
- (k) ~~(Reserved)~~
- (l) ~~(Reserved)~~
- (m) ~~All records required under this paragraph shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.~~

Authority: T.C.A. §§ 68-201-101 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)
Vacant Working in Municipal Government					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	✓				<i>John Benitez</i>
Karen Cisler Environmental Interests	✓				<i>Karen Cisler</i>
Dr. Wayne T. Davis Conservation Interests	✓				<i>Wayne T. Davis</i>
Stephen Gossett Working for Industry with technical experience	✓				<i>Stephen Gossett</i>
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				✓	
Richard Holland Working for Industry with technical experience	✓				<i>Richard Holland</i>
Chris Moore Working in management in Private Manufacturing	✓				<i>Chris Moore</i>
Michelle Owenby Commissioner's Designee, Dept. of Environment and Conservation	✓				<i>Michelle Owenby</i>
John Roberts Small Generator of Air Pollution representing Automotive Interests				✓	
Amy Spann Registered Professional Engineer	✓				<i>Amy Spann</i>
Larry Waters County Mayor	✓				<i>Larry Waters</i>
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	✓				<i>Jimmy West</i>
Vacant Involved with Institution of Higher Learning on air pollution evaluation and control					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/08/2015, 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: 10/09/13

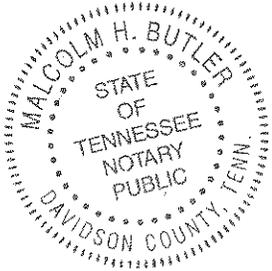
Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: 7/20/2015

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 7/20/2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1-11-2017

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. Statery III
Herbert H. Statery III
Attorney General and Reporter
2/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/7/16

Effective on: 6/5/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 MAR -7 PM 1:47
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control Board

SUBJECT: Storage Vessels for Petroleum Liquids

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-201-105

EFFECTIVE DATES: June 5, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Board is deleting: Rule 1200-03-16-.10, relating to standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after April 21, 1976 and prior to May 19, 1978; Rule 1200-03-16-.11, relating to standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984; and Rule 1200-03-16-.61, relating to standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after June 2, 1990. According to the Board, the rules are being deleted as the result of becoming obsolete by revisions to applicable federal regulations.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

- (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 amendments to Rules 1200-03-16-.10, 1200-03-16-.11, and 1200-03-16-.61 could potentially affect any small business that owns or operates a storage tank that is subject to these regulations. The effect would be beneficial in that they would not be subject to obsolete state regulations. Such businesses would be subject to current superseding federal regulations.

- (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.

None.

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

The amendments to Rules 1200-03-16-.10, 1200-03-16-.11, and 1200-03-16-.61 could prevent small businesses from being subject to both an obsolete state regulation superseded by such federal regulations. There would be no effect on consumers.

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

None.

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

The provisions of Chapter 1200-03-16 are the state equivalent of federal regulations contained in 40 CFR Part 60. The amendments to Rules 1200-03-16-.10, 1200-03-16-.11, and 1200-03-16-.61 serve to allow the Division to avoid requiring subject facilities to be subject to both obsolete state regulations and their current federal equivalents.

- (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.

Not applicable.

Impact on Local Governments

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

The Department anticipates that this amended rule will not have an impact on local governments.

5

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-05-16
Rule ID(s): 6134
File Date: 3/7/16
Effective Date: 6/5/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@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
1200-03-16	New Source Performance Standards
Rule Number	Rule Title
1200-03-16-.10	Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced After April 21, 1976 and Prior to May 19, 1978
1200-03-16-.11	Standard of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced May 18, 1978
1200-03-16-.61	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After June 2, 1990

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

Chapter 1200-03-16
New Source Performance Standards

Amendments

The Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Standard of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced After April 21, 1976 and Prior to May 19, 1978" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.10 shall read: Reserved.

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

Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Standard of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced May 18, 1978" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.11 shall read: Reserved.

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

Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After June 2, 1990" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.61 shall read: Reserved.

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

Rule 1200-03-16-.10 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-16-.10 Reserved ~~STANDARDS OF PERFORMANCE FOR STORAGE VESSELS FOR PETROLEUM LIQUIDS FOR WHICH CONSTRUCTION, RECONSTRUCTION, OR MODIFICATION COMMENCED AFTER APRIL 21, 1976 AND PRIOR TO MAY 19, 1978.~~

(1) ~~Applicability:~~

- (a) ~~The provisions of this rule shall apply to each storage vessel for petroleum liquids commenced on or after April 21, 1976, which has a storage capacity greater than 151,416 liters (40,000 gallons), except as provided in subparagraph (1)(b), below.~~
- (b) ~~This rule does not apply to storage vessels for crude petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer.~~
- (c) ~~1. Has a capacity greater than 151,416 liters (40,000 gallons), but not exceeding 246,052 liters (65,000 gallons) and commences construction or modification after March 8, 1974, and prior to May 19, 1978.~~
 - 2. ~~Has a capacity greater than 246,052 liters (65,000 gallons) and commences construction or modification after June 11, 1973, and prior to May 19, 1978.~~

(2) ~~Definitions:~~

- (a) ~~"Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323-82.~~
 - 1. ~~Pressure vessels which are designed to operate in excess of fifteen (15) pounds per square inch gauge without emissions to the atmosphere except under emergency conditions.~~

- ~~2. Subsurface caverns or porous rock reservoirs, or~~
 - ~~3. Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.~~
- ~~(b) "Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in ASTM-D-396-78, gas turbine fuel oils Number 2-GT through 4-GT as specified in ASTM-D-2880-78, or diesel fuel oils Number 2-D and 4-D as specified in ASTM-D-975-78.~~
 - ~~(c) "Petroleum refinery" means each facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, extracting, or reforming of unfinished petroleum derivatives.~~
 - ~~(d) "Crude petroleum" means a naturally occurring mixture which consists of hydrocarbons and/or sulfur, nitrogen and/or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.~~
 - ~~(e) "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.~~
 - ~~(f) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.~~
 - ~~(g) "Custody transfer" means the transfer of produced crude petroleum and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.~~
 - ~~(h) "Drilling and production facility" means all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary non-transportation related equipment used in the production of crude petroleum but does not include natural gasoline plants.~~
 - ~~(i) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods specified by the Technical Secretary.~~
 - ~~(j) "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.~~
 - ~~(k) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.~~
 - ~~(l) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by method specified by the Technical Secretary.~~
- ~~(3) Standards for volatile organic compounds (VOC). The owner or operator of any storage vessel to which this rule applies shall store petroleum liquids as follows:~~
 - ~~(a) If the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than 78 mm Hg (1.5 psia) but not greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.~~
 - ~~(b) If the true vapor pressure of the petroleum liquid, as stored, is greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.~~

~~(4) Monitoring of Operations:~~

- ~~(a) Except as provided in subparagraph (d) of this paragraph, the owner or operator subject to this rule shall maintain a record of the petroleum liquid stored, the period of storage, and the maximum true vapor pressure of that liquid during the respective storage period.~~
- ~~(b) Available data on the typical Reid vapor pressure and the maximum expected storage temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517, unless the Technical Secretary specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the samples(s).~~
- ~~(c) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa (2.0 psia) or whose physical properties preclude determination by the recommended method is to be determined from available data and recorded if the estimated true vapor pressure is greater than 6.9 kPa (1.0 psia).~~
- ~~(d) The following are exempt from the requirements of this paragraph:~~
- ~~1. Each owner or operator of each affected facility which stores petroleum liquids with a Reid vapor pressure of less than 6.9 kPa (1.0 psia) provided the maximum true vapor pressure does not exceed 6.9 kPa (1.0 psia).~~
 - ~~2. Each owner or operator of each affected facility equipped with a vapor recovery and return or disposal system in accordance with the requirements of paragraph (3) of this rule.~~

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

Rule 1200-03-16-.11 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200-03-16-.11 Reserved ~~STANDARDS OF PERFORMANCE FOR STORAGE VESSELS FOR PETROLEUM LIQUIDS FOR WHICH CONSTRUCTION, RECONSTRUCTION, OR MODIFICATION COMMENCED AFTER MAY 18, 1978 AND PRIOR TO JULY 23, 1984.~~

~~(1) Applicability:~~

- ~~(a) Except as provided in subparagraph (b) of this paragraph, the affected facility to which this rule applies is each storage vessel for petroleum liquids which has a storage capacity greater than 151,416 liters (40,000 gallons) and for which construction is commenced after May 18, 1978.~~
- ~~(b) Each petroleum liquid storage vessel with a capacity of less than 1,589,873 liters (420,000 gallons) used for petroleum or condensate stored, processed, or treated prior to custody transfer is not an affected facility and, therefore, is exempt from the requirements of this rule.~~

~~(2) Definitions:~~

- ~~(a) "Storage vessel" means each tank, reservoir, or container used for the storage of petroleum liquids, but does not include:~~
- ~~1. Pressure vessels which are designed to operate in excess 204.9 kPa (15 psig) without emissions to the atmosphere except under emergency conditions;~~
 - ~~2. Subsurface caverns or porous rock reservoirs, or~~
 - ~~3. Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.~~

- (b) ~~“Petroleum liquids” means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Nos. 2 through 6 fuel oils as specified in ASTM D-396-78, gas turbine fuel oils Nos. 2-GT through 4-GT as specified in ASTM D-2880-78, or diesel fuel oils Nos. 2-D and 4-D as specified in ASTM D-975-78.~~
 - (c) ~~“Petroleum refinery” means each facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, extracting, or reforming of unfinished petroleum derivatives.~~
 - (d) ~~“Petroleum” means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.~~
 - (e) ~~“Condensate” means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.~~
 - (f) ~~“True vapor pressure” means the equilibrium partial pressure exerted by a petroleum liquid such as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss from Floating Roof Tanks, 1962.~~
 - (g) ~~“Reid vapor pressure” is the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323-82.~~
 - (h) ~~“Liquid-mounted seal” means a foam or liquid-filled primary seal between the tank wall and the floating circumference of the tank.~~
 - (i) ~~“Metallic shoe seal” includes but is not limited to a metal sheet held vertically against the tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.~~
 - (j) ~~“Vapor-mounted seal” means a foam-filled primary seal mounted continuously around the circumference of the tank so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.~~
 - (k) ~~“Custody transfer” means the transfer of produced petroleum and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.~~
- (3) ~~Standard for volatile organic compounds (VOC).~~
- (a) ~~The owner or operator of each storage vessel to which this rule applies which contains a petroleum liquid which, as stored, has a true vapor pressure equal to or greater than 10.3 kPa (1.5 psia) but not greater than 76.6 kPa (11.1 psia) shall equip the storage vessel with one of the following:~~
 1. ~~An external floating roof, consisting of a pontoon-type or double-deck-type cover that rests on the surface of the liquid contents and is equipped with a closure device between the tank wall and the roof edge. Except as provided in item (a)1.(ii)(IV) of this paragraph, the closure device is to consist of two seals, one above the other. The lower seal is referred to as the secondary seal. The roof is to be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when this roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.~~
 - (i) ~~The primary seal is to be either a metallic shoe seal, a liquid-mounted seal, or a vapor-mounted seal. Each seal is to meet the following requirements:~~
 - (1) ~~The accumulated area of gaps between the tank wall and the metallic shoe seal or the liquid-mounted seal shall not exceed 212 cm² per meter of tank diameter (10.0 in² per ft of tank diameter) and the width of any portion of any gap shall not exceed 3.81 cm (1 1/2 in).~~

- ~~(II) The accumulated area of gaps between the tank wall and the vapor-mounted seal shall not exceed 21.2 cm² per meter of tank diameter (1.0 in² per ft of tank diameter) and the width of any portion of any gap shall not exceed 1.27 cm (1/2 in).~~
 - ~~(III) One end of the metallic shoe is to extend into the stored liquid and the other end is to extend to a minimum vertical distance of 61 cm (24 in.) above the stored liquid surface.~~
 - ~~(IV) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.~~
- ~~(ii) The secondary seal is to meet the following requirements:~~
- ~~(I) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in item (a)1.(ii)(II) of this paragraph.~~
 - ~~(II) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm² per meter of tank diameter (1.0 in² per ft of tank diameter) and the width of any portion of any gap shall not exceed 1.27 cm (1/2 in).~~
 - ~~(III) There are to be no holes, tears, or other openings in the seal or seal fabric.~~
 - ~~(IV) The owner or operator is exempted from the requirements for secondary seals and the secondary seal gap criteria when performing gap measurements or inspections of the primary seal.~~
- ~~(iii) Each opening in the roof except for automatic bleeder vents and rim space vents is to provide a projection below the liquid surface. Each opening in the roof except for automatic bleeder vents, rim space vents and leg sleeves is to be equipped with a cover, seal or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use or as described in subpart (a) 1. (iv) of this paragraph. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting.~~
- ~~(iv) Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.~~
- ~~2. A fixed roof with an internal floating type cover equipped with a continuous closure device between the tank wall and the cover edge. The cover is to be floating at all times, (i.e., off the leg supports) except during initial fill and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when the cover is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible. Each opening in the cover except for automatic bleeder vents and the rim space vents is to provide a projection below the liquid surface. Each opening in the cover except for automatic bleeder vents, rim space vents, stub drains and leg sleeves is to be equipped with a cover, seal, or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the cover is floating except when the cover is being floated off or is being landed on the leg supports. Rim vents are to be set open only when the cover is being floated off the leg supports or at the manufacturer's recommended setting.~~
- ~~3. A vapor recovery system which collects all VOC vapors and gases discharged from the storage vessel, and a vapor return or disposal system which is designed to process such~~

~~VOC vapors and gases so as to reduce their emission to the atmosphere by at least 95 percent by weight.~~

~~4. A system equivalent to those described in parts (a) 1., (a) 2. and (a) 3. of this rule as provided in paragraph (5).~~

~~(b) The owner or operator of each storage vessel to which this rule applies which contains a petroleum liquid which, as stored, has a true vapor pressure greater than 76.6 kPa (11.1 psia), shall equip the storage vessel with a vapor recovery system which collects all VOC vapors and gases discharged from the storage vessel, and a vapor return or disposal system which is designed to process such VOC vapors and gases so as to reduce their emission to the atmosphere by at least 95 percent by weight.~~

~~(4) Testing and Procedures~~

~~(a) Except as provided in 1200-3-16-.01(5), compliance with the standard prescribed in paragraph 1200-3-16-.11(3) shall be determined as follows:~~

~~1. The owner or operator of each storage vessel to which this rule applies which has an external floating roof shall meet the following requirements:~~

~~(i) Determine the gap areas and maximum gap widths between the primary seal and the tank wall, and the secondary seal and the tank wall according to the following frequency:~~

~~(I) For primary seals, gap measurements shall be performed within 60 days of the initial fill with petroleum liquid and at least once every five years thereafter. All primary seal inspections or gap measurements which require the removal or dislodging of the secondary seal shall be accomplished as rapidly as possible and the secondary seal shall be replaced as soon as possible.~~

~~(II) For secondary seals, gap measurements shall be performed within 60 days of the initial fill with petroleum liquid and at least once every year thereafter.~~

~~(III) If any storage vessel is out of service for a period of one year or more, subsequent refilling with petroleum liquid shall be considered initial fill for the purposes of items (a)1.(i)(I) and (a)1.(i)(II) of this paragraph.~~

~~(ii) Determine gap widths in the primary and secondary seals individually by the following procedures:~~

~~(I) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.~~

~~(II) Measure seal gaps around the entire circumference of the tank in each place where a 1/8" diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the tank wall and measure the circumferential distance of each such location.~~

~~(III) The total surface area of each gap described in item (a)1.(ii)(II) of this paragraph shall be determined by using probes of various widths to accurately measure the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.~~

~~(IV) Keep records of each gap measurement at the plant for a period of at least two years following the date of measurement. Each record shall identify the vessel on which the measurement was performed and shall contain the date of the seal gap measurement, the raw data obtained in the measurement process required by subpart (a)1(iii) of this paragraph and the calculation required by subpart (a)1(iii) of this paragraph.~~

~~(V) If either the seal gap calculated in accord with subpart (a)1(iii) of this paragraph or the measured maximum seal gap exceeds the limitations specified by paragraph (3) of this rule, a report shall be furnished to the Technical Secretary within 60 days of the date of measurements. The report shall identify the vessel and list each reason why the vessel did not meet the specifications of paragraph (3). The report shall also describe the actions necessary to bring the storage vessel into compliance with the specifications of paragraph (3).~~

~~(iii) Add the gap surface area of each gap location for the primary seal and the secondary seal individually. Divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the appropriate ratio in the standard in 1200-3-16-11(3)(a)1.(i) and (ii).~~

~~(iv) Provide the Technical Secretary prior notice of the gap measurement to afford the Technical Secretary opportunity to have an observer present.~~

~~2. The owner or operator of each storage vessel to which this rule applies which has a vapor recovery and return or disposal system shall provide the following information to the Technical Secretary on or before the date on which construction of the storage vessel commences:~~

~~(i) Emission data, if available, for a similar vapor recovery and return or disposal system used on the same type of storage vessel, which can be used to determine the efficiency of the system. A complete description of the emission measurement method used must be included.~~

~~(ii) The manufacturer's design specifications and estimated emission reduction capability of the system.~~

~~(iii) The operation and maintenance plan for the system.~~

~~(iv) Any other information which will be useful to the Technical Secretary in evaluating the effectiveness of the system in reducing VOC emissions.~~

~~(5) (Reserved).~~

~~(6) Monitoring of Operations.~~

~~(a) Except as provided in subparagraph (d) of this paragraph, the owner or operator subject to this rule shall maintain a record of the petroleum liquid stored, the period of storage, and the maximum true vapor pressure of that liquid during the respective storage period.~~

~~(b) Available data on the typical Reid vapor pressure and the maximum expected storage temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517, unless the Technical Secretary specifically requests that the liquid be sampled, the actual storage temperatures determined, and the Reid vapor pressure determined from the sample(s).~~

~~(c) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa (2.0 psia) or whose physical properties preclude determination by the recommended method is to be determined from available data and recorded if the estimated true vapor pressure is greater than 6.9 kPa (1.0 psia).~~

~~(d) The following are exempt from the requirements of this paragraph:~~

~~1. Each owner or operator of each storage vessel storing a petroleum liquid with a Reid vapor pressure of less than 6.9 kPa (1.0 psia) provided the maximum true vapor pressure does not exceed 6.9 kPa (1.0 psia).~~

2. ~~Each owner or operator of each storage vessel equipment with a vapor recovery and return or disposal system in accordance with the requirements of 1200-3-16-11 (3)(a)3. and (3)(b).~~

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

Rule 1200-03-16-.61 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

~~1200-03-16-.61 Reserved **STANDARDS OF PERFORMANCE FOR VOLATILE ORGANIC LIQUID STORAGE VESSELS (INCLUDING PETROLEUM LIQUID STORAGE VESSELS) FOR WHICH CONSTRUCTION, RECONSTRUCTION, OR MODIFICATION COMMENCED AFTER JUNE 2, 1990.** (A new rule which limits emissions from volatile organic liquid storage vessels).~~

~~(1) Applicability~~

- ~~(a) Except as provided in subparagraphs (b), (c), and (d) of this paragraph, the affected facility to which this rule applies is each storage vessel with a capacity greater than or equal to 40 cubic meters (m³) that is used to store volatile organic liquids (VOL's) for which construction, reconstruction, or modification is commenced after June 2, 1990.~~
- ~~(b) Except as specified in subparagraphs (a) and (b) of paragraph (7), storage vessels with design capacity less than 75 m³ are exempt from the General Provisions (1200-3-16-.01) and from the provisions of this rule.~~
- ~~(c) Except as specified in subparagraph (a) and (b) of paragraph (7), vessels either with a capacity greater than or equal to 151 m³ storing a liquid with a maximum true vapor pressure less than 3.5 kPa or with a capacity greater than or equal to 75 m³ but less than 151 m³ storing a liquid with a maximum true vapor pressure less than 15.0 kPa are exempt from the General Provisions (1200-3-16-.01) and from the provisions of this rule.~~
- ~~(d) This rule does not apply to the following:
 1. ~~Vessels at coke oven by-product plants.~~
 2. ~~Pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.~~
 3. ~~Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships.~~
 4. ~~Vessels with a design capacity less than or equal to 1,589.874 m³ used for petroleum or condensate stored, processed, or treated prior to custody transfer.~~
 5. ~~Vessels located at bulk gasoline plants.~~
 6. ~~Storage vessels located at gasoline service stations.~~
 7. ~~Vessels used to store beverage alcohol.~~~~

~~(2) Definitions:~~

- ~~(a) All terms that are used in this rule and are not defined below are given the same meaning as in paragraph 1200-3-16-.01(4).
 1. ~~"Bulk gasoline plant" means any gasoline distribution facility that has a gasoline throughput less than or equal to 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition~~~~

~~under Federal requirement or Federal, State or local law, and discoverable by the Technical Secretary and any other person.~~

- ~~2. "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.~~
- ~~3. "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.~~
- ~~4. "Fill" means the introduction of VOL into a storage vessel but not necessarily to complete capacity.~~
- ~~5. "Gasoline service station" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.~~
- ~~6. "Maximum true vapor pressure" means the equilibrium partial pressure exerted by the stored liquid at the temperature equal to the highest calendar month average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored at the ambient temperature, as determined:
 - ~~(i) In accordance with methods described in American Petroleum Institute Bulletin 2517- Evaporation Loss From External Floating Roof Tanks. (Reference 1200-3-16-.01(5)(g)); or~~
 - ~~(ii) As obtained from standard reference tests; or~~
 - ~~(iii) As determined by ASTM Method D2879-83 (Reference 1200-3-16-.01(5)(g)); or~~
 - ~~(iv) (Reserved)~~~~
- ~~7. "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquified petroleum gases, as determined by ASTM D323-82 (reference 1200-3-16-.01(5)(g)).~~
- ~~8. "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.~~
- ~~9. "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery.~~
- ~~10. "Storage vessel" means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:
 - ~~(i) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors; or~~
 - ~~(ii) Subsurface caverns or porous rock reservoirs.~~~~
- ~~11. "Volatile organic liquid" (VOL) means any organic liquid which can emit volatile organic compounds into the atmosphere except those VOL's that emit only those compounds which the Technical Secretary has determined do not contribute appreciably to the formation of ozone. These compounds are identified in EPA statements on ozone abatement policy for SIP revisions (42 FR 35314, 44 FR 32042, 45 FR 32424, and 45 FR 48941).~~
- ~~12. "Waste" means any liquid resulting from industrial, commercial mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or recycled.~~

~~(3) Standard for Volatile Organic Compounds (VOC)~~

- ~~(a) The owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m³ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa or with a design capacity greater than or equal to 75 m³ but less than 151 m³ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following:~~

~~1. A fixed roof in combination with an internal floating roof meeting the following specifications:~~

- ~~(i) The internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.~~

- ~~(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:~~

- ~~(I) A foam or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.~~

- ~~(II) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.~~

- ~~(III) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.~~

- ~~(iii) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.~~

- ~~(iv) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder walls, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.~~

- ~~(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.~~

- ~~(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.~~

- ~~(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a split fabric cover that covers at least 90 percent of the opening.~~

- ~~(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.~~
 - ~~(ix) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.~~
- ~~2. An external floating roof. An external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof. Each external floating roof must meet the following specifications:~~
- ~~(i) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.~~
 - ~~(I) The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in part 4 of subparagraph (4)(b), the seal shall completely cover the annular space between the edge of the floating roof and tank wall.~~
 - ~~(II) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in part 4 of subparagraph (4)(b).~~
 - ~~(ii) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with slotted membrane fabric cover that covers at least 90 percent of the area of the opening.~~
 - ~~(iii) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.~~
- ~~3. A closed vent system and control device meeting the following specifications:~~
- ~~(i) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections as determined in 1200-3-16-43(6).~~
 - ~~(ii) The control device shall be designed and operated to reduce inlet VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements (1200-3-16-.01) of the General Provisions.~~
- ~~4. A system equivalent to those described in parts (a)1, (a)2 or (a)3 of this paragraph as provided in paragraph (5) of this rule.~~

~~(b) The owner or operator of each storage vessel with a design capacity greater than or equal to 75 m³ which contains a VOL that, as stored, has a maximum true pressure greater than or equal to 76.6 kPa shall equip each storage vessel with one of the following:~~

- ~~1. A closed vent system and control device as specified in part 3 of subparagraph (3)(a).~~
- ~~2. A system equivalent to that described in subparagraph (b)1 as provided in paragraph (5) of this rule.~~

~~(4) Test Methods and Procedures~~

~~(a) The owner or operator of each storage vessel as specified in paragraph (3)(a) shall meet the requirements of parts 1, 2, or 3 of subparagraph (b) of this paragraph. The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of paragraph (3).~~

~~1. After installing the control equipment required to meet part 1 of subparagraph (3)(a) (permanently affixed roof and internal floating roof), each owner or operator shall:~~

~~(i) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is on service), prior to filling the storage vessel with VOL. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the storage vessel.~~

~~(ii) For vessels equipped with a liquid mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Technical Secretary in the inspection report required in part 3 of subparagraphs (6)(a) and (b). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.~~

~~(iii) For vessels equipped with a double seal system as specified in item II of subpart (3)(a)1(ii):~~

~~(I) Visually inspect the vessel as specified in subpart (a)1(iv) of this paragraph at least every 5 years; or~~

~~(II) Visually inspect the vessel as specified in subpart (a)1(i) of this paragraph.~~

~~(iv) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes (if any), and sleeve seals (if any) each time the storage vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspection as specified in subpart (a)1(ii) of this~~

~~paragraph and at intervals no greater than 5 years in the case of vessels specified in subpart (a)1(iii) of this paragraph.~~

~~(v) Notify the Technical Secretary in writing at least 30 days prior to the filling or refilling of each storage vessel for which an inspection is required by subparagraphs (a)1(i) and (a)1(iv) of this paragraph to afford the Technical Secretary the opportunity to have an observer present. If the inspection required by subpart (a)1(ii) of this paragraph is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Technical Secretary at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Technical Secretary at least 7 days prior to the refilling.~~

~~(b) After installing the control equipment required to meet part 3 of subparagraph (3)(a) (external floating roof), the owner or operator shall:~~

~~1. Determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel and between the secondary seal and the wall of the storage vessel according to the following frequency:~~

~~(i) Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 60 days of the initial fill with VOL and at least once every 5 years thereafter.~~

~~(ii) Measurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with VOL and at least once per year thereafter.~~

~~(iii) If any source ceases to store VOL for a period of 1 year or more, subsequent introduction of VOL into the vessel shall be considered an initial fill for the purposes of subparts (i) and (ii) of part (b)1 of this paragraph.~~

~~2. Determine gap widths and areas in the primary and secondary seals individually by the following procedures:~~

~~(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.~~

~~(ii) Measure seal gaps around the entire circumference of the tank in each place where a 0.32-cm diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.~~

~~(iii) The total surface area of each gap described in subpart (b)2(ii) of this paragraph shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.~~

~~3. Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each by the nominal diameter of the tank and compare each ratio to the respective standards in subpart (b)4 of this paragraph.~~

~~4. Make necessary repairs or empty the storage vessel within 45 days of identification in any inspection for seals not meeting the requirements listed in subparts (i) and (ii) of part (b)4 of this paragraph:~~

- ~~(i) The accumulated area of gaps between the tank wall and the mechanical shoe or liquid-mounted primary seal shall not exceed 212 cm² per meter of tank diameter, and the width of any portion of any gap shall not exceed 3.81 cm.~~
- ~~(I) One end of the mechanical shoe is to extend into the stored liquid, and the other end is to extend a minimum vertical distance of 61 cm above the stored liquid surface.~~
- ~~(II) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.~~
- ~~(ii) The secondary seal is to meet the following requirements:~~
 - ~~(I) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in subpart (b)2(iii) of this paragraph.~~
 - ~~(II) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm² per meter of tank diameter, and the width of any portions of any gap shall not exceed 1.27 cm.~~
 - ~~(III) There are to be no holes, tears, or other openings in the seal or seal fabric.~~
- ~~(iii) If a failure that is detected during inspection required in part 1 of subparagraph (4)(b) cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Technical Secretary in the inspection report required in part (6)(b)4. Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.~~
- ~~5. Notify the Technical Secretary 30 days in advance of any gap measurements required by subpart (b)1 of this paragraph to afford the Technical Secretary the opportunity to have an observer present.~~
- ~~6. Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.~~
 - ~~(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with VOL.~~
 - ~~(ii) For all the inspections required by part (b)6 of this paragraph, the owner or operator shall notify the Technical Secretary in writing at least 30 days prior to the filling or refilling of each storage vessel to afford the Technical Secretary the opportunity to inspect the storage vessel prior to refilling. If the inspection required by part (b)6 of this paragraph is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Technical Secretary at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Technical Secretary at least 7 days prior to the refilling.~~
- ~~(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in parts (a)3 or (b)2 of paragraph (3) (other than flare) is exempt from rule 4200-3-16.01(5) of the General Provisions and shall meet the following requirements.~~

~~1. Submit for approval by the Technical Secretary as an attachment to the notification required by rule 1200-3-16-.01(7)(a)1. If the facility is exempt from rule 1200-3-16-.01(7)(a)1, as an attachment to the notification required by rule 1200-3-16-.01(7)(a)2, an operating plan containing the information listed below.~~

~~(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases, or liquids other than fuels from sources that are not designated sources under this rule, the efficiency demonstration is to include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and minimum temperature of 8160C is used to meet the 95 percent requirement, documentation that these conditions will exist is sufficient to meet the requirements of this subparagraph.~~

~~(ii) A description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).~~

~~2. Operate the closed vent system and control device and monitor the parameters of the closed vent system and control device in accordance with the operating plan submitted to the Technical Secretary, in accordance with part (c)1 of this subparagraph, unless the plan was modified by the Technical Secretary during the review process. In this case, the modified plan applies.~~

~~(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in parts (a)3 or (b)2 of paragraph (3) shall meet the requirements as specified in the general control device requirements, subparagraph (e) and (f) of paragraph (7).~~

~~(5) (Reserved)~~

~~(6) Reporting and Record Keeping Requirements~~

~~The owner or operator of each storage vessel as specified in subparagraph (3)(a) shall keep records and furnish reports as required by subparagraphs (a), (b), or (c) of this paragraph depending upon the control equipment installed to meet the requirements of paragraph (3). The owner or operator shall keep copies of all reports and records required by this paragraph, except for the record required by (c)1, for at least 2 years. The record required by part (c)1 will be kept for the life of the control equipment.~~

~~(a) After installing control equipment in accordance with subpart (i) part (3)(a)1 (fixed roof and internal floating roof), the owner or operator shall meet the following requirements:~~

~~1. Furnish the Technical Secretary with a report that describes the control equipment and certifies that the control equipment meets the specifications of parts (3)(a)1 and (4)(a)1. This report shall be an attachment to the notification required by rule 1200-3-16-.01(7)(a)3.~~

~~2. Keep a record of each inspection performed as required by subparts (4)(a)1(i), (ii), (iii), (iv). Each record shall identify the storage vessel on which the inspection was performed and shall contain the date the vessel was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).~~

~~3. If any of the conditions described in subpart (ii) of part (4)(a)1 are detected during the annual visual inspection (as required by that subpart), a report shall be furnished to the Technical Secretary within 30 days of the inspection. Each report shall identify the storage vessel, the~~

~~nature of the defects, and the date the storage vessel was emptied or the nature of and date the repair was made.~~

- ~~4. After each inspection required by subpart (iii) of paragraph (4)(a)1 that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in subpart 4(a)1(ii), a report shall be furnished to the Technical Secretary within 30 days of the inspection. The report shall identify the storage vessel and the reason why it did not meet the specifications of either subpart (i) of part (3)(a)1 or subpart (iii) of part (4)(a)1 and list each repair made.~~

~~(b) After installing control equipment in accordance with subpart (iii) of part (3)(a)1 (external floating roof), the owner or operator shall meet the following requirements.~~

- ~~1. Furnish the Technical Secretary with a report that describes the control equipment and certifies that the control equipment meets the specifications of subpart (ii) of part (3)(a)1 and subpart (ii) of part (4)(b)1. This report shall be an attachment to the notification required by rule 1200—3—16—.01(7)(a)3.~~

- ~~2. Within 60 days of performing the seal gap measurements required by part 1 of subparagraph (4)(b), furnish the Technical Secretary with a report that contains:~~

~~(i) The date of measurement.~~

~~(ii) The raw data obtained in the measurement.~~

~~(iii) The calculations described in parts 2 and 3 of subparagraph (4)(b).~~

- ~~3. Keep a record of each gap measurement performed as required by subparagraph (4)(b). Each record shall identify the storage vessel in which the measurement was performed and shall contain:~~

~~(i) The date of measurement.~~

~~(ii) The raw data obtained in the measurement.~~

~~(iii) The calculations described in subparagraph (4)(b) part 2 and 3.~~

- ~~4. After each seal gap measurement that detects gaps exceeding the limitations specified by part 4 of subparagraph (4)(b), submit a report to the Technical Secretary within 30 days of the inspection. The report will identify the vessel and contain the information specified in part (b)2 of this paragraph and the date the vessel was emptied or the repairs made and date of repair.~~

~~(c) After installing control equipment in accordance with part 3 or 4 of subparagraph (3)(a) or (b) (closed vent system and control device other than a flare), the owner or operator shall keep the following records.~~

- ~~1. A copy of the operating plan.~~

- ~~2. A record of the measured values of the parameters monitored in accordance with part 2 of subparagraph (4)(c).~~

~~(d) After installing a closed vent system and flare to comply with paragraph (3), the owner or operator shall meet the following requirements.~~

- ~~1. A report containing the measurements required by part 1, 2, 3, 4, 5, and 6 of subparagraph (4)(b) of this paragraph, shall be furnished to the Technical Secretary as required by rule 1200—3—16—.01(7) of the General Provisions. The report shall be submitted within 6 months of the initial start-up date.~~

- ~~2. Records shall be kept of all periods of operation during which the flare pilot flame is absent.~~

3. ~~Semiannual reports of all periods recorded under part 2 of subparagraph (6)(d) in which the pilot flame was absent shall be furnished to the Technical Secretary.~~

~~(7) Monitoring of Operations~~

- ~~(a) The owner or operator shall keep copies of all records required by this section, except for the record required by subparagraph (b) of this paragraph, for at least 2 years. The record required by subparagraph (b) of this paragraph will be kept for the life of the source.~~
- ~~(b) The owner or operator of each storage vessel as specified in subparagraph (1)(a) shall keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel. Each storage vessel with a design capacity less than 75 m³ is subject to no provision of this rule other than those required by this subparagraph.~~
- ~~(c) Except as provided in subparagraphs (f) and (g) of this paragraph, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m³ storing a liquid with a maximum true vapor pressure greater than or equal to 3.5 kPa or with a design capacity greater than or equal to 75 m³ but less than 151 m³ storing a liquid with a maximum true vapor pressure greater than or equal to 15.0 kPa shall maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.~~
- ~~(d) Except as provided in subparagraph (g) of this paragraph, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m³ storing a liquid with a maximum true vapor pressure that is normally less than 5.2 kPa or with a design capacity greater than or equal to 75 m³ but less than 151 m³ storing a liquid with a maximum true vapor pressure that is normally less than 27.6 kPa shall notify the Technical Secretary within 30 days when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor values for each volume range.~~
- ~~(e) Available data on the storage temperature may be used to determine the maximum true vapor pressure as determined below.
 1. For vessels operated above or below ambient temperatures, the maximum true vapor pressure is calculated based upon the highest expected calendar month average of the storage temperature. For vessels operated at ambient temperatures, the maximum true vapor pressure is calculated based upon the maximum local monthly average ambient temperature as reported by the National Weather Service.
 2. For crude oil or refined petroleum products the vapor pressure may be obtained by the following:
 - (i) Available data on the Reid vapor pressure and the maximum expected storage temperature based on the highest expected calendar month average temperature of the stored product may be used to determine the maximum true pressure from nomographs contained in API Bulletin 2517 (Note: All references to API Bulletins refer to the American Petroleum Institute. Copies of the bulletins may be obtained by writing to A.P.I. Publications Department, 1220 L Street, N.W., Washington, D.C. 20005. Be sure and specify which bulletin you are requesting. There may be a charge for some bulletins.), unless the Technical Secretary or specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the sample(s).
 - (ii) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa or with physical properties that preclude determination by the recommended method is to be determined from available data and recorded if the estimated maximum true vapor pressure is greater than 3.5 kPa.
 3. For other liquids, the vapor pressure:
 - (i) May be obtained from standard reference texts; or~~

- ~~(ii) — Determined by ASTM Method D2879-83; or~~
- ~~(iii) — (Reserved)~~
- ~~(iv) — (Reserved)~~

~~(f) — The owner or operator of each vessel storing a waste mixture of indeterminate or variable composition shall be subject to the following requirements.~~

~~1. — Prior to the initial filling of the vessel, the highest maximum true vapor pressure for the range of anticipated liquid compositions to be stored will be determined using the methods described in subparagraph (e) of this paragraph.~~

~~2. — For vessels in which the vapor pressure of the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls as defined in subparagraph (3)(a), an initial physical test of the vapor pressure is required; and a physical test at least once every six (6) months thereafter is required as determined by the following methods:~~

- ~~(i) — ASTM Method D2879-83; or~~
- ~~(ii) — ASTM Method D323-82; or~~
- ~~(iii) — (Reserved)~~

~~(g) — The owner or operator of each vessel equipped with a closed vent system and control device meeting the specifications of paragraph (3) is exempt from the requirements of subparagraphs (e) and (d) of this paragraph.~~

Authority: T.C.A. §§ 68-201-101 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:

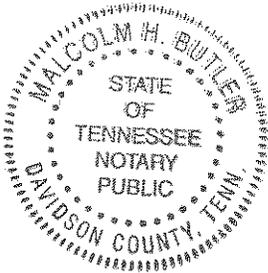
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Vacant Working in Municipal Government					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	✓				<i>John Benitez</i>
Karen Cisler Environmental Interests	✓				<i>Karen Cisler</i>
Dr. Wayne T. Davis Conservation Interests	✓				<i>Wayne T. Davis</i>
Stephen Gossett Working for Industry with technical experience	✓				<i>Stephen Gossett</i>
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				✓	
Richard Holland Working for Industry with technical experience	✓				<i>Richard Holland</i>
Chris Moore Working in management in Private Manufacturing	✓				<i>Chris Moore</i>
Michelle Owenby Commissioner's Designee, Dept. of Environment and Conservation	✓				<i>Michelle Owenby</i>
John Roberts Small Generator of Air Pollution representing Automotive Interests				✓	
Amy Spann Registered Professional Engineer	✓				<i>Amy Spann</i>
Larry Waters County Mayor	✓				<i>Larry Waters</i>
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	✓				<i>Jimmy West</i>
Vacant Involved with Institution of Higher Learning on air pollution evaluation and control					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/08/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/05/14

Rulemaking Hearing(s) Conducted on: (add more dates). 10/07/14



Date: 7/20/2015

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: 7/20/2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1/11/2017

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

2/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/7/16

Effective on: 6/5/16
Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2016 MAR -7 PM 1:46
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: State Parks

SUBJECT: Public Use and Recreation

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 11-1-101 and 11-1-108

EFFECTIVE DATES: June 8, 2016 through June 30, 2017

FISCAL IMPACT: The Department anticipates an increase of approximately \$20,000 annually as a result of the amendments. The Department currently receives regular inquiries from customers interested in renting event space and serving alcohol at the proposed special events. The Department is going to implement an alcohol permit fee for special events that plan to serve alcohol. In the resort parks that currently serve alcohol in the food service facilities, there will be a corkage fee implemented if the special event chooses to provide its own alcohol rather than purchasing alcohol from the park food service facility.

STAFF RULE ABSTRACT: The Department is amending Rule 0400-02-02-.11 to align the Department's rules regulating state parks with Tennessee Code Annotated, Section 39-17-1311 regarding the possession of handguns in state parks.

The Department is amending Rule 0400-02-02-.14 to clarify where alcoholic beverages may be consumed in state parks.

Public Hearing Comments

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

There were no comments received by the Department regarding this rulemaking.

Regulatory Flexibility Addendum

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

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

This rulemaking will not affect any small businesses.

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

There are not costs to small business resulting from this rulemaking.

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

There are not impacts on 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.

This rulemaking will not affect any small businesses.

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

This rulemaking will not affect any small businesses.

- (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.

This rulemaking will not affect any small businesses.

Impact on Local Governments

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

The Department does not anticipate that these amended rules will have a financial impact on local governments.

9

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-07-16
Rule ID(s): 6136
File Date: 3/10/16
Effective Date: 6/8/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	State Parks
Contact Person:	Mike Robertson
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0434
Email:	Mike.Robertson@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0400-02-02	Public Use and Recreation
Rule Number	Rule Title
0400-02-02-.11	Firearms, Traps, and Other Weapons
0400-02-02-.14	Alcoholic Beverages

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

Chapter 0400-02-02
Public Use and Recreation

Amendments

Rule 0400-02-02-.11 Firearms, Traps, and Other Weapons is amended by deleting it in its entirety and substituting instead the following:

0400-02-02-.11 Firearms, Traps, and Other Weapons.

(1) In park, natural, and historical areas the use of traps, seines, handthrown spears, nets (except landing nets), firearms (including air and gas powered pistols and rifles), blow guns, bows and arrows or crossbows, and any other implements designed to discharge missiles in the air or under the water which are capable of destroying animal life ~~is~~ are prohibited. The possession of such objects or implements is prohibited unless they are unloaded and adequately cased, or broken down or otherwise packed in such a way as to prevent their use while in the park areas.

(2) Exceptions

~~Exception 1:~~

(a) Shooters may use recreational target shooting ranges available for skeet, trap and bow and arrow target shooting within a park area as long as these weapons are properly cased when not on the range.

~~Exception 2:~~

(b) Authorized Federal, State, County and City law enforcement officers may carry firearms in the performance of their official duties.

~~Exception 3:~~

(c) Persons using park area facilities while participating in authorized open or managed hunts within the park areas or beyond, may use and possess firearms under the specific rules and regulations pertaining to the authorized hunt and only in the authorized hunting zones or compartments.

(d) In accordance with T.C.A. § 39-17-1311, persons who are authorized to carry a handgun pursuant to T.C.A. § 39-17-1351 may carry handguns, unless such persons:

1. Are in the immediate vicinity of an athletic event or other school-related activity on an athletic field sponsored by a school or university; and

2. (i) Knew or should have known such an athletic event or other school-related activity was taking place, or

(ii) Failed to take reasonable steps to leave the area of the athletic event or school-related activity after being informed of or becoming aware of its use.

Authority: T.C.A. §§ 11-1-101 et seq. and 4-5-201 et seq.

Rule 0400-02-02-.14 Alcoholic Beverages is amended by deleting it in its entirety and substituting instead the following:

0400-02-02-.14 Alcoholic Beverages.

(1) ~~Except in facilities that are licensed to sell alcoholic beverages, consumption of alcoholic beverages within state park areas that are open to the general public is forbidden~~ Possessing alcoholic beverages in an open container or consuming any alcoholic beverages in any state park area is prohibited, except as specifically allowed in paragraph (2) of this rule.

(2) ~~Except in facilities that are licensed to sell alcoholic beverages, the public display of any container of alcoholic beverages is prohibited within state park areas that are open to the general public. Possessing alcoholic beverages in an open container or consuming any alcoholic beverages in any state park area is allowed in the following designated areas and circumstances:~~

(a) In the overnight accommodations set out below:

1. Designated campsites;

2. Cabins;

3. Inn Rooms;

4. Group Camps; and

5. Other accommodations designated by the Division of State Parks.

(b) In any designated group day-use facility by any authorized group which has paid a reservation fee and has obtained a prior authorization from the Park Manager to consume alcohol. A designated group day-use facility includes:

1. Designated picnic area, shelters, or meeting rooms; and

2. Open-Space venues that have specific boundaries as defined by the Park Manager.

(c) In any facility that is licensed to sell alcoholic beverages.

Authority: T.C.A. §§ 11-1-101 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 11/03/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/03/15

Rulemaking Hearing(s) Conducted on: (add more dates). 10/27/15

Date: 11/3/15

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 11/3/15

Notary Public Signature: [Handwritten Signature]

My commission expires on: 11/5/18



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

[Handwritten Signature]
Herbert H. Slattery III
Attorney General and Reporter

3/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/10/16

Effective on: 6/8/16

[Handwritten Signature]
Tre Hargett
Secretary of State

RECEIVED
2016 MAR 10 PM 1:32
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control Board

SUBJECT: Local Air Programs/Administrative Fee Schedule

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-201 et seq. and 68-201-105

EFFECTIVE DATES: June 5, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The Board is amending rules for purposes of clarification in response to an opinion issued by the Attorney General in which the Attorney General opined that local air programs cannot regulate state-owned facilities because the State has not waived sovereign immunity. Op. Tenn. Atty. Gen. 10-86. The Technical Secretary now issues permits to state-owned facilities. The rules, as amended, insert the counties that have local air programs into a fee payment schedule for minor and conditional major facilities and further clarify that only facilities permitted by the State are required to pay the fees to the State in counties with local air programs.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

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

This rulemaking does 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.

This rulemaking does not impact small businesses.

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

This rulemaking does not impact small businesses.

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

This rulemaking does not impact small businesses.

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

In states that have not waived sovereign immunity relative to state-owned facilities these facilities would be permitted by the state regulatory authority and pay fees to the state regulatory authority.

- (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.

This rulemaking does not impact small businesses.

Impact on Local Governments

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

The Department anticipates that this amended rule will not have an impact on local governments.

41

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-04-16
Rule ID(s): 6133
File Date: 3/7/16
Effective Date: 6/5/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Malcolm H. Butler
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0600
Email:	malcolm.butler@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
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

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

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emissions Fees is amended by deleting subparagraph (a) in its entirety and substituting instead the following:

- (a) It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees for sources subject to permitting pursuant to Division 1200-03 sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.

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

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (c) in its entirety and substituting instead the following:

- (c) Beginning December 1, 1991 all minor and conditional major source annual emission fees are due and payable to the Division in full according to Schedule I of this subparagraph. The county that a source is located in determines when the minor source annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. The fee must be paid to the Division in full by the first (1st) day of the month that the fee is due. The Technical Secretary may extend this due date an additional ninety (90) days where he finds that the minor source owner or operator's fee notice was mailed by the Division to an incorrect mailing address.

SCHEDULE I

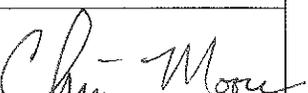
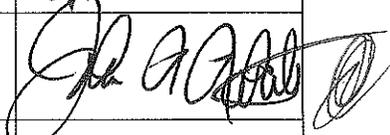
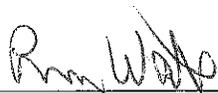
Month the Annual Emissions Fee is Due (Accounting Period)
Counties in the Monthly Grouping

January	Anderson, Bedford, Benton Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, <u>Davidson</u> , Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, <u>Hamilton</u> , Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, <u>Knox</u> , Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and

	Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and <u>Shelby</u>
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

Authority: T.C.A. § 68-201-101 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)
Vacant Working in Municipal Government					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	✓				
Karen Cisler Environmental Interests	✓				
Dr. Wayne T. Davis Conservation Interests	✓				
Stephen Gossett Working for Industry with technical experience	✓				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	✓				
Richard Holland Working for Industry with technical experience	✓				
Chris Moore Working in management in Private Manufacturing	✓				
John Roberts Small Generator of Air Pollution representing Automotive Interests	✓				
Amy Spann Registered Professional Engineer				✓	
Michelle Walker Commissioner's Designee, Dept. of Environment and Conservation	✓				
Larry Waters County Mayor	✓				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	✓				
Vacant Involved with Institution of Higher Learning on air pollution evaluation and control					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 03/11/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/24/14

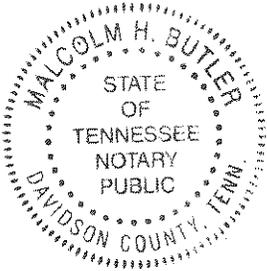
Rulemaking Hearing(s) Conducted on: (add more dates). 01/21/15

Date: 3-11-2015

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 3-11-2015

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

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
2/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/7/16

Effective on: 6/5/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 MAR -7 PM 1:47
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Water Resources

SUBJECT: Publication Systems/Water Quality

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-221-704

EFFECTIVE DATES: June 5, 2016 through June 30, 2017

FISCAL IMPACT: No increase expected. There may be a cost savings by reducing the number of violations with the change in the special purpose samples.

STAFF RULE ABSTRACT:

The Board of Water Quality, Oil and Gas is amending Rule 0400-45-01-.06 for the purpose of making certain references consistent with existing administrative rules. The rule currently references subpart V of the Code of Federal Regulations, title 40, chapter I, subchapter D, part 141 (40 C.F.R. § 141.620 et seq.). That reference is deleted and replaced with a reference to "Stage 2 Disinfection Byproduct Requirements (LRAA)".

The Board is amending Rule 0400-45-01-.07(1)(g) to sunset the existing special purpose sample rule after March 31, 2016, to coincide with the start of the revised total coliform rule on April 1, 2016.

The Board is amending Rule 0400-45-01-.17(22) to revise the definition of "lead free" in a manner consistent with the term's meaning under the Tennessee Safe Drinking Water Act.

The Board is amending Rule 0400-45-01-.41(3)(b) to reflect the recent exemption included in applicable federal rules relating to special purpose samples. Special purpose samples are useful for checking potential problem areas in response to a customer complaint or to verify whether an area that has undergone a recent installation, maintenance, or repair is ready to return to service and does not reflect the overall water quality of the water

distribution system. The revised total coliform rule requires a specific number of samples for the water system's sampling plan per monitoring period, and does not allow for a fluctuating number of special purpose samples each monitoring period. Systems are not allowed to take additional samples beyond the number of approved samples. This prevents a situation where a noncompliant system could appear compliant because of excessive sampling.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

The change to the explanation of what constitutes a special purpose sample will mean that special purpose samples will not count toward bacteriological monitoring violations of the Revised Total Coliform Rule and could reduce the number of violations that small businesses that are a public water system will receive. It will also simplify sampling and recordkeeping for the systems. Special purpose samples are useful for checking on potential problem areas, such as in response to a customer complaint, or to verify whether an area that has undergone a recent installation, maintenance or repair is ready to return to service and do not reflect the overall water quality of the water distribution system. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

The rule changes benefit those small businesses which supply water to the public, such as restaurants, campgrounds, factories and trailer parks. There are approximately 19 commercial enterprises (mines, clay companies and factories) that supply their employees with their own produced water (nontransient noncommunity system – serve the same people). There are approximately 193 campgrounds, gas stations, restaurants, etc. that supply water to the public (transient noncommunity system – serve different people). There are approximately 11 trailer parks which are community public water systems that could also be considered small businesses.

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

There should be no additional reporting, recordkeeping or administrative costs for the change in the explanation of what constitutes a special purpose sample. It will simplify sampling and recordkeeping for the systems. The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

There could potentially be a reduction in violations due to the special purpose samples no longer counting toward bacteriological monitoring violations under the Revised Total Coliform Rule. It will simplify sampling and recordkeeping for the systems. The change to the definition of lead free affects the manufacture, sale and installation of piping and fixtures used for drinking water purposes by further restricting the amount of lead that the piping and fixtures may contain. This new definition is under both the Federal and Tennessee Safe Drinking Water Act. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

None has been identified. The change to special purpose samples reflects the recent change to the federal rule and will be less burdensome to water systems as they will not count toward Revised Total Coliform Rule compliance.

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

The rules are amended to reflect recent changes to the Tennessee Safe Drinking Water Act, which matches the language of the Federal Safe Drinking Water Act. The change to what constitutes a special purpose sample reflects the recent change to the federal rule. The change in the terminology from "subpart V" to "Stage 2 Disinfection Byproduct Requirements" more accurately references state rule.

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

It is advantageous to small businesses that special purpose samples will not count toward compliance with the Revised Total Coliform Rule. Exempting them may make it problematic to receive primary enforcement authority with EPA for the Revised Total Coliform Rule. The small businesses cannot be exempted from the lead free definition as it is under the Federal and Tennessee Safe Drinking Water Act and also covers the manufacture, sale and installation of piping and fixtures used for drinking water purposes.

Impact on Local Governments

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

The Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for local governments.

6

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-06-16
Rule ID(s): 6135
File Date: 3/7/16
Effective Date: 6/5/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Anna R. Sartors
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0159
Email:	anna.r.sartors@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0400-45-01	Public Water Systems
Rule Number	Rule Title
0400-45-01-.06	Maximum Contaminant Levels
0400-45-01-.07	Monitoring and Analytical Requirements
0400-45-01-.17	Operation and Maintenance Requirements
0400-45-01-.41	Revised Total Coliform Rule

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

Amendments

Chapter 0400-45-01 Public Water Systems

Subpart (i) of part 1 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by deleting the phrase "(subpart V)" and substituting the phrase "(Stage 2 Disinfection Byproducts Reporting Requirements)" such that, as amended the subpart shall read:

- (i) Compliance dates. Subpart H systems serving 10,000 or more persons must comply with this part beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this part beginning January 1, 2004. All systems must comply with these MCLs until the date specified for Locational Running Annual Average ~~(subpart V)~~ (Stage 2 Disinfection Byproducts Requirements (LRAA)) compliance in Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subpart (i) of part 2 of subparagraph (b) of paragraph (6) of Rule 0400-45-01-.06 Maximum Contaminant Levels is amended by twice deleting the phrase "subpart V" and substituting the phrase "Stage 2 Disinfection Byproducts Reporting Requirements" such that, as amended the subpart shall read:

- (i) Compliance dates. The ~~subpart V~~ Stage 2 Disinfection Byproducts Requirements (LRAA) MCLs for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for ~~subpart V~~ Stage 2 Disinfection Byproducts Requirements (LRAA) compliance in subparagraph (1)(c) of Rule 0400-45-01-.38.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (1) of Rule 0400-45-01-.07 Monitoring and Analytical Requirements is amended by deleting it in its entirety and substituting instead the following:

- (g) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine whether the coliform treatment technique trigger has been exceeded compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 provided the water is not served to customers before negative analytical results are obtained. Samples representing water served to customers prior to obtaining analytical results shall not be special purpose samples and shall not count toward compliance with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06 with the MCL for total coliforms in paragraph (4) of Rule 0400-45-01-.06. After March 31, 2016, this subparagraph is no longer applicable.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Paragraph (22) of Rule 0400-45-01-.17 Operation and Maintenance Requirements is amended by deleting it in its entirety and substituting instead the following:

- (22) All pipe, pipe or plumbing fitting or fixture, solder, or flux which is used in the installation or repair of any public water system shall be lead free. The term "lead free" shall have the meaning given it in T.C.A. § 68-221-703. ~~This shall not apply to lead joints necessary for the repair of cast iron pipes.~~ The term "lead free" in this paragraph is defined as follows:

~~(a) When used with respect to solders and flux shall mean solders and flux containing not more than two-tenths of one percent (0.2%) lead and~~

~~(b) When used with respect to pipes and pipe fittings shall mean pipes and pipe fittings containing not more than eight percent (8.0%) lead.~~

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (3) of Rule 0400-45-01-.41 Revised Total Coliform Rule is amended by deleting it in its entirety and substituting the following:

(b) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded, provided the water is not served to customers before negative analytical results are obtained. Samples representing water served to customers prior to obtaining analytical results shall not be special purpose samples and shall count toward compliance with the coliform treatment technique trigger. Repeat samples taken pursuant to paragraph (8) of this rule are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

Authority: T.C.A. §§ 68-221-701 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)				X	
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)	X				
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (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 08/18/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/19/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/2015

Date: August 26, 2015

Signature: *John McClurkan*

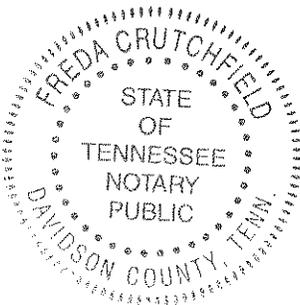
Name of Officer: John McClurkan

Title of Officer: Chairman

Subscribed and sworn to before me on: August 26, 2015

Notary Public Signature: *Freda Crutchfield*

My commission expires on: May 03, 2016



Rules of the Board of Water Quality, Oil and Gas
Rule 0400-45-01-.06 Maximum Contaminant Levels
Rule 0400-45-01-.07 Monitoring and Analytical Requirements
Rule 0400-45-01-.17 Operation and Maintenance Requirements
Rule 0400-45-01-.41 Revised Total Coliform Rule

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. Statory III
Herbert H. Statory III
Attorney General and Reporter
2/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/7/16

Effective on: 6/5/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 MAR -7 PM 1:48
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

SUBJECT: Child Nutrition Programs/Local Education Agency
Exemptions for Infrequent School-Sponsored Fundraisers

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-2303, and 78
C.F.R. 125

EFFECTIVE DATES: June 29, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule allows Local Education Agencies to make special exemptions outside of the sale of food and/or beverages that do not meet the United States Department of Agriculture's competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. This new rule changes the maximum allowable exemptions from thirty (30) days within a school year per school site to twenty (20) days per semester, with the option to request additional exemption days through a waiver from the Department of Education.

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.

32

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

For Department of State Use Only
Sequence Number: 03-39-16
Rule ID(s): 6162
File Date: 3/31/16
Effective Date: 6/29/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@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
0520-01-06	Child Nutrition Programs
Rule Number	Rule Title
0520-01-06-.04	Special Exemptions for School-Sponsored Fundraisers

Chapter Number	Chapter Title
Rule Number	Rule Title

**CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS**

Repeal/New

Rule 0520-01-06-.04 Special Exemptions for Infrequent School-Sponsored Fundraisers is repealed in its entirety and replaced so that the following new rule shall read:

0520-01-06-.04 SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS

LEAs may set special exemptions for infrequent school-sponsored fundraisers that sell foods or beverages that do not meet the nutrition standards for Smart Snacks. Such specially exempted fundraisers shall take place no more than twenty (20) days per semester per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the twenty (20) day limit per semester is not exceeded.

LEAs shall include the special exemptions set for infrequent school-sponsored fundraisers in the Local Wellness Policy required by the Healthy, Hunger-Free Kids Act of 2010.

LEAs may request approval to exceed the twenty (20) day limit per semester from the Department of Education.

Authority: T.C.A. §§ 49-1-302, 49-6-2303, 78 Fed. Reg. 125 (June 28, 2013)

~~0520-01-06-.04 SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS.~~

~~Local Education Agencies may make special exemptions for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers shall take place on no more than thirty (30) days within a school year per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the thirty (30) day limit is not exceeded.~~

* 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				
Tucker	X				
Troutt				X	

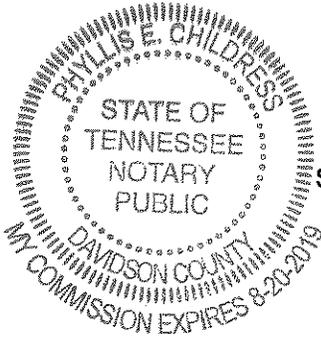
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 01/29/2016 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 3/10/16

Signature: [Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director



Subscribed and sworn to before me on: 3/10/16

Notary Public Signature: [Signature]

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.

[Signature]
Herbert H. Slatery III
Attorney General and Reporter

3/23/2016

Date

RECEIVED
 2016 MAR 31 PM 3:35
 SECRETARY OF STATE
 PUBLICATIONS
 Department of State Use Only

Filed with the Department of State on: 3/31/16

Effective on: 6/29/16

[Signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Trustees of the Tennessee Consolidated Retirement System

SUBJECT: Qualified Domestic Relations Order Acceptance Guidelines

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 8-36-128

EFFECTIVE DATES: June 26, 2016 through June 30, 2017

FISCAL IMPACT: There is not estimated to be an increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. The Tennessee Consolidated Retirement System will process such orders utilizing existing staff; payments to alternate payees through the orders will occur in the same manner as benefit payments are already processed.

STAFF RULE ABSTRACT: The proposed rules establish the guidelines for the Tennessee Consolidated Retirement System to accept Qualified Domestic Relations Orders pursuant to T.C.A. § 8-36-128, which provides that the Tennessee Consolidated Retirement System shall honor claims under Qualified Domestic Relations Orders at a time designated by the state treasurer.

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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The rule does not have a projected impact on local governments.

31

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

For Department of State Use Only

Sequence Number: 03-22-16
Rule ID(s): 6161
File Date: 3/28/16
Effective Date: 6/26/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission:	Board of Trustees of the Tennessee Consolidated Retirement System
Division:	
Contact Person:	Jill Bachus
Address:	502 Deaderick Street, 15 th Floor Andrew Jackson Building, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-3845
Email:	Jill.Bachus@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
1700-03-03	Qualified Domestic Relations Orders
Rule Number	Rule Title
1700-03-03-.01	Purpose
1700-03-03-.02	Definitions
1700-03-03-.03	Payment by TCRS
1700-03-03-.04	Submission of Orders
1700-03-03-.05	Requirements for a Valid QDRO
1700-03-03-.06	Review of Orders
1700-03-03-.07	Determination of Qualified Order
1700-03-03-.08	Effect of a Valid QDRO
1700-03-03-.09	Benefits Affected by a QDRO
1700-03-03-.10	Benefits Resulting from Resuming Membership
1700-03-03-.11	Submission of Amended Order

1700-03-03-.12	Termination of QDRO
1700-03-03-.13	Alternate Payee's Information
1700-03-03-.14	Cost of Living Adjustments

New

Chapter 1700-03-03
Qualified Domestic Relations Orders

Table of Contents

1700-03-03-.01 Purpose
1700-03-03-.02 Definitions
1700-03-03-.03 Payment by TCRS
1700-03-03-.04 Submission of Orders
1700-03-03-.05 Requirements for a Valid QDRO
1700-03-03-.06 Review of Orders
1700-03-03-.07 Determination of Qualified Order
1700-03-03-.08 Effect of a Valid QDRO
1700-03-03-.09 Benefits Affected by a QDRO
1700-03-03-.10 Benefits Resulting from Resuming Membership
1700-03-03-.11 Submission of Amended Order
1700-03-03-.12 Termination of QDRO
1700-03-03-.13 Alternate Payee's Information
1700-03-03-.14 Cost of Living Adjustments

Rule 1700-03-03-.01 Purpose.

The rules in this chapter implement T.C.A. § 8-36-128.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.02 Definitions.

In addition to the definitions contained in T.C.A. § 8-34-101, the following definitions are applicable to this chapter:

- (1) Alternate payee means a former spouse of a member or retiree who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the benefits payable by the retirement system with respect to such member or retiree.
- (2) Qualified domestic relations order ("QDRO") has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
- (3) Refund means a withdrawal of the member's accumulated contributions pursuant to T.C.A. § 8-37-210.

Authority: T.C.A. §§ 8-34-101, 8-34-313, 8-36-128, and 8-37-210.

Rule 1700-03-03-.03 Payment by TCRS.

The retirement system will make payment of a retirement allowance or refund only as directed by statute or by a QDRO. After the retirement system determines that an order is a QDRO, the retirement system shall make payments to the alternate payee as directed by the QDRO at the time that a member begins receiving a monthly retirement allowance or receives a refund of contributions, unless the retirement system receives a certified copy of an order from a court of competent jurisdiction that withdraws or supersedes the previous order.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.04 Submission of Orders.

A person who wishes to have the retirement system review a domestic relations order to determine whether it is a QDRO for the purpose of receiving retirement system payments shall submit a copy of a signed domestic relations order to the retirement system. Such order shall be on the form provided by the retirement system and must contain all requirements prescribed by these rules. The retirement system will reject any order that is not on the form provided. The copy shall be certified by the clerk of the court that entered the order. The retirement system shall not make a determination for orders not yet entered by the court.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.05 Requirements for a Valid QDRO.

- (1) The retirement system will accept a court order as a valid QDRO if the order meets all of the following requirements:
 - (a) The order must relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
 - (b) The order must be a certified copy of an original or amended order dated on or after the effective date of the rules in this Chapter.
 - (c) The order must have been issued by a court of competent jurisdiction in a divorce proceeding that provides for the distribution of property, or any proceeding to amend or enforce such a property distribution.
 - (d) The order must identify the Tennessee Consolidated Retirement System as the retirement system to which it is directed.
 - (e) The order must contain the name, address, and social security number of the member.
 - (f) The order must contain the name, address, and social security number of the alternate payee.
 - (g) The order must express any amount to be paid to the alternate payee from a member's retirement allowance as a dollar amount per month or as a percentage per month.
 - (h) The order must contain the beginning and ending dates of the marriage of the member and the alternate payee and assign a portion of the member's retirement allowance under the retirement system based upon the period of marriage.
 - (i) The order must contain an assignment of the retirement allowance based upon the value of a member's entitlement under the retirement system if he or she were to retire at full retirement age utilizing the regular service retirement allowance without taking into account an early retirement penalty for his or her total creditable service through the valuation date.
 - (j) The order must express any amount to be paid to the alternate payee from a member's refund as a dollar amount or as a percentage of the refund.
 - (k) The order must contain a provision authorizing the retirement system to increase the amount payable to the alternate payee each month based upon the alternate payee's share of any cost of living adjustment received by the member.
 - (l) The order must contain a provision directing the director to make payment to the alternate payee in accordance with the QDRO until either the member or the alternate payee dies, whichever

occurs first. The order must contain a provision that provides that the QDRO becomes null and void upon the death of the member or the alternate payee.

- (2) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement will not be accepted by the retirement system as a valid QDRO.
- (3) The order may specify an alternative method for the parties to verify their social security numbers to the retirement system, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if the retirement system finds that the method of verification is insufficient for the purposes of payment of benefits or reporting of income for tax purposes.

Authority: T.C.A. §§ 8-34-313, 8-36-128, and 8-36-206.

Rule 1700-03-03-.06 Review of Orders.

The director of the retirement system or the director's designee shall review the order for compliance with requirements imposed by statute or rule. Upon completion of the review, the director or the designee shall notify the member or retiree and each alternate payee in writing of the determination.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.07 Determination of Qualified Order.

- (1) Any determination that an order is a QDRO is voidable or subject to modification if the retirement system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.
- (2) If the director or designee determines that an order is not a QDRO, the notice shall identify the provisions of the order that do not meet the requirements of applicable statutes or rules.
- (3) Any determination by the director or the director's designee that an order is not a QDRO is a final decision by the retirement system. No appeal to the board of trustees is authorized. A party adversely affected by a determination may file a motion for reconsideration with the director no later than thirty (30) days after the date such determination is rendered if the party wishes to contest the determination. The director will review the motion for reconsideration as a lesser appeal as defined in Chapter 1700-03-02.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.08 Effect of a Valid QDRO.

- (1) Retirement Allowance.
 - (a) After the retirement system has determined that a QDRO applying to a retirement allowance is valid, one of the following will occur:
 1. If the member has not yet started receiving a retirement allowance, the QDRO will be placed in the member's file and will be implemented when the first affected payment commences; or
 2. If the member is already receiving a retirement allowance subject to the QDRO, payment to the alternate payee will begin on the monthly payment date prescribed in T.C.A. § 8-36-117 in the month following approval by the retirement system.
- (2) Refund of Member Contributions.

- (a) After the retirement system has determined that a QDRO applicable to a member's refund is valid, one of the following will occur:
1. If the QDRO provides for the allocation of a refund and the member has not applied for a refund, the QDRO will be placed in the member's file and will be implemented when payment of the affected refund is made;
 2. If a refund application is pending when the retirement system receives a QDRO that purports to apply to the refund but the refund payment has not yet been made, the retirement system will hold the portion of the refund that would be payable to the alternate payee until it receives clarification from the court as to whether the QDRO is effective against the pending refund. It is the member's or alternate payee's responsibility to obtain clarification from the court and notify the retirement system of the court's clarification; or
 3. If a refund payment has already been made when the retirement system receives a QDRO that purports to apply to the refund, the QDRO shall not be effective against that refund.

Authority: T.C.A. §§ 8-34-313, 8-36-117, and 8-36-128.

Rule 1700-03-03-.09 Benefits Affected by a QDRO.

- (1) A QDRO may apply only to the following benefits administered by the retirement system:
- (a) A monthly retirement allowance; or
 - (b) A member's refund of employee contributions.
- (2) A QDRO shall not apply to any of the following:
- (a) A survivor benefit;
 - (b) Any disability benefit;
 - (c) An error refund; or
 - (d) Any other benefit.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.10 Benefits Resulting from Resuming Membership.

If a member terminates membership in the retirement system by withdrawal of contributions, the retirement system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a QDRO. If the former member later resumes membership in the retirement system, then the retirement system shall pay to an alternate payee no portion of retirement allowance payable to the member or retiree which results from the resumption of membership, even if the retirement allowance is a result in part from reinstatement of service credit initially credited during marriage. A member who reinstates service credit by depositing amounts previously withdrawn or refunded shall deposit the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to the alternate payee. The reinstatement fee shall be based on the total amount withdrawn, regardless of whether a portion or all of the amount was paid to an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.11 Submission of Amended Order.

If a court amends an order that the retirement system has determined to be a QDRO, the member or retiree or alternate payee shall submit a certified copy of the amended order to the retirement system. The retirement system shall review any amended order for compliance with the requirements imposed by rule or statute for an original order. An amended order will be applied to member benefits beginning on the date the amended order is determined by the retirement system to be valid.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.12 Termination of QDRO.

The retirement system will consider a QDRO as having been terminated in any of the following situations:

- (1) Upon receipt of a certified copy of a court order terminating the QDRO;
- (2) Upon payment of all amounts provided for in the QDRO;
- (3) When the person to whom the QDRO applies ceases to be an annuitant of the System; or
- (4) Upon the death of the alternate payee or the member.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.13 Alternate Payee's Information.

An alternate payee is responsible to report to the retirement system in writing each change in his or her name, residence address, and direct deposit information. When a member's retirement allowance or refund subject to a QDRO becomes payable, the retirement system will send notice to the last address of the alternate payee reported to the retirement system that the retirement allowance or refund is payable. Other than sending such notice, the retirement system shall have no duty to take any other action to locate an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

Rule 1700-03-03-.14 Cost of Living Adjustments.

The alternate payee will receive a proportionate share of any cost of living adjustment received by the member. The retirement system will calculate the amount of any adjustment payable to the alternate payee under the QDRO. The amount of any adjustment payable to the alternate payee is the percentage of adjustment due the member multiplied by the alternate payee's monthly retirement allowance as of the date of the adjustment.

Authority: T.C.A. §§ 8-34-313 and 8-36-128.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David H. Lillard, Jr.	X				
Jill Bachus	X				
Rebecca Hunter	X				
Tre Hargett				X	
Deborah Taylor Tate	X				
Larry Martin				X	
Justin Wilson	X				
Angie Judish	X				
Shannon Jones	X				
Tony Crisp				X	
Patsy Moore				X	
Harold Morrison	X				
Kevin Fielden				X	
Alfred W. Laney	X				
Bob Wormsley	X				
Bill Kemp	X				
Ken Wilber				X	
Michael Barker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Trustees of the Tennessee Consolidated Retirement System on 02/26/2016 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: March 21, 2016

Signature: [Handwritten Signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer and Chair of the Board of Trustees of the Tennessee Consolidated Retirement System



Subscribed and sworn to before me on: March 21, 2014

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

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

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

3/24/2016
 Date

Department of State Use Only

Filed with the Department of State on: 3/28/16

Effective on: 6/26/16



Tre Hargett
Secretary of State

RECEIVED
2016 MAR 28 PM 2:12
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards

SUBJECT: Locksmith Licensing

STATUTORY AUTHORITY: There are no known state or federal regulations mandating promulgation of such rule or establishing guidelines relevant thereto.

EFFECTIVE DATES: June 26, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The proposed rules amend several definitions within the licensing act, provide more efficient disclosure and renewal requirements for applicants, amend experience and education requirements, clarify and amend civil penalties, amend rules of conduct with regard to licensees, and allow for a more streamlined process to grant licensees reciprocity.

Public Hearing Comments

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

Comment as to 0780-5-13-.03: Stanley Harrell ("Mr. Harrell"): Tennessee Locksmith Licensing requirements place an undue and unfair burden on Mr. Harrell's offering of services to federal agencies that may be located in Tennessee.

Response: The proposed rules do not place an undue or unfair burden on applicants and/or licenses similarly situated to Mr. Harrell as the licensing requirements are evenly applied to protect the Tennessee consumer from deceptive and illegal practices.

Comment as to 0780-5-13-.03(5): Robert Wesson ("Mr. Wesson"): The probationary period that can be invoked, seems ambiguous.

Response: The probationary period of the proposed rule is drafted to comply with Tenn. Code Ann. § 62-11-104(m), which provides the Commission with discretion to invoke a probationary measures upon each applicant. The Commissioner determined not to place any mandatory probationary requirements on all applicants, but instead the rule as written sets forth specific probationary measures that the Commissioner may invoke upon an applicant, where such measures are determined necessary. The measures are not ambiguous in that any applicant placed on probation will be provided with its specific probationary requirements to abide by during its period of probation.

Comment as to 0780-5-13-.03(5)(a): Define "[a]nd other such requirements determined to be reasonably necessary."

Response: The Commissioner's responsibilities are established by Tenn. Code Ann. § 62-11-106 and the rules are drafted to comply with the enacted laws. There is no suitable static definition for "and other such requirements determined to be reasonably necessary." However, such requirements must be "reasonably necessary." As such, any further requirements may not be arbitrary or capricious must address a specific concern and be drafted to mitigate the risk to consumers for such concern in a reasonable manner so not to be overly burdensome to the applicant.

Comment as to 0780-5-13-.09(1) from Mr. Wesson: I believe the State should come up with the curriculum for this course [i.e. life safety], along with the State Fire Marshal and the NFP-100.

Response: The change in the proposed rule was drafted in order to comply with Tenn. Code Ann. § 62-11-106(7). As written, the rule allows for locksmith attendance to a variety of fire safety courses. To produce the curriculum for a fire safety course would create a greater financial burden than benefit to the locksmith licensing program.

Comment as to 0780-5-13-.11 from Mr. Wesson: why is there a minimum on the civil penalty?

Response: The proposed rule was amended to lower the minimum civil penalty to one dollar (\$1.00). The Commissioner is granted statutory authority to levy a civil penalty up to \$2,500 per violation. This rule as amended gives notice that the Commissioner may use discretion in the levying of civil penalties based upon the circumstances of the violation as set out in paragraph (4) of the rules.

Comment as to 0780-5-13-.15 from Mr. Wesson: The proposed rule regarding reciprocity should incorporate provisions to allow more locksmiths, certified outside of ALOA (Associated Locksmith of America).

Response: ALOA is the only national certification association in the United States. To include additional associations would create a greater financial burden than benefit to the locksmith licensing program.

Comment as to 0780-5-13-.09(8) from Mr. Wesson: The carryover provision was a good thing for locksmiths.

Response: The proposed rule was drafted in an effort to comply with Tenn. Code Ann. § 62-11-111(i).

Comment as to 0780-5-13-.09(8): Representative Jay Reedy, District 74, requested clarification on the carryover provision.

Response: There is no carryover at all from a previous renewal period to later renewal period.

Comment as to 0780-5-13-.02(1): Mr. Ron Harrison ("Mr. Harrison") requested clarification on "access control" with regards to the alarm industry exemption statute, as stated in Tenn. Code Ann. § 62-32-305(7).

Response: There is no exemption for locksmiths or general contractors within Tenn. Code Ann. § 62-32-305(7).

Comment as to 0780-5-13-.02(3): Mr. Harrison requested clarification as to the definition of "branch office."

Response: The definition of branch office, and its related exception, is clearly defined in the rule.

Comment as to 0780-5-13-.02(19): Mr. Harrison requested clarification on the definition of "qualifying agent."

Response: A qualifying agent is clearly defined in the rule. The qualifying agent is required to qualify the company license; however, a company can have multiple branch offices with a licensed locksmith and the offices can have the same qualifying agent.

Comment as to 0780-5-13-.09: Mr. Harrison requested clarification on the carryover provision of the continuing education requirements and believes allowing a certain amount of continuing education hours is beneficial.

Response: The proposed rule regarding the continuing education's carry over provision is clearly defined and does not allow the carryover of continuing education hours.

Comment: Melissa Bass, Representative for the Tennessee Organization of Locksmiths, commended the staff of the Tennessee Locksmith Licensing Program on the proposed rules and subsequent rulemaking hearing.

Response: Ms. Bass' comments are acknowledged.

Regulatory Flexibility Addendum

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

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

Answer: This rule would affect any locksmith licensees and locksmith apprentices as well as all future applicants. There are currently 370 locksmith licensee and 285 locksmith apprentices.

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:

Answer: The proposed rules create a more efficient, concise, and streamlined process for locksmith applicants and licensees. The proposed rules provide clarity in its application guidelines as well as renewal and continual maintenance procedures. The administrative skills and/or costs required for compliance with the proposed rules would not exceed those required for existing rules.

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

Answer: These rules will have no effect on consumers. Minimally, small businesses can expect the proposed rules to effect, specifically, the continuing education requirement of the Locksmith Licensing Program and may result in higher costs to locksmith licensees.

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

Answer: The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

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

Answer: There are no federal or state counterparts to the issues addressed by these rules.

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

Answer: An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

Impact on Local Governments

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

There is no expected impact on local government by the promulgation of this amendment.

35

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-21-16
Rule ID(s): 6160
File Date: 3/28/16
Effective Date: 6/29/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Locksmith Licensing Program
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Ashley N. Thomas, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3072
Email:	ashley.thomas@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
0780-05-13	Locksmiths
Rule Number	Rule Title
0780-05-13-.02	Definitions
0780-05-13-.03	Application for License or Registration
0780-05-13-.04	Application Requirements
0780-05-13-.05	Renewal of Licenses and Registrations
0780-05-13-.08	Experience
0780-05-13-.09	Continuing Education and Programs
0780-05-13-.10	Qualifying and Continuing Education Providers
0780-05-13-.11	Civil Penalties
0780-05-13-.12	Submission of Information
0780-05-13-.14	Code of Conduct
0780-05-13-.16	Reciprocity

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

Chapter 0780-05-13
Locksmiths
Repeal/New

Table of Contents

0780-05-13-.01	Purpose	0780-05-13-.11	Civil Penalties
0780-05-13-.02	Definitions	0780-05-13-.12	Submission of Information
0780-05-13-.03	Application for License Registration	0780-05-13-.13	Standards of Practice
0780-05-13-.04	Application Requirements	0780-05-13-.14	Code of Conduct
0780-05-13-.05	Renewal of Licenses and Registrations	<u>0780-05-13-.16</u>	<u>Reciprocity</u>
0780-05-13-.08	Experience		
0780-05-13-.09	Continuing Education and Programs		
0780-05-13-.10	Qualifying and Continuing Education Providers		

0780-05-13-.02 Definitions.

- (1) ~~“Access control” means mechanical locks that have an integral alarm as part of their design without electrical components and electro-mechanical locks such as self-contained, low-voltage exit alarm devices that secure a single entry point, which are not part of an integrated system. Nothing in these rules shall exempt any locksmith from complying with the Alarm Contractors Licensing Law and Rules;~~
- (1) “Access control” means any barrier or device, which limits or prohibits free or unlimited access; however, for the purpose of this chapter, “access control” may mean any “stand-alone” mechanical, electro-mechanical, or electronic locking device that is not part of an integrated system. Nothing in this chapter shall exempt any licensed locksmith from complying with all licensing requirements for alarm contracting;
- (2) “Automotive work” means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing a special locking system, mechanical locking device or electrical locking device for controlled access to vehicles;
- (3) ~~“Branch office” means any office of a locksmith company within this state other than its principal place of business within this state; physical location that is not the primary place of business at which a locksmith or apprentice conducts any activity relative to locksmithing services, including but not limited to offices where administrative and/or other locksmith business function is performed. The only exceptions are warehouse facilities which are utilized solely for storage purposes and locations that are not accessible to the general public which have no signage, advertising or other outward indication to the public that the licensing locksmith company conducts its primary business at that location.~~
- (4) “Commissioner” means the commissioner of commerce and insurance;
- (5) “Continuing education” means education that is creditable toward the education requirements that must be satisfied as a prerequisite for renewal or a license as a locksmith;
- (6) “Conviction” means and includes the entry of a plea of guilty, plea of no contest or a verdict rendered in open court by a judge or jury;
- (7) “General locksmithing” means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing locks or other devices for access to structures or personal property;

- (8) "Good moral character" means an individual with high legal, moral and ethical values, and the following shall be prima facie evidence that an individual does not have good moral character:
- (a) Conviction by any local, state, federal or military court of any crime involving the illegal sale, manufacture, distribution or transportation of a controlled substance, drug, or narcotic;
 - (b) Conviction of a crime involving felonious assault;
 - (c) Conviction of a crime involving unlawful breaking or entering, burglary, larceny or arson;
 - (d) Conviction as a habitual criminal;
 - (e) An addiction to alcohol or a narcotic drug;
 - (f) Discharge from the armed forces under dishonorable conditions; or
 - (g) Conviction of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(33);
- (9) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours ~~that has the necessary experience, training or education in the course subject matter and has been approved by the Commissioner;~~
- (10) "Licensee" means an individual who holds a current, unexpired license as a locksmith issued by the commissioner;
- (11) "Locksmith company" means any person or entity engaging in the business of providing or undertaking to provide locksmithing services for another person;
- (12) "Locksmith student" means an individual who is enrolled in a locksmith training program pursuant to Rule 0780-05-13-.07;
- (13) "Locksmith training program" means a course or courses or an apprenticeship program given in preparation for licensure as a locksmith;
- (14) "Master key system" means any keying arrangement which has two or more levels of keying;
- ~~(44)~~(15) "Motor vehicle" shall have the same meaning as set forth in ~~Tenn. Code Ann~~ T.C.A. § 55-17-102(15);
- ~~(45)~~(16) "Provider" means an individual or entity offering courses approved by the commissioner for qualifying education or continuing education credit hours;
- (17) "Permanent, fixed business location" means an office, office building or dwelling submitted to the commissioner as the locksmith company's principal place of business. Mail boxes and mail drop addresses may not be used as a primary place of business or as a branch office.
- ~~(46)~~(18) "Person" means an individual, firm, association, governmental entity, or other legal entity;
- ~~(47)~~(19) "Qualifying agent" means any person licensed by the commissioner as a locksmith who is immediately responsible for the operation of a principal office or any branch office;
- ~~(48)~~(20) "Qualifying education" means education that is creditable toward the education requirements for initial licensure as a locksmith;
- ~~(49)~~(21) "Registrant" means an individual who holds a current, unexpired registration as a locksmith apprentice issued by the commissioner or a company that holds a current, unexpired registration as a locksmith company issued by the commissioner;
- ~~(20)~~(22) "Safe and vault work" means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing a special locking system, mechanical locking device or

electrical locking device for controlled access or egress to safes, vaults, safe doors, lock boxes, automatic teller machines, or other devices for safeguarding areas;

~~(24)~~(23) "Structure" means any building or improvement and its components, systems, fixtures and appurtenances;

~~(24)~~ "Timely renewal" means that all documentation and fees required for the renewal have been received by the commissioner prior to the expiration of the locksmith license or registration.

Authority: T.C.A. § 62-11-106.

0780-05-13-.03 Application for License or Registration.

(1) Any person who seeks to be licensed as a locksmith in any category, registered as an apprentice locksmith, or registered as a locksmith company shall complete an application on a form prescribed by the Commissioner and submit the completed application to the Commissioner. Such applications for licensure or registration are available upon request from the Commissioner. All fees associated with initial licensure and subsequent renewals are non-refundable.

~~(2)~~ Applications for licensure or registration are available upon request from the Commissioner.

~~(3)~~(2) All applications for licensure or registration shall be submitted on the form prescribed by the commissioner for this purpose and shall be accompanied by the following supporting documents:

(a) A copy of at least one (1) of the following valid forms of identification:

1. A driver's license or non-driver's I.D. issued by the State Department of Motor Vehicles; or
2. A valid passport; or
3. A resident alien card; or
4. A license or permit issued by a government agency; or
5. If the applicant is a city, state, or federal employee, an employee identification card.

~~(b)~~ Two (2) completed fingerprint cards or a copy of the receipt for electronically scanned prints. Fingerprints must be rolled nail to nail by a qualified, trained technician on the fingerprint cards provided by this office. The cards must be fully completed and signed and all questions in the blocks at the top of the card must be answered.

(c) Any applicant disclosing any citations, arrests, convictions, or any other documented activity associated with criminal behavior, whether involving a military crime or a state or federal misdemeanor or felony, must provide a written explanation of the episode, and any associated documentation in support thereof. Failure to provide this written information will result in an incomplete application and will cause the application to not be processed.

~~(e)~~(d) Two (2) color frontal photographs of the applicant's face taken within the preceding three (3) months, the size of which must be one (1) inch by one (1) inch and must include the applicant's name and the last four (4) digits of the applicant's social security number on the back of each photograph.

~~(d)~~(e) All applications for a locksmith company registration shall also include the following:

4. ~~The name, date of birth, residence, present and previous occupations of the qualifying agent and each member, officer or director of the business firm;~~

1. The address of the permanent, fixed principal place of business location of the firm and location of all branch offices as well as the qualifying agent licensed locksmith for each branch office, if applicable. A mail drop box address is not acceptable as a physical location for any kind of office;
- ~~2.~~ The address of the principal place of business of the firm and the location of all branch offices as well as the qualifying agent for each branch office, if applicable;
- ~~3.~~ 2. Evidence of general liability insurance and insurance coverage as set forth in ~~Tenn. Code Ann~~ T.C.A. § 62-11-108; and
- ~~4.~~ 3. A payment in the amount of the application fee as set forth in Rule 0780-05-13.06.
4. Copies of a locksmith company's current business license(s) in all applicable city and county jurisdictions within Tennessee.

(f) Applicants for licensure or registration under this chapter shall be of good moral character as defined by Rule 0780-05-13-.02(8).

~~(4)~~(3) Any application submitted which lacks required information or reflects a failure to meet any requirement for licensure or registration will be held by the program office with written notification that the information is lacking or the reason(s) the application does not meet the requirements for licensure sent to the applicant. The application will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed ~~sixty (60)~~ ninety (90) days from the date of application. If the applicant fails to respond to the written notification, the application will be closed and the applicant must reapply.

~~(5)~~(4) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded. all fees associated with the application and initial licensure are nonrefundable.

~~(5)~~ Any partnership, association, company or corporation seeking initial registration as a locksmith business shall be placed on probationary licensure status for a period of two (2) years from the date of the issuance of the registration.

(a) Such probationary status may include such reasonable terms and conditions for the issuance and maintenance of a locksmith business registration as the commissioner determines to be reasonably necessary. Such probationary requirements may include, but are not limited to:

1. Acquiring a bond in an amount determined to be necessary by the commissioner for the protection of the public;
2. Providing reports to the commissioner regarding the company's activities as a locksmith company; or
3. Such other requirements determined to be reasonably necessary by the commissioner.

(b) A licensee's probationary status may be considered by the commissioner in the assessment of discipline for any acts, conduct, or other disciplinary violations occurring during the probationary period.

(c) No locksmith business registrant shall violate the terms and conditions of its probation.

Authority: T.C.A. §§ 62-11-106, -106, -111, and -112.

0780-05-13-.04 Application Requirements.

- (1) ~~Beginning immediately upon the effective date of these rules, and continuing until July 1, 2008, any~~ Any person who desires to obtain a license as a locksmith in any category or a registration as a locksmith company shall submit an application to the Commissioner, along with the required application and license fee, provided that the applicant meets the requirements set forth in ~~Tenn. Code Ann~~ T.C.A. §§ 62-11-111(a) and (b) and demonstrates to the satisfaction of the Commissioner not less than two (2) years' experience in the locksmithing business, or an equivalent amount of certified education or apprenticeship.
- (2) ~~Beginning July 1, 2008, any~~ Any person who desires to obtain a license as a locksmith in any category, a registration as an apprentice locksmith, or a registration as a locksmith company shall submit an application to the Commissioner, along with the required application and license fee and shall comply with ~~Tenn. Code Ann~~ T.C.A. §§ 62-11-111 or 62-11-112.
- (3) Applications will not be considered filed complete until the applicable fee prescribed in these rules is received.

Authority: T.C.A. §§ 62-11-106, -111, and -112.

0780-05-13-.05 Renewal of Licenses and Registrations.

- (1) Licenses and certificates of registration shall expire on the last day of the twenty-fourth (24th) month following their issuance or renewal, and shall become invalid on such date unless renewed.
- (2) Renewal must be received in the office of the Commissioner not less than thirty (30) days nor more than sixty (60) days prior to the expiration of a license or certificate.
- (3) Licenses and registrations granted shall be staggered in accordance with ~~Tenn. Code Ann~~ T.C.A. § 56-1-302(b).
- (4) An individual or company choosing not to renew his, her or its license or registration shall notify the Commissioner of his, her or its intention prior to the expiration of that license or registration, and shall surrender the license or registration to the Commissioner immediately upon its expiration.
- (5) Applications for renewal of licenses and registrations pursuant to the Act shall be made on a form provided by the Commissioner. Applications for renewals will not be considered filed complete until the applicable fee and documentation prescribed in these rules is are received.
- (6) Any locksmith licensee or registrant who does not submit all required documentation and fees within ninety (90) days of the expiration date of the license or registration must reapply.
- (7) A late fee will be assessed on any incomplete renewal application which is not completed prior to the expiration of the current license or registration.

Authority: T.C.A. §§ 62-11-106, -111, and -112.

0780-05-13-.08 Experience.

- (1) An applicant seeking licensure as a locksmith under any the general locksmithing category shall demonstrate to the satisfaction of the Commissioner not less than two (2) years' experience in the locksmithing business, or an equivalent amount of apprenticeship, as permitted under T.C.A § 62-11-112. obtain forty (40) hours of verifiable experience prior to submitting an application for licensure.
- (2) ~~An applicant seeking licensure as a locksmith under the safe and vault category shall obtain ten (10) hours of experience prior to submitting an application for licensure.~~

- ~~(3) An applicant seeking licensure as a locksmith under the automotive work category shall obtain ten (10) hours of experience prior to submitting~~
- (4) Prior to July 1, 2008, the Commissioner shall allow the applicant to submit proof of the required two (2) years experience by providing at least two (2) of the following:
 - (a) Business license;
 - (b) Federal tax ID;
 - (c) Sales tax receipt; and
 - (d) Letter from employer on employer's letterhead stating the applicant's experience.

Authority: T.C.A. § 62-11-106.

0780-05-13-.09 Continuing Education and Programs

- (1) Continuing Education Credits.
 - ~~(a) As a prerequisite to renewal, a licensee shall obtain twelve (12) hours of continuing education for each biennial renewal period.~~
 - ~~(b) A licensee who completes more than twelve (12) hours of continuing education credits in a biennial renewal period may carry over a maximum of four (4) hours into the next renewal period.~~
 - ~~(c) A licensee shall obtain continuing education credits from any of the following sources:
 1. Successful completion of a continuing education course or program approved by the Commissioner;
 2. Participation in developing curriculum for a qualifying or continuing education course or program;
 3. Teaching a qualifying or continuing education course or program, limited to six (6) hours per biennial renewal period;
 4. Authorship of a textbook or manual directly related to locksmithing services, limited to six (6) hours per biennial renewal period; or
 5. Authorship of a published article related to locksmithing services, limited to four (4) hours per article and two (2) articles per biennial renewal period.~~
 - ~~(d) The Commissioner may waive the continuing education requirements upon request by the licensee by showing good cause for the waiver, including but not limited to reasons such as illness, disability, or military service.~~
 - ~~(e) The licensee seeking a waiver of continuing education requirements shall request the waiver in writing to the Commissioner at least ninety (90) days prior to the licensee's renewal date.~~
- (2) Exemption to continuing education requirements for one (1) twelve (12) month period per renewal cycle may be granted if applied for in writing on the form prescribed by the Commissioner for this purpose for the following reasons:
 - (a) A licensee serving on temporary active duty in the armed forces of the United States for a period exceeding one hundred twenty (120) consecutive days within the year.

- ~~(b) A licensee experiencing physical disability or illness if supporting documents are submitted to and approved by the Commissioner. Such documentation shall be in the form of a statement from a physician or medical records which show that the disability or illness prevented the licensee's participating in a course in which the licensee has enrolled or prevented the licensee's participation in the continuing education program for at least one hundred twenty (120) consecutive days in a year.~~
- (1) As a prerequisite to renewal, a licensee shall obtain twelve (12) hours of continuing education for each biennial renewal period, two (2) of which shall be dedicated to life safety.
- (2) In order to qualify for credit toward satisfaction of the continuing professional education requirements of T.C.A. § 62-11-106(7), the continuing education program must be a formal program of learning which contributes directly to the professional competence of the licensee.
- (3) Formal programs requiring attendance may only be considered if:
- (a) an outline is prepared and preserved;
- (b) the unit program is at least one (1) hour (1 credit hour = 50 minutes) in length;
- (c) the program is conducted by a qualified instructor or lecturer; and
- (d) a record of registration and attendance is maintained and certified by the signatures of an authorized representative of the organization sponsoring the program.
- (4) Subject to compliance with paragraphs 1 and 2 of this rule, the following are deemed to be qualifying programs:
- (a) University or college courses provided that:
1. successful completion of a semester or quarter length course will satisfy the continuing professional education requirement for the year in which it is taken; and
2. the courses are relevant to the locksmith industry.
- (b) Programs of locksmith associations and organizations recognized by the Commissioner.
- (c) Formal correspondence and other individual study programs which require registration and provide evidence of satisfactory completion may qualify for continuing education credit in an amount to be determined by the Commissioner.
- (5) Continuing education credit will be allowed for service as an instructor or speaker at any program for which participants are eligible to receive continuing education credit. Credit for such service shall be allowed on the first presentation only, unless the program has been substantially revised. One (1) hour of instruction will equal one (1) hour of continuing education.
- (6) Any program of continuing education not specifically mentioned by this rule may be submitted to the Commissioner for evaluation and approval.
- (7) The Commissioner specifically reserves the right to approve or disapprove credit for continuing education claimed under this rule.
- (8) Each attendee shall be provided a certificate of completion to be submitted with their renewal application.
- (9) No carryover of hours from renewal period to the next renewal period is permitted.

- (10) The Commissioner may, upon written request, extend the time within which a licensee must comply with the requirements of this chapter for reasons of poor health, military service, or other reasonable and just causes.
- (11) Any licensee who requests and is granted an extension of time under this rule shall remain subject to the provisions of this chapter and shall note such extension on any report or correspondence thereafter submitted until such time as the extension and reason for it are no longer pertinent.
- (12) Each extension of time granted by the Commissioner shall be reviewed every six (6) months for the purpose of determining whether good cause exists to continue such extension.

Authority: T.C.A. §§ 62-11-106 and -111.

0780-05-13-.10 Qualifying and Continuing Education Providers.

- (1) Course approval requirements.
- (a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application on a form prescribed by the Commissioner and submit to the Commissioner any documents, statements and forms as the Commissioner may require. The complete application shall be submitted to the Commissioner no later than thirty (30) days prior to the scheduled date of the course. At a minimum, a person or entity seeking approval to conduct a course for qualifying or continuing education shall provide:
1. Name and address of the provider;
 2. Contact person and his or her address, telephone number, fax number and e-mail address;
 3. The location of the courses or programs;
 4. The number and type of education credit hours requested for each course;
 5. Topic outlines that list the summarized topics covered in each course and, upon request, a copy of any course materials;
 6. If a prior approved course has substantially changed, a summarization of the changes; and
 7. The names and qualifications of each instructor who is qualified in accordance with paragraph (2) of this rule.
- (b) Acceptable topics include, but are not limited to:
1. Life Safety Codes;
 2. Building Codes;
 3. Americans with Disabilities Act;
 4. Master Keying;
 5. Key Records and Codes;
 6. Key Blanks and Keyways;
 7. Product Liability;

8. Professional Installations; and
 9. Tennessee locksmith laws and rules.
- (c) The Commissioner may withhold or withdraw approval of any provider for violation of or failure to comply with any provision of this rule. Such withholding or withdrawal does not constitute a contested case proceeding pursuant to the Uniform Administrative Procedures Act compiled at ~~Tenn. Code Ann~~ T.C.A. Title 4, Chapter 5.
 - (d) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Commissioner. Such person or entity may indicate that the Commissioner has approved a course of study if that course of study has been pre-approved by the Commissioner before it is advertised or held.
 - (e) ~~Within five (5) working days after the completion of each course, the provider shall submit to the Commissioner a list of all attendees, including, if applicable, the attendees' license numbers, who completed the course on the course completion form approved by the Commissioner. If the course is for qualifying or continuing education, each licensee successfully completing the course shall be furnished a certificate of completion.~~
 - (f) Providers shall maintain course records for at least five (5) years. The Commissioner may at any time examine such records to ensure compliance with this rule.
- (2) ~~Instructor qualifications and requirements. A person seeking approval as an instructor shall submit an application on a form prescribed by the Commissioner. If granted, the approval as an instructor shall be valid for a period of two (2) years from the date of the approval.~~
- (a) ~~An instructor shall have one of the following qualifications:~~
 1. ~~Three (3) years of recent experience in the subject matter being taught; or~~
 2. ~~A minimum of an associates degree in the subject area being taught; or~~
 3. ~~Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught; or~~
 4. ~~Other educational, teaching or professional qualifications determined by the Commissioner which constitute an equivalent to one (1) or more of the qualifications in parts (2)(a)1., 2., and 3., of this rule.~~
 - (b) ~~In order to maintain approved status, an instructor shall furnish evidence on a form approved by the Commissioner that the instructor has taught a Commissioner approved course, or any other course for qualifying or continuing education credit that the Commissioner determines to be equivalent, within the preceding two (2) year period. Any instructor who does not meet the requirements of this subparagraph (2)(b) shall be required to submit a new application in accordance with subparagraph (2)(a) above.~~
 - (c) ~~All instructors shall furnish a log, on a form prescribed by the Commissioner, of all continuing education classes taught during the previous license period, a list of the names of the students enrolled in the classes, the dates, the number of hours, and a brief description of the subject matter included in the course or program.~~
- (2) Continuing education providers.
- (a) The provider of any continuing education program must seek approval of such program by registering with the Commissioner in the prescribed form at least 30 days prior to the program being offered for continuing professional education credit. Such form shall include certification that the program sponsored will conform to the provisions of this

chapter. If the course is for continuing education, each licensee successfully completing the course shall be furnished a certificate of completion.

(b) The provider of each continuing education program shall keep detailed records, including:

1. the date and location of the program presentation;
2. the names of each instructor and their qualifications in resume format;
3. a list of licensees attending each program presentation, and
4. a written outline of the program agenda.

(c) The records required by paragraph 2 of this rule shall be maintained for a period of five (5) years following the date of each program presentation.

(d) The provider of any continuing education program approved by the Commissioner may advise attendees of such approval and the number of continuing hours allowed.

~~(3) If a licensee who is not a resident of Tennessee satisfies a continuing education requirement for renewal of a license as a locksmith in the licensee's resident state, the licensee will be deemed to have met the continuing education requirement for Tennessee; provided, the continuing education requirements in the licensee's resident state are at least equivalent to the continuing education requirements in Tennessee. In order for the licensee to be deemed to have met the requirement, the licensee must file with the license renewal a certificate from the licensee's resident state certifying that the licensee has completed the continuing education requirement for licensure in that state. The certificate from the licensee's resident state verifying compliance with continuing education in the resident state must be received by the Commissioner no later than thirty (30) days prior to the expiration date of the license.~~

(3) Withdrawal of program approval.

Approval of any program may be withdrawn by the Commissioner if:

- (a) The establishment or conduct of a program violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law;
- (b) The information contained in the application for approval is materially inaccurate or misleading;
- (c) The provider, an instructor, or any representative of the provider disseminates false or misleading information concerning any program;
- (d) The performance of the instructor is so deficient as to impair significantly the value of the program; provided, however, that the instructor shall receive adequate notice of the discovered deficiency and the opportunity to demonstrate satisfactory correction thereof.

(4) Continuing education control and reporting system.

- (a) Each approved provider shall submit to the Commissioner, in approved form, within fifteen (15) days of the completion of their program, a list of the names of each licensee in attendance, their respective license numbers and the number of hours each attended.
- (b) It shall be the responsibility of each licensee to provide his name and license number to the provider at the time of registration for any Commissioner-approved continuing professional education program.

Authority: T.C.A. § 62-11-106.

0780-05-13-.11 Civil Penalties.

- (1) With respect to any licensed locksmith, registered apprentice locksmith, or registered locksmith company, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee or registrant for each separate violation of a statute, rule or commissioner's order pertaining to locksmiths and apprentice locksmiths, in accordance with the following schedule:

Violation	Penalty
(a) Tenn. Code Ann <u>T.C.A.</u> § 62-11-109	\$100 - \$5,000 <u>\$1 - \$2,500</u>
(b) Rule 0780-5-13-.12	\$100 - \$5,000
(b) Any rule in this Chapter	\$1 - \$2,500
(c) Rule 0780-5-13-.13	\$100 - \$5,000
(d) Rule 0780-5-13-.14	\$100 - \$5,000
(e) (c) Commissioner's order	\$100 - \$5,000 <u>\$1 - \$2,500</u>

- (2) With respect to any person required to be licensed in this state as a locksmith or registered as an apprentice locksmith or locksmith company, the commissioner may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann <u>T.C.A.</u> § 62-11-104	\$100 - \$5,000 <u>\$1 - \$2,500</u>

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this Rule, the commissioner may consider such factors as the following:
- Whether the amount imposed will be a substantial economic deterrent to the violator;
 - The circumstances leading to the violation;
 - The severity of the violation and risk of harm to the public;
 - The economic benefits gained by the violator as a result of noncompliance;
 - The interest of the public, and
 - Willfulness of the violation.

Authority: T.C.A. §§ 62-11-106 and 62-11-110.

0780-05-13-.12 Submission of Information.

- (2) A licensee or registrant shall inform the commissioner in writing of any change in residential or business mailing or physical address within thirty (30) days of such change.
- (3) A qualifying agent on behalf of the locksmith company or a licensee shall inform the commissioner in writing of any change in his or her locksmithing business name, change in the business structure including a change in qualifying agent status, or opening of a branch office within thirty (30) days before the change occurs or as soon as practicable. Locksmith company registrations and licenses are non-transferable.
- (4) A licensee or registrant shall submit a Transfer Notice on the form prescribed by the Commissioner containing the name of the current or previous employer and the name of the current or prospective employer along with two (2) color passport-style photos, identification card fee, and the Transfer Fee within ten (10) days of obtaining employment with another locksmithing company.

- (a) In the case of a termination, the locksmith shall not engage in any locksmithing activity that requires a license under T.C.A. § 62-11-104 without either first submitting a Transfer Notice or obtaining a new company registration.
- ~~(5) A licensee or registrant shall inform the Commissioner in writing if he/she has had his/her license or registration disciplined in another state within thirty (30) days after the licensee or registrant was disciplined.~~
- (5) A locksmith company shall submit a Termination Notice on the form prescribed by the Commissioner within ten (10) days of the termination, end of employment, or other separation from a locksmith indicating the locksmith's name, license number, date of separation, and such other information as the Commissioner may require.

Authority: T.C.A. § 62-11-106.

0780-5-13-.14 Code of Conduct.

- (1) Licensees or registrants shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.
- (2) A licensee or registrant shall not use improper or questionable methods of soliciting business, including but not limited to misleading clients, utilizing scare tactics or causing damage to an otherwise functioning product, and shall not pay another person or accept payment from another person for engaging in these improper methods.
- (3) A licensee or registrant shall not associate his/her individual or business name with any business or event that engages in or attempts to engage in misrepresentation.
- (4) A licensee or registrant shall not disclose any client information obtained relative to locksmithing services performed to someone other than the client unless the disclosure is expressly authorized in writing by the client.
- (5) A licensee or registrant shall not misrepresent his/her locksmithing services, the features of any product, or make unwarranted claims about the merits of a product or a service that the licensee offers.
- (6) No licensee or registrant shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (7) No licensee or registrant shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.
- (8) Before the execution of a contract to perform locksmithing services, a licensee or registrant shall disclose to the client any interest in a business that may affect the client. No licensee or registrant shall allow his or her interest in any business to affect the quality or results of the locksmithing work that the licensee or registrant may be called upon to perform.
- (9) Licensees and registrants shall not engage in false or misleading advertising.
- (10) A licensee or registrant shall not perform or recommend any locksmithing services that would violate applicable federal, state or local laws, or codes or pose a threat to public safety.
- (11) A licensee or registrant shall not perform or endeavor to perform locksmithing services while under the influence of or impaired by alcohol or a narcotic drug
- (12) Any vehicle dispatched by a licensed locksmith company for the purpose of conducting a business transaction for the locksmith company, regardless of whether the transaction requires a license for the activity or the individual dispatched is a licensed locksmith, shall conspicuously

display the licensed locksmith company's identity and its license number in accordance with T.C.A. § 62-11-116.

(13) Unless otherwise exempt, no licensed locksmith shall provide locksmith services except:

- (a) As an employee, agent or contractor of a registered locksmith company; or
- (b) As the holder of a locksmith company registration.

Authority: T.C.A. §§ 62-11-104, 62-11-106 and 62-11-116.

0780-05-13-.16 Reciprocity

(1) Pursuant to T.C.A. § 62-11-118, no locksmith, licensed in good standing in another jurisdiction, shall be required to meet the initial qualification education requirements for licensure in this state or be required to take and pass the locksmith examination if the applicant has any one (1) of the following Associated Locksmiths of America (ALOA) certified designations:

- (a) Certified registered locksmith (CRL);
- (b) Certified professional locksmith (CPL); or
- (c) Certified master locksmith (CML).

(2) In order to verify the licensee's status, a letter of good standing is required from at least one jurisdiction in which the applicant holds an active license or registration. The "letter of good standing" must detail how the applicant qualified for the license or registration, the date on which the license or registration was issued and the current license or registration status. A statement regarding any disciplinary action taken against the license or registration in any applicable jurisdiction is also required.

Authority: T.C.A. §§ 62-11-106 and 62-11-118.

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

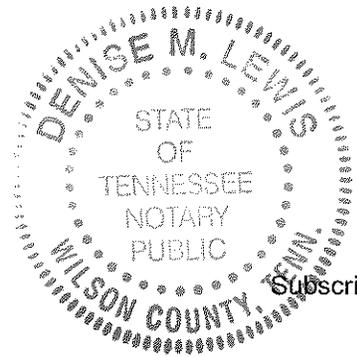
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 1/19/16 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/04/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/27/15



Date: 1/19/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 1/19/16

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/16

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
3/18/2016 Date

Department of State Use Only

Filed with the Department of State on: 3/28/16

Effective on: 6/26/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
6 MAR 28 PM 1:17
SECRETARY OF STATE PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Communications Disorders and Sciences

SUBJECT: Speech Pathology and Audiology Procedures for Licensure and Examination

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-17-101 et seq.

EFFECTIVE DATES: June 22, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rule adds various requirements for applying to become licensed as a speech language pathologist or audiologist in Tennessee.

Rule 1370-01-.05(6): Adds words "If applying by Certificate of Clinical Competence" to the beginning of the paragraph.

Rule 1370-01-.05(8): New paragraph that adds a requirement for applicants to offer proof of good moral character.

Rule 1370-01-.08(1): Adds word "Praxis" at beginning of paragraph.

Rule 1370-01-.08(5): Adds jurisprudence examination requirement.

Rule 1370-01-.14(4): Adds requirement that supervising licensees be at least two (2) years removed from the completion of their clinical fellowship work.

Public Hearing Comments

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

Board of Communications Disorders and Sciences Rulemaking Hearing
August 11, 2015

Public Hearing Comments

The Board received no written comments regarding these rule amendments.

The Board received one oral comment from John Williams, a lobbyist for TAASLP (Tennessee Association of Audiologist and Speech-Language Pathologist). Mr. Williams voiced his concerns about the use of the term "Criteria" in Rule 1370-01-.05(8)(b) since the "Criteria" method is not defined or explained in the rules or statutes. He mentioned that people who read the rules aren't familiar with the details of the application process (which is where the term "Criteria" method is used). He recommended that the Board explain or define the "Criteria" method.

The Board agreed with Mr. Williams that the use of the term "Criteria" might lead to confusion, and instead wanted to refer to the section of the rules where the Criteria method is discussed but not defined as such. Upon further discussion, the Board deleted subsection (b).

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.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

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

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

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

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Communications Disorders and Sciences

Rulemaking hearing date: August 11, 2015

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

These rule amendments will affect all applicants for licensure by the Board of Communications Disorders and Sciences as well as all licensees wishing to become supervising licensees. The applicants and licensees will be burdened by additional requirements, but the additional requirements will ensure that public interests are being better met as the requirements should result in more qualified practitioners. The Board has been requiring applicants to submit letters documenting good moral character for licensure for several years and has also required applicants to take the jurisprudence exam since March 1, 2013. Neither requirement has been met with concerns over the additional burdens placed on the applicants. The supervision requirement for supervisors to be two years removed from clinical fellowship should have a minimal impact on licensees and supervisors as the current language conflicts with rules regarding clinical fellows, clinical externs and supervision.

- 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:**

Due to the fact that the Board has been giving this exam since March 1, 2013, it is clear that the additional reporting, recordkeeping and administrative costs have been minimal.

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

Because these rules are mainly the burden of the applicant, small businesses should not be affected by the rule amendments. The additional requirements for licensure and supervision will ensure that the public interests are being better met as the amendments should produce more qualified practitioners.

- 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 or objective of these rule amendments.

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

Federal: None.

State: Other various health-related boards have been adding jurisprudence requirements to their rules. Currently, the Board of Dentistry has proposed rules requiring all licensees to complete jurisprudence exams while the Board of Optometry is proposing to add a requirement for one hour of jurisprudence continuing education during each continuing education cycle.

Additionally, other boards have also added a requirement for applicants to show proof of good moral character.

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

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

Impact on Local Governments

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

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

20

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

For Department of State Use Only
Sequence Number: 03-20-16
Rule ID(s): 6159
File Date: 3/24/16
Effective Date: 6/22/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Communications Disorders and Sciences
Division:	
Contact Person:	Hannah Lanford, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Hannah.Lanford@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
1370-01	Rules for Speech Pathology and Audiology
Rule Number	Rule Title
1370-01-.05	Procedures for Licensure
1370-01-.08	Examinations
1370-01-.14	Speech Language Pathology Assistants and Supervision

(Rule 1370-01-.04, continued)

- (d) An applicant in the area of audiology;
 - 1. For applications received after January 1, 2009, the applicant must possess at least a Doctor of Audiology degree or other doctoral degree with emphasis in audiology or hearing science from an accredited institution; and
 - (i) Possess a current Certificate of Clinical Competence (CCC) in the area of audiology issued through ASHA; or
 - (ii) Have successfully completed and documented the following:
 - (I) a minimum of one thousand eight hundred twenty (1820) clock hours of supervised clinical experience (practicum) by a licensed audiologist or ASHA or ABA certified audiologist; and
 - (II) passage of the written Professional Assessments for Beginning Teachers (Praxis Test) as required by Rule 1370-01-.08.
 - 2. When the applicant has been licensed in Tennessee or another state prior to 2009, the applicant must possess at least a Master's degree in Audiology from an accredited institution; and
 - (i) Possess a current Certificate of Clinical Competence (CCC) in the area of audiology issued through ASHA, or ABA certification; or
 - (ii) Have successfully completed a minimum of four hundred (400) clock hours of supervised clinical experience (practicum) with individuals having a variety of communications disorders, as required by ASHA. The experience shall be obtained through an accredited institution which is recognized by ASHA; and
 - (iii) The Clinical Fellowship in the area of audiology; and
 - (iv) passage of the written Professional Assessments for Beginning Teachers (Praxis Test) as required by Rule 1370-01-.08.
- (2) An individual who seeks licensure in the State of Tennessee and who holds a current license in another state may be granted a Tennessee license, if such person meets the qualifications of licensure by reciprocity pursuant to Rule 1370-01-.05 (9).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-102, 63-17-103, 63-17-105, 63-17-109 through 63-17-115, and Public Chapter 288 of the Public Acts of 2001. **Administrative History:** Original rule filed September 10, 1974; effective October 10, 1974. Amendment filed July 31, 1978; effective September 13, 1978. Repeal and new rule filed July 8, 1987; effective August 21, 1987. Amendment filed September 18, 1991; effective November 2, 1991. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed September 14, 2010; effective December 13, 2010.

1370-01-.05 PROCEDURES FOR LICENSURE. To become licensed as a speech language pathologist or audiologist in Tennessee, a person must comply with the following procedures and requirements:

- (1) An applicant shall download a current application from the Board's Internet Web page or shall obtain a current application packet from the Board's Administrative Office, respond truthfully and completely to every question or request for information contained in the application form, and submit it, along with all documentation and fees required, to the

(Rule 1370-01-.05, continued)

Board's Administrative Office. It is the intent of this Rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials be filed simultaneously.

- (2) An applicant shall submit with his application a certified birth certificate or a notarized photocopy of a certified birth certificate.
- (3) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.
- (4) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of a crime in any country, state, or municipality, except minor traffic violations;
 - (b) The denial of certification or licensure application by any other state or country, or the discipline of the certificate holder or licensee in any state or country.
 - (c) Loss or restriction of certification or licensure privileges.
 - (d) Any judgment or settlement in a civil suit in which the applicant was a party defendant, including malpractice, unethical conduct, breach of contract, or any other civil action remedy recognized by the country's or state's statutory, common law, or case law.
- (5) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- ~~(6) An applicant shall file with the application documentation of proof of possessing the following certification:~~
- (6) If applying by Certificate of Clinical Competence, an applicant shall file with the application documentation of proof of possessing the following certification:
 - (a) Audiology applicants shall file with their application documentation that they possess a current Certificate of Clinical Competence (CCC) in the area of audiology issued through ASHA.
 - (b) Speech Language Pathology applicants shall file with their application documentation that they possess a current Certificate of Clinical Competence (CCC) in the area of speech language pathology issued through ASHA.
- (7) An applicant shall have successfully completed the following requirements and cause the supporting documentation to be provided to the Board's Administrative Office:
 - (a) A master's or doctorate degree in speech language pathology or audiology. Unless already submitted pursuant to rule 1370-01-.10, it is the applicant's responsibility to request that a graduate transcript be submitted directly from the educational institution to the Board's Administrative Office. The transcript must show that graduation with at least a master's level degree has been completed, and must carry the official seal of the institution.
 - (b) Documentation of the required supervised clinical experience (practicum) with individuals having a variety of communications disorders, as specified in Rule 1370-01-.04 for the discipline for which licensure is being sought. The experience must be obtained through an accredited institution. Unless already provided pursuant to Rule

Form

Form

(Rule 1370-01-.05, continued)

1370-01-.10, the applicant shall have a letter transmitted directly from the authorized individual at the accredited institution to the Board's Administrative Office attesting to the standards of the practicum and the applicant's successful completion.

- (c) A Clinical Fellowship or Clinical Externship in the area in which licensure is being sought.
 - 1. The applicant shall ensure that the supervising Speech Language Pathologist or Audiologist submits a letter which attests to the Clinical Fellowship or Clinical Externship pursuant to Rule 1370-01-.10 directly to the Board's Administrative Office; or
 - 2. An audiologist initially licensed after January 1, 2009 shall have a letter transmitted directly from the authorized individual at the accredited institution to the Board's Administrative office attesting that the applicant has completed the clinical externship requirement or equivalent 1820 supervised clinical clock hours.
- (d) The examination for licensure pursuant to Rule 1370-01-.08. When the examination has been successfully completed, the applicant shall cause the examining agency to submit directly to the Board's Administrative Office documentation of the successful completion of the examination.

(8) Proof of good moral character

- (a) An applicant shall submit evidence of good moral character. Such evidence shall include at least one (1) recent (dated within the preceding twelve (12) months) original letter from a professional attesting to the applicant's personal character and professional ethics and typed on the signator's letterhead.

(9)(8) When necessary, all required documents shall be translated into English and such translation, together with the original document, shall be certified as to authenticity by the issuing source. Both versions must be submitted simultaneously.

Forn
Forn

(10)(9) Reciprocity

- (a) If the applicant is licensed or was ever licensed in another state, the applicant shall cause the appropriate licensing Board in each state in which he holds or has held a license to send directly to the Board an official statement which indicates the condition of his license in such other state, including the date on which he was so licensed and under what provision such license was granted (i.e. certificate of clinical competence, examination, reciprocity, grandfathering, etc.).
- (b) In order to be licensed in the State of Tennessee by reciprocity, the Board must determine that the standards for licensure in effect in that state when the individual was licensed there are at least equivalent to, or exceed, the current requirements for licensure in Tennessee.

Forn
Forn

(11)(10) A speech language pathologist or audiologist who holds an ASHA certification or equivalent, or holds a doctor of audiology degree (AuD) from an accredited institution of higher learning and has passed the examination required for licensure under §63-17-110 (b) (2), or is licensed in another state and who has made application to the Board for a license in the State of Tennessee, may perform activities and services of a speech language pathology or audiological nature without a valid license pending disposition of the application. For purposes of this rule, "pending disposition of the application" shall mean a Board member or the Board's designee has determined the application is

Forn
Forn

(Rule 1370-01-.05, continued)

complete and the applicant has received written authorization from the Board member or the Board designee to commence practice, pursuant to T.C.A. §63-1-142.

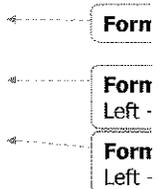
Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-110 through 63-17-113, 63-17-115, and 63-17-117. **Administrative History:** Repeal and new rule filed July 8, 1987; effective August 21, 1987. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed June 22, 2004; effective September 5, 2004. Amendment filed July 21, 2004; effective October 4, 2004. Amendment filed August 3, 2005; effective October 17, 2005. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed September 11, 2006; effective November 25, 2006. Amendment filed September 14, 2010; effective November 13, 2010.

1370-01-.06 FEES.

- (1) The fees authorized by the Licensure Act for Communication Disorders and Sciences (T.C.A. §§63-17-101, et seq.) and other applicable statutes are established as nonrefundable fees, as follows:
 - (a) Application Fee - A fee to be paid by all applicants, including those seeking licensure by reciprocity. It must be paid to the Board each time an application for licensure is filed, or a license is reactivated.
 - (b) Duplicate License Fee - A fee to be paid when a licensee requests a replacement for a lost or destroyed 'artistically designed' license.
 - (c) Endorsement/Verification Fee - A fee to be paid for each certification, verification, or endorsement of an individual's record for any purpose.
 - (d) Examination Fee - The fee to be paid each time an examination is taken or retaken.
 - (e) Initial Licensure Fee - A fee to be paid when the Board has granted licensure and prior to the issuance of the 'artistically designed' wall license.
 - (f) Late Renewal Fee - A fee to be paid when an individual fails to timely renew and is in addition to the Licensure Renewal Fee.
 - (g) Licensure Renewal Fee - To be paid biennially by all licensees except retired licensees and Inactive Volunteers. This fee also applies to licensees who reactivate a retired, inactive, or expired license.
 - (h) State Regulatory Fee - To be paid by all individuals at the time of application and biennially (every other year) with all renewal applications.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Communications Disorders and Sciences.

(3) Fee Schedule

- (a) Speech Language Pathologist Amount
 - 1. Application \$ 50.00
 - 2. Duplicate License Fee 25.00



(Rule 1370-01-.07, continued)

be just cause for the application file to be closed. This action may be made by the Board's Unit Director.

- (6) If a completed application file has been initially denied by the reviewing Board member and ratified as such by the Board, the action will become final and the following shall occur:
 - (a) A notification of the denial shall be sent to the applicant by the Board's Administrative Office by certified mail, return receipt requested. Specific reasons for the denial will be stated, such as incomplete information, unofficial records, failure of examination, and other matters judged insufficient for licensure, and such notification shall contain all the specific statutory and rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§4-5-201, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 - (c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.
- (7) If the Board finds that it has erred in the issuance of a license, the Board will give written notice by certified mail, return receipt requested, of intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to Rule 1370-01-.07(6)(b).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-142, 63-17-105, 63-17-110 through 63-17-114(6), 63-17-115, and 63-17-117. **Administrative History:** Original rule filed March 11, 1991; effective April 25, 1991. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2003; effective April 16, 2003. Amendment filed August 3, 2005; effective October 17, 2005.

1370-01-.08 EXAMINATIONS. ~~All persons intending to apply for licensure as a Speech Language Pathologist or Audiologist in Tennessee must successfully complete an examination pursuant to this Rule.~~

Forn

All persons intending to apply for licensure as a Speech Language Pathologist or Audiologist in Tennessee must successfully complete examinations pursuant to this Rule.

- ~~(1) The examination must be completed prior to application for licensure.~~
- (1) The Specialty Area Tests in Speech-Language Pathology and Audiology of the Professional Assessments for Beginning Teachers (Praxis Test) must be completed prior to application for licensure.
- (2) Evidence of successful completion must be submitted by the examining agency directly to the Board's Administrative Office as part of the application process pursuant to Rule 1370-01-.05.
- ~~(3) The Board adopts the Specialty Area Tests in Speech Language Pathology and Audiology of the Professional Assessments for Beginning Teachers (Praxis Test), or its successor examination, as its licensure examination. Successful completion of examination is a prerequisite to licensure pursuant to Rule 1370-01-.05.~~
- (3) The Board adopts the Praxis Test, or its successor examination, as its licensure examination. Successful completion of examination is a prerequisite to licensure pursuant to Rule 1370-01-.05.

Forn

Forn

Forn

Forn

Forn

Forn

- (4) The Board adopts the ASHA determination as to the passing score on the Praxis Test or successor examination.
- (5) The Tennessee Jurisprudence Exam, established by the Board on the rules and statutes, must be successfully completed prior to licensure and/or reinstatement of licensure.

Forn
Forn

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-110, 63-17-111 **Administrative History:** Original rule filed March 11, 1991; effective April 25, 1991. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed September 11, 2006, effective November 25, 2006.

1370-01-.09 RENEWAL OF LICENSE OR REGISTRATION.

- (1) Renewal Application.
 - (a) The due date for license renewal is the expiration date indicated on the renewal certificate.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 - 2. Paper Renewals - For individuals who have not renewed their license or registration online via the Internet, a renewal application form will be mailed to each individual licensed or registered by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee or registrant from the responsibility of meeting all requirements for renewal.
 - (c) To be eligible for license or registration renewal, an individual must submit to the Board's Administrative Office on or before the due date for renewal all of the following:
 - 1. A completed Renewal Application form;
 - 2. The renewal and state regulatory fees as provided in Rule 1370-01-.06; and
 - 3. Attestation on the Renewal Application form to indicate and certify completion of continuing education requirements pursuant to Rule 1370-01-.12.
 - (d) Licensees and registrants who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses or registrations processed pursuant to rule 1200-10-01-.10.
- (2) Exemption from Licensure or Registration Renewal - A licensee or registrant who does not plan to practice in Tennessee and who therefore does not intend to use the title 'speech language pathologist' or 'audiologist' or any title which conveys to the public that he is currently licensed or registered by this Board may apply to convert an active license or registration to retired, or inactive, status. These licensees must comply with the requirements of Rule 1370-01-.11.
- (3) Reinstatement of an Expired License or Registration.

Forn

RULES FOR SPEECH PATHOLOGY AND AUDIOLOGY CHAPTER 1370-01

(Rule 1370-01-.13, continued)

- (7) Violation, or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the practice act or any lawful order of the Board issued pursuant thereto;
- (8) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant;
- (9) Engaging in the practice as a Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant under a false or assumed name, or the impersonation of another practitioner under a like, similar or different name;
- (10) Violation of the continuing education provisions of Rule 1370-01-.12;
- (11) Conviction of a felony or any offense involving moral turpitude;
- (12) Failing to provide adequate supervision for any assistant pursuant to Rule 1370-01-.14 or clinical fellow pursuant to Rule 1370-01-.10, including timely registration with the Board;
- (13) Supervising a quantity of assistants or clinical fellows inconsistent with the provisions of Rules 1370-01-.10 and/or 1370-01-.14

Forn

Forn

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-114, 63-17-117 and 63-17-128 **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed September 11, 2006; effective November 25, 2006.

1370-01-.14 SPEECH LANGUAGE PATHOLOGY ASSISTANTS AND SUPERVISION.

- (1) Requirements.
 - (a) Speech Language Pathology Assistants.
 1. Speech Language Pathology Assistants must work under the supervision of a licensed Speech Language Pathologist ("Supervising Licensee").
 2. The minimum qualifications for persons employed as Speech Language Pathology Assistants shall be as follows:
 - (i) The applicant must have completed a program of study designed to prepare the student to be a Speech Language Pathology Assistant. The applicant must have earned sixty (60) college-level semester credit hours in a program of study that includes general education and the specific knowledge and skills for a Speech Language Pathology Assistant. The training program shall include a minimum of one hundred (100) clock hours of field experience supervised by a licensed Speech Language Pathologist.
 - (I) At least twenty (20) semester credit hours of the sixty (60) hour requirement shall be in general education.
 - (II) At least twenty (20) semester credit hours of the sixty (60) hour requirement shall be in technical content. The course content must include the following:
 - I. overview of normal processes of communication and overview of communication disorders;

(Rule 1370-01-.14, continued)

- II. instruction in assistant-level service delivery practices;
 - III. instruction in workplace behaviors;
 - IV. cultural and linguistic factors in communication; and
 - V. observation.
- (III) The one hundred (100) hours of supervised fieldwork experience must provide appropriate experience for learning the job responsibilities and workplace behaviors of a Speech Language Pathology Assistant. This experience is not intended to develop independent practice.
3. If the applicant's academic institution does not provide for the full one hundred (100) hours of supervised field work experience by a licensed Speech Language Pathologist, then the applicant shall register with the Board and shall have a minimum of thirty (30) days up to a maximum of ninety (90) days to acquire the full one hundred (100) clock hours of field experience needed to become a fully credentialed Speech Language Pathology Assistant.
- (2) Scope of Practice.
- (a) A Speech Language Pathology Assistant shall not perform the following:
 1. Interpret test results or perform diagnostic evaluations;
 2. Conduct parent or family conferences or case conferences;
 3. Perform client or family counseling;
 4. Write, develop, or modify a client's individualized treatment plan;
 5. Treat clients without following the established plan;
 6. Sign any document without the co-signature of the supervising Speech Language Pathologist;
 7. Select or discharge clients for services;
 8. Disclose clinical or confidential information, either orally or in writing, to anyone not designated by the Speech Language Pathologist;
 9. Refer clients for additional outside service;
- (3) Supervision by and Responsibilities of the Supervising Licensee.
- (a) Prior to the commencement of training and/or employment, individuals seeking to be Speech Language Pathology Assistants must be registered by the supervising licensee with the Board on a registration form provided at the request of the supervising licensee.
 1. The registration form shall be completed by the supervising licensee who shall return the completed form to the Board's administrative office with a copy of the written plan of training to be used for that Speech Language Pathology Assistant.

(Rule 1370-01-.14, continued)

2. The Speech Language Pathology Assistant shall not begin training and/or employment until he/she has registered with the Board and paid the required fees, as provided in Rule 1370-01-.06.
3. For those applicants whose academic institution does not provide for the full one hundred (100) hours of supervised field work experience by a licensed Speech Language Pathologist:
 - (i) The registration form shall be completed by the supervising licensee who shall return the completed form to the Board's Administrative Office with a copy of the written plan of training to be used by the applicant.
 - (ii) The applicant shall not begin training and/or employment until he/she has registered with the Board. No fee shall be required during the thirty (30) to ninety (90) day period in which the applicant obtains the full one hundred (100) hours of supervised field work experience. Upon the completion of the full one hundred (100) hours, the applicant shall pay the required fees, as provided in Rule 1370-01-.06, to become a fully credentialed Speech Language Pathology Assistant.
- (b) The supervising licensee is responsible for designating an alternate licensed Speech Language Pathologist and ensuring that the designated alternate licensed Speech Language is available on-site to provide supervision when he/she is off site for any period of time. The designated alternate licensed Speech Language Pathologist must be registered with the Board as the alternate and should be documented on all written materials for training
- (c) Notice of employment, change of supervisor, or termination of any Speech Language Pathology Assistant must be forwarded by the supervising licensee to the Board's administrative office within thirty (30) days of such action.
- (d) Prior to utilizing a Speech Language Pathology Assistant, the licensed Speech Language Pathologist who is responsible for his or her direction shall carefully define and delineate the role and tasks. The Speech Language Pathologist shall:
 1. Define and maintain a specific line of responsibility and authority; and
 2. Assure that the Speech Language Pathology Assistant is responsible only to him or her in all client-related activities.
- (e) Any licensed Speech Language Pathologist may delegate specific clinical tasks to a registered Speech Language Pathology Assistant who has completed sufficient training. However, the legal, ethical, and moral responsibility to the client for all services provided, or omitted, shall remain the responsibility of the supervising licensee or of the licensed Speech Language Pathologist acting as supervisor in the absence of the supervising licensee. A Speech Language Pathology Assistant shall be clearly identified as an assistant by a badge worn during all contact with the client.
- (f) When a Speech Language Pathology Assistant assists in providing treatment, a supervising licensee shall:
 1. Provide a minimum of fifteen (15) hours of training for the competent performance of the tasks assigned. This training shall be completed during the first thirty (30) days of employment. A written plan for this training shall be submitted with registration. This training should include, but not be limited to, the following:

(Rule 1370-01-.14, continued)

- (i) Normal processes in speech, language, and hearing;
- (ii) A general overview of disorders of speech, language, and hearing;
- (iii) An overview of professional ethics and their application to the Speech Language Pathology Assistant activities;
- (iv) Training for the specific job setting shall include information on:
 - (I) The primary speech, language, and hearing disorders treated in that setting;
 - (II) Response discrimination skills pertinent to the disorders to be seen;
 - (III) Equipment to be used in that setting;
 - (IV) Program administration skills, including stimulus presentation, data collection, and reporting procedures, screening procedures, and utilization of programmed instructional materials; and
 - (V) Behavior management skills appropriate to the population being served.
- 2. Evaluate each client prior to treatment.
- 3. Outline and direct the specific program for the clinical management of each client assigned to the Speech Language Pathology Assistant.
- 4. Provide direct/indirect, but on-site observation according to the following minimum standards:
 - (i) Provide direct observation for the first ten (10) hours of direct client contact following training;
 - (ii) Supervision of a Speech Language Pathology Assistant means direct supervision of not less than ten percent (10%) of a Speech Language Pathology Assistant's time each week. Direct supervision means on-site and in-view supervision as a clinical activity is performed;
 - (iii) The supervising licensee shall provide indirect supervision of not less than twenty percent (20%) of a Speech Language Pathology Assistant's time each week. Indirect supervision may include audio and video recordings, numerical data, or review of written progress notes. The supervising licensee, or the licensed Speech Language Pathologist acting as supervisor in the absence of the supervising licensee, must still be on-site;
 - (iv) At all times, the supervising licensee shall be available at a minimum by telephone whenever a Speech Language Pathology Assistant is performing clinical activities;
 - (v) All direct and indirect observations shall be documented and shall include information on the quality of a Speech Language Pathology Assistant's performance;
 - (vi) Whenever the Speech Language Pathology Assistant's performance is judged to be unsatisfactory over two (2) consecutive observations, the Speech

(Rule 1370-01-.14, continued)

Language Pathology Assistant shall be retrained in the necessary skills. Direct observations shall be increased to one hundred percent (100%) of all clinical sessions, until the Speech Language Pathology Assistant's performance is judged to be satisfactory over two (2) consecutive observations;

- (vii) Ensure that the termination of services is initiated by the Speech Language Pathologist responsible for the client; and
 - (viii) Make all decisions regarding the diagnosis, management, and future disposition of the client.
5. Provide supervision for an individual who is completing the required one hundred (100) hours of supervised field work experience pursuant to part (3)(a)3., as follows:
- (i) Fifty percent (50%) of the remaining hours must be supervised directly, on-site;
 - (ii) Of the hours remaining pursuant to subpart (3)(f)5.(i), at least twenty-five percent (25%) must be supervised directly, on-site and
 - (iii) Any remaining hours must be supervised indirectly.
 - (iv) Example: If the individual needs to complete eighty (80) of the required 100 hours of supervised field work experience, the first forty (40) hours (50%) must be supervised directly, on-site. Of the remaining forty (40) hours, at least ten (10) of those hours (25%) must be supervised directly, on-site and the remaining thirty (30) hours must be supervised indirectly.
- (g) Supervision limitations.
1. Supervising licensees shall supervise no more than three (3) individuals concurrently.
 2. Supervising licensees shall supervise no more than two (2) Speech Language Pathology Assistants concurrently.
 3. Supervising licensees shall supervise no more than three (3) Clinical Fellows concurrently.

(4) Supervising licensees shall be at least two (2) years removed from the completion of their Clinical Fellowship work.

Form

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, 63-17-114 and 63-17-128. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed June 22, 2004; effective September 5, 2004. Amendment filed August 3, 2005; effective October 17, 2005. Amendment filed September 11, 2006; effective November 25, 2006. Amendment filed April 6, 2010; effective July 5, 2010. Repeal and new rule filed June 28, 2013; effective September 26, 2013.

1370-01-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SUBPOENAS.

- (1) Upon a finding by the Board that the Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant has violated any provision of the Tennessee Code Annotated §§63-17-101, et seq., or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense:

* 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)
Carrie Crittendon	X				
Terri Flynn	X				
Mary Velvet Buehler	X				
Dr. Kimberly Vinson	X				
Julie Anne Crosby-Davis	X				
Debby Starr	X				
Richard Morton	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communications Disorders and Sciences (board/commission/ other authority) on 08/11/2015 (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: 04/06/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/11/15 (mm/dd/yy)

Date: 8/12/15

Signature: *Hannah Lanford*

Name of Officer: Hannah Lanford
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 08-12-15

Notary Public Signature: *Shirley Meckow*

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 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
3/18/2016
Date

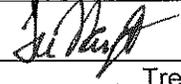
Department of State Use Only

Filed with the Department of State on: 3/24/16

RECEIVED
2016 MAR 24 PM 3:58
SECRETARY OF STATE
PUBLICATIONS

Effective on:

6/22/16



Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Physical Therapy

SUBJECT: Examinations/Dry Needling

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 66-13-304

EFFECTIVE DATES: June 29, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendment to Rule 1150-01-.08 will clear up confusion regarding how many times an applicant may fail the licensing examination before having to complete additional continuing education hours that must be approved by the Board.

Rule 1150-01-.22 is a new rule regarding the practice of dry needling that was created to comply with 2015 Public Chapter 124 (codified in Tennessee Code Annotated Sections 63-13-304 and 63-13-305).

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.

Physical Therapy Rulemaking Hearing January 11, 2016 Public Comments

There was one written comment received regarding the proposed rules as well as several oral comments. For clarity, the comments are grouped according to the specific paragraph of the rule under consideration.

1150-01-22(2)(b)(2) - Anatomical Regions of the Body

A written comment was received from J. Randy Walker, Associate Dean of the University of Tennessee at Chattanooga. Mr. Walker had two concerns regarding the proposed rules. First, Mr. Walker was concerned that the new rules will allow a therapist to practice dry needling with only twenty-four (24) hours of specific dry needling education. Mr. Walker requested that the Board require specific instruction in each anatomical region – “anatomical regional courses – one for UE [upper extremities] and one for the LE [lower extremities].” He also wrote that David Harris, Physical Therapy Board member, had in earlier meetings wanted to allow a physical therapist to exercise professional judgement and integrity so as to not practice on parts of the body for which the therapist receives no instruction. Mr. Walker concurred with this view; however, Mr. Walker wrote that he did not see this deference to professional judgment reflected in the rule. Mr. Walker requested clarification on the matter.

Scott Newton, President of the Tennessee Physical Therapy Association (“TPTA”), also commented on this issue. Mr. Newton stated that while TPTA would not be opposed to the rule, other educational programs throughout the country were not unified in how the classes addressed different anatomical regions of the body and that adopting Mr. Walker’s proposed changes would serve a disadvantage to those therapists who had previously practiced dry needling. Mr. Newton said that this was more of an issue of a physical therapist practicing outside of his or her own comfort zone than an issue for the Board.

Craig O’Neal with Results Physiotherapy stated that he was against making any changes to this paragraph.

The Board responded to comments on paragraph 1150-01-22(2)(b)(2). David Harris stated that the Board did not want to be intrusive, so the decision was made not to require any specific instruction as to anatomical regions in the educational requirements. David Finch proposed a line that said that physical therapists may only practice dry needling on areas of the body regarding which they receive training. Bethany Buttrey agreed with Mr. Finch’s suggested wording and stated that, as to specific educational instruction, she felt the Board originally intended to include such a requirement. Mr. Harris reiterated that the issue of practicing on areas of the body regarding which a physical therapist did or did not receive training is more of a professionalism issue than an issue about which the Board should make a rule. The Board voted to make no changes to paragraph 1150-01-22(2)(b)(2).

1150-01-22(7) - Informed Consent

Mr. Walker’s second concern involved paragraph (7) - informed consent. Mr. Walker listed his concerns as follows: 1) a second request for informed consent will unnecessarily raise issues for the patient, 2) a written consent form is unnecessary because all other physical therapy modalities only require verbal consent, and 3) no matter how much education a therapist has received in dry needling and shared with the patient, such disclosure does not better inform the patient, and this required disclosure rises above that required for every other modality. Lastly, Mr. Walker wrote that only Colorado, the District of Columbia, and Mississippi require the specific written consent articulated in the proposed rule, while Virginia and Arizona require a less specific written consent. Mr. Walker further commented that Georgia, Kentucky, and North Carolina do not require specific consent, and he requested that the Board adopt this approach and not require specific consent for dry needling.

Craig O'Neal requested that the Board delete paragraph (7) in its entirety. Mr. O'Neal said that the manner in which consent is obtained should be an organizational responsibility. Additionally, he stated that the general public does not fully know about the practice of physical therapy nor what therapists do and requiring such consent specifically for dry needling would be confusing to the patient.

Scott Newton stated that requiring a therapist to specifically enumerate all training he or she has received regarding the practice of dry needling would be overkill and confusing to therapists.

Alan Meade agreed with the suggestions of Finch and Buttrey (see below in the Board comments paragraph) and further stated that it would satisfy the Tennessee Medical Association by giving additional protections to the public. He questioned what would happen when a patient receives treatment without consent and then later seeks action. He stated that the suggested amendment would alleviate those concerns by leaving part of the requirement in the rules.

The Board responded to comments on paragraph 1150-01-.22(7). David Harris said that apprehension exists among the Board with respect to requiring specific written informed consent. Mr. Harris stated that there exists the possibility that requiring specific consent for dry needling will lead to similar requirements for other modalities in the future, and that such a requirement would be overstepping the intent of the rule. Mr. Harris further stated that it should not be the responsibility of the Board to keep up with the practices' paperwork – that the decision should be left up to the practice/practitioner. David Finch stated that it was proper to inform patients about what dry needling is because dry needling is an invasive procedure. Mr. Finch also commented that perhaps the Board could adopt a less burdensome standard, suggesting that the rule require that a physical therapist "give information" about the practice of dry needling and the physical therapist's own training in dry needling as opposed to requiring the providing of such information specifically in written form. Mr. Finch also suggested adding a period after the word "needling" and before the word "a." Bethany Buttrey agreed with the deleting the remainder of the paragraph but also suggested adding the words "as well as a description of the risks, benefits, and potential side effects of dry needling."

The Board ultimately decided to amend the language of paragraph (7) to read: "All physical therapy patients receiving dry needling shall be provided with information from the patient's physical therapist that includes a definition and description of the practice of dry needling and a description of the risks, benefits, and potential side effects of dry needling."

1150-01-.22(2)(b)(3) – Pre-Approval of Dry Needling Courses by the Board

Scott Newton requested that the Board strike provision (2)(b)(3) which, as written, requires the Board to approve each educational program offering dry needling education. Mr. Newton stated that the Board does not need to approve these programs as TPTA currently approves educational programs, and the Board looks at the information to determine a therapist's compliance. Furthermore, Mr. Newton expressed concern that the use of the phrase "pre-approved" in provision (2)(b)(3) would complicate matters for physical therapists who have already taken the proposed requisite dry needling courses.

Craig O'Neal added that the approval requirement for the practice of dry needling would greatly burden the Board and be a different approach compared to approval of continuing education courses and other modalities. Additionally, Mr. O'Neal said that this requirement would be a great burden on practitioners who were previously engaged in the practice of dry needling and urged the Board to strike provision (2)(b)3.

Alan Meade again addressed the Board with sample language to remedy the issues addressed regarding provision (2)(b)(3). Dr. Meade suggested removing the first paragraph and adding language "to be approved by the accrediting bodies" to the end of the part.

Mr. Newton commented that the precise wording used to label the types of organizations/institutions that can pre-approve or approve dry needling courses should match specific wording used in the new Rule 1150-01-.12(d) and (e) (regarding the categories of approved course providers) that was passed by the Board at the August 14, 2015 rulemaking hearing and is now at the Attorney General's Office pending approval.

The Board considered the above comments and chose to amend Rule 1150-01-.22(2)(b)3 to read instead: "Each course must be pre-approved or approved by the Board or its consultant, or the Board may delegate the approval process to recognized health-related organizations or accredited physical therapy educational institutions."

Amended Rule 1150-01-.08(9)

No public comments were made regarding the proposed amendment to Rule 1150-01-.08(9). The Board approved the amendment as drafted.

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.**

The 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 rules are established with clarity, conciseness, and lack of ambiguity.

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

The rules do not establish flexible compliance or reporting requirements for small businesses.

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

The rules do not establish friendly schedules or deadlines for compliance or reporting requirements for small businesses.

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

The rules do not consolidate or simplify compliance or reporting requirements for small businesses.

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

The rules do not establish performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

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

The rules do not unnecessarily create barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Physical Therapy

Rulemaking hearing date: 01/11/2016

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

The amendment to Rule 1150-01-.08 simply clarifies what steps a physical therapist licensing applicant must take after failing the licensing examination two or more times. New Rule 1150-01-.22 affects physical therapists wishing to provide dry needling treatments pursuant to 2015 Public Chapter 124 (codified in T.C.A. §§ 63-13-304 and 63-13-305). Those individuals affected by the amendment will bear the costs of the continuing education classes necessary to retake the examination. Those individuals affected by the new rule will bear the costs of classes required to practice dry needling services.

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

The amendment to Rule 1150-01-.08 simply clarifies what steps a physical therapist licensing applicant must take after failing the licensing examination two or more times. The new rule (1150-01-.22) would require physical therapists who want to practice dry needling to complete additional course work before being allowed to practice, which would cost the practitioner some money. The practitioner or the practitioner's employer would also have to provide some basic information to the patient before engaging in dry needling. Neither rule should require additional reporting, recordkeeping, or administrative costs.

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

Small businesses and consumers should be positively impacted by the new dry needling rule (1150-01-.22). Physical therapy clinics will now be able to offer dry needling to patients without fear of practicing outside the scope of the practice act. The dry needling rule will also provide some liability protection to those practitioners who comply with the rule if they are ever sued for negligence.

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 methods of achieving the purpose and/or objectives of the proposed amended rule (1150-01-.08) and new rule (1150-01-.22).

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

Federal: None.

State: The new dry needling rule embodies many of the requirements contained in rules promulgated by counterpart boards in other jurisdictions. Some have more requirements (Maryland) and some have a few less (Georgia). The Board considered similar rules from other jurisdictions in crafting the proposed rule.

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

Neither the rule amendment (1150-01-.08) nor the new rule (1150-01-.22) provides exemptions for small businesses. In actuality, the new rule (1150-01-.22) affects only those practitioners who wish to offer dry needling. There is no additional requirement for a clinic as a standalone entity, except for the preparing of the basic information sheet to be given to a patient before receiving dry needling.

Impact on Local Governments

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

The proposed rules 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
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 03-42-16
Rule ID(s): 6165
File Date: 3/31/16
Effective Date: 6/29/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Physical Therapy
Division:	
Contact Person:	Thomas Aumann, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Thomas.Aumann@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
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.08	Examinations
1150-01-.22	Dry Needling

(Rule 1150-01-.07, continued)

2. The applicant fails to sit for the written exam, if applicable, within six (6) months after being notified of eligibility.
- (b) Whenever the applicant fails to complete the application process as stated in (a) above, written notification will be mailed to the applicant notifying him that the file has been closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.
- (10) If an applicant requests an entrance for licensure and, after Board review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, e.g., reciprocity to examination.
- (11) An applicant shall submit an original letter of recommendation from a physical therapist or physical therapist assistant licensed in the United States that attests to the applicant's good moral character. The letter cannot be from a relative of the applicant.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-301, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-307, and 63-13-312. **Administrative History:** Original rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed December 2, 2014; effective March 2, 2015.

1150-01-.08 EXAMINATIONS. In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

- (1) The Board adopts as its examination for physical therapists and physical therapist assistants the National Physical Therapy Examinations endorsed by the Federation of State Boards of Physical Therapy or successor examinations.
- (2) Examination Application
 - (a) All applicants for examination shall apply for admission directly with the Federation of State Boards of Physical Therapy (FSBPT) by contacting:

Federation of State Boards of Physical Therapy	Telephone	(703) 299-3100
509 Wythe Street	Fax	(703) 299-3110
Alexandria, VA 22314	Internet	www.fsbpt.org

Application forms and instructions will be provided by the Board's administrative office.
 - (b) All educational requirements must be completed prior to filing an application for licensure or examination.
- (3) Eligibility Approval
 - (a) Only a person who has filed the required application, paid the fees, and been notified of acceptance by the Board shall be permitted to take the examination.
 - (b) The FSBPT will compile an applicant list and forward to the Board. The Board will review the applicant list provided by the FSBPT, determine the eligible applicants, and notify the FSBPT of such determination.

(Rule 1150-01-.08, continued)

- (c) An examination shall be administered only to bona fide candidates for initial licensure or candidates who are not licensed in another jurisdiction and do not have a qualifying exam score in another jurisdiction.
 - (d) An applicant for licensure and/or examination who has not met the requirements as set forth in T.C.A. §63-13-306 and §63-13-307 shall be refused permission to take the examination.
- (4) Eligibility Notification
- (a) The FSBPT will compile eligibility lists and forward to the Computer Based Testing Provider. The FSBPT will send a letter to each candidate containing a toll-free number to call to schedule the examination.
 - (b) The candidate will contact the Computer Based Testing Provider to schedule the examination at the location of their choice.
 - 1. Candidates must take the examination within sixty (60) days of the date on the eligibility letter provided by the FSBPT. If the candidate does not take the examination within this time period, they will be removed from the eligibility listings of the Computer Based Testing Provider and will be required to begin the examination application process again.
 - 2. Candidates may reschedule the examination up to two (2) working days prior to the scheduled test date by calling the toll-free number provided to them in their eligibility letter without penalty. Candidates who fail to give such notice to the Computer Based Testing Provider, and who fail to sit for the Examination as scheduled, will forfeit the examination fees paid and will be required to begin the examination application process.
- (5) Administration
- (a) Candidates must arrive at the test site at least fifteen (15) minutes prior to their scheduled appointment with the Computer Based Testing Provider.
 - (b) Candidates must have government-issued photo identification (passport, driver's license, etc.) as well as another piece of identification which contains a signature.
 - (c) All candidates will be thumb-printed and photographed at the testing center.
 - (d) All sessions will be videotaped.
- (6) Passing level. Candidates qualifying for licensure by examination must pass the examination with a criterion reference passing point. This passing point shall be set to equal a scaled score of six hundred (600) based on a scale ranging from two hundred to eight hundred (200-800).
- (7) Results
- (a) No information regarding pass/fail status will be available to candidates at the test site.
 - (b) Upon receipt of the examination group score reports in the Board's administrative office, the results will be mailed to each candidate with ten (10) working days. Scores will not be provided except in writing and by mail.

GENERAL RULES GOVERNING THE PRACTICE OF PHYSICAL THERAPY CHAPTER 1150-01

(Rule 1150-01-.08, continued)

- (c) Hand scoring services are available from the FSBPT at the request of the candidate. The FSBPT may charge a fee for this service.
- (8) Retaking
- (a) A candidate who fails the examination is eligible to repeat the licensure examination process described in this rule. An applicant who fails to qualify for licensure after a total of two (2) examination attempts, in any state, shall wait at least three (3) months after the last unsuccessful attempt before reapplying for examination.
 - (b) If the individual neglects, fails to pass, or refuses to take the examination within twelve (12) months after being deemed eligible to sit for the examination, the application shall be denied and the file shall be closed. However, such individual may thereafter, make a new application pursuant to Rule 1150-01-.04, 1150-01-.05, 1150-01-.07, and 1150-01-.08.
- (9) ~~Effective July 1, 2015, the Board will no longer approve individualized structured remediation plans. However, those remediation plans already in effect prior to July 1, 2015 must be completed by the applicant. An applicant who fails the examination more than two (2) times after July 1, 2015 must submit proof of ten (10) hours of additional clinical training and ten (10) hours of additional coursework to the Board administrator before the Board will approve a reapplication for subsequent testing beyond two attempts.~~

(9) Effective July 1, 2015, the Board will no longer approve individualized structured remediation plans. However, those remediation plans already in effect prior to July 1, 2015 must be completed by the applicant. An applicant who fails the examination two (2) or more times after July 1, 2015 must submit proof of ten (10) hours of additional clinical training and ten (10) hours of additional coursework to the Board administrator before the Board will approve a reapplication for subsequent testing beyond two attempts. These ten (10) hours of additional clinical training and ten (10) hours of additional coursework are required after each subsequent failure beyond two (2) times before an applicant can be approved for reapplication for subsequent testing.

Formatted: Indent: Left: 0.38", Hanging: 0.38"

Formatted: Normal

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-109, 63-13-301, 63-13-304, 63-13-306, and 63-13-307.
Administrative History: Original rule filed August 16, 1990; effective September 30, 1990. Repeal filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Amendment filed January 31, 2000; effective April 15, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed January 19, 2005; effective April 4, 2005. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed August 19, 2010; effective November 17, 2010. Amendment filed April 6, 2015; effective July 5, 2015.

1150-01-.09 RENEWAL OF LICENSE.

- (1) Renewal Application
- (a) The due date for license renewal is the expiration date indicated on the licensee's renewal certificate.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

(Rule 1150-01-.20, continued)

need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).

(2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:

- (a) Conviction of any felony.
- (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 - 1. Sex.
 - 2. Alcohol or drugs.
 - 3. Physical injury or threat of injury to any person.
 - 4. Abuse or neglect of any minor, spouse or the elderly.
 - 5. Fraud or theft.
- (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-51-101, et seq., and Public Chapter 373 of the Public Acts of 1999. **Administrative History:** Original rule filed February 10, 2000; effective April 25, 2000.

1150-01-.21 PROFESSIONAL PEER ASSISTANCE. As an alternative to disciplinary action, or as part of a disciplinary action, the Board shall utilize the services of a professional assistance program, as approved by the Board, for situations regarding licensee substance abuse, chemical abuse, or lapses in professional and/or ethical judgments. Information regarding persons entering the program upon referral by this Board shall be confidential.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-304, and 63-13-312. **Administrative History:** Original rule filed March 16, 2000; effective May 30, 2000.

1150-01-.22 Dry Needling

- (1) In order to perform dry needling, a physical therapist must obtain all of the educational instruction described in paragraphs (2)(a) and (2)(b) herein. All such educational instruction must be obtained in person and may not be obtained online or through video conferencing. Formatted: Indent: Left: 0.38", Hanging: 0.38"
- (2) Mandatory Training - Before performing dry needling, a practitioner must complete educational requirements in each of the following areas: Formatted: Indent: Left: 0.38", Hanging: 0.38"
 - (a) Fifty (50) hours of instruction, to include instruction in each of the four (4) areas listed herein, which are generally satisfied during the normal course of study in physical therapy school: Formatted: Indent: Left: 0.75", Hanging: 0.38"
 - 1. Musculoskeletal and Neuromuscular systems: Formatted: Indent: Left: 1.13", Hanging: 0.38"
 - 2. Anatomical basis of pain mechanisms, chronic pain, and referred pain: Formatted: Indent: Left: 1.13", Hanging: 0.38"
 - 3. Trigger Points: Formatted: Indent: Left: 1.13", Hanging: 0.38"

(Rule 1150-01-.21, continued)

4. Universal Precautions; and

Formatted: Indent: Left: 1.13", Hanging: 0.38"

(b) Twenty-four (24) hours of dry needling specific instruction.

Formatted: Indent: Left: 0.75", Hanging: 0.38", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

1. The twenty-four (24) hours must include instruction in each of the following six (6) areas:

Formatted: Indent: Left: 1.13", Hanging: 0.38"

(i) Dry needling technique;

(ii) Dry needling indications and contraindications;

(iii) Documentation of dry needling;

(iv) Management of adverse effects;

(v) Practical psychomotor competency; and

(vi) Occupational Safety and Health Administration's Bloodborne Pathogens Protocol.

Formatted: Indent: Left: 1.5", Hanging: 0.5"

2. Each instructional course shall specify what anatomical regions are included in the instruction and describe whether the course offers introductory or advanced instruction in dry needling.

Formatted: Indent: Hanging: 0.38"

3. Each course must be pre-approved or approved by the Board or its consultant, or the Board may delegate the approval process to recognized health-related organizations or accredited physical therapy educational institutions.

(3) A newly-licensed physical therapist shall not practice dry needling for at least one (1) year from the date of initial licensure, unless the practitioner can demonstrate compliance with paragraph (2) through his or her pre-licensure educational coursework.

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0.38", Hanging: 0.38"

(4) Any physical therapist who obtained the requisite twenty-four (24) hours of instruction as described in paragraph (2)(b) in another state or country must provide the same documentation to the Board, as described in paragraph (2)(b), that is required of a course provider. The Board or its consultant must approve the practitioner's dry needling coursework before the therapist can practice dry needling in this state.

Formatted: Indent: Left: 0.38", Hanging: 0.38"

(5) Dry needling may only be performed by a licensed physical therapist and may not be delegated to a physical therapist assistant or support personnel.

Formatted: Indent: Left: 0.38", Hanging: 0.38"

(6) A physical therapist practicing dry needling must supply written documentation, upon request by the Board, that substantiates appropriate training as required by this rule.

Formatted: Indent: Left: 0.38", Hanging: 0.38"

(7) All physical therapy patients receiving dry needling shall be provided with information from the patient's physical therapist that includes a definition and description of the practice of dry needling and a description of the risks, benefits, and potential side effects of dry needling.

Authority: T.C.A. §§ 63-13-304 and 63-13-305.

Formatted: Normal, No widow/orphan control, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Formatted: Font color: Custom Color(33,30,31)

* 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)
Vacant					
Bethany R. Buttrey	X				
David Harris	X				
David Finch	X				
Minty R. Ballard	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Physical Therapy (board/commission/ other authority) on 01/11/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/18/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 01/11/16 (mm/dd/yy)

Date: 1/28/16

Signature: [Handwritten Signature]

Name of Officer: Thomas Aumann

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: [Handwritten Signature]

My commission expires on: APRIL 19, 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.

[Handwritten Signature]
 Herbert H. Slatery III
 Attorney General and Reporter
3/24/2016
 Date

Department of State Use Only

RECEIVED
 2016 MAR 31 PM 3:55
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 3/31/16

Effective on: 6/29/16

[Handwritten Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Physical Therapy

SUBJECT: General Rules Governing the Practice of Physical Therapy

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-13-304

EFFECTIVE DATES: June 29, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule amendment to disciplinary actions, civil penalties, assessment of costs, and screening panels, will delete paragraphs (2) and (3), pertaining to orders of compliance, by combining and modifying the language to more efficiently and accurately state the requirements to complete this procedure.

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 rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

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

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

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

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Physical Therapy

Rulemaking hearing date: August 14, 2015

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

These rule amendments will affect all Physical Therapists and clarify language regarding the requirements to obtain an order of compliance when necessary. The therapists will benefit from these rule amendments because the old language created confusion as to the process for obtaining such orders.

- 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 proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

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

The Board does not anticipate that there will be any adverse impacts to small businesses or consumers due to these rule amendments.

- 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 methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, these rule amendments could have a positive impact on business.

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

Federal: None.

State: None.

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

These proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

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

34

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

For Department of State Use Only

Sequence Number: 03-41-16
Rule ID(s): 6164
File Date: 3/21/16
Effective Date: 6/29/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Physical Therapy
Division:	
Contact Person:	Thomas Aumann, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37932
Phone:	(615) 741-1611
Email:	Thomas.Aumann@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
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.15	Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels

(Rule 1150-01-.11, continued)

- (b) Pay the current licensure renewal fees and State regulatory fee as provided in Rule 1150-01-.06. If retirement reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will additionally require payment of the reinstatement fee as prescribed in Rule 1150-01-.06.
- (c) Complete the continuing competence requirements, as provided in Rule 1150-01-.12.
- (4) Licensure reactivation applications shall be treated as licensure applications and review and decisions shall be governed by Rule 1150-01-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-308, and 63-13-309. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003.

1150-01-.12 CONTINUING COMPETENCE. ~~Continuing Competence. On January 1, 2003, the Board shall begin to notify applicants for renewal of continuing competence requirements as provided in T.C.A. §63-13-304(6). The Board shall require each licensed physical therapist and physical therapist assistant to participate in a minimum number of experiences to promote continuing competence for the twenty-four (24) months that precede the licensure renewal month. Beginning January 1, 2005, all applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.~~

Continuing Competence. The Board shall notify applicants for renewal of continuing competence requirements as provided in T.C.A. §63-13-304(6). The Board shall require each licensed physical therapist and physical therapist assistant to participate in a minimum number of experiences to promote continuing competence for the twenty-four (24) months that precede the licensure renewal month. Beginning January 1, 2005, all applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.

Formatted: Normal

- (1) The requirements for continuing competence are defined as planned learning experiences which occur beyond the entry level educational requirements for physical therapists and physical therapist assistants. Content of the experience must relate to physical therapy whether the subject is intervention, examination, research, documentation, education, management, or some other content area. The purpose of this requirement is to assist in assuring safe and effective practices in the provision of physical therapy services to the citizens of Tennessee.
- (2) For applicants approved for initial licensure by examination, successfully completing the requirements of Rules 1150-01-.04, .05, and .08, as applicable, shall be considered proof of sufficient competence to constitute compliance with this rule for the initial period of licensure except for the ethics and jurisprudence education requirements of paragraph (4). Applicants approved for initial licensure by examination must successfully complete four (4) hours of ethics and jurisprudence education during their initial period of licensure

~~(3) Twenty-four (24) Month Requirement. Continuing competence credit is awarded for the clock hours spent in an activity as provided in paragraphs (5) and (6). Except as provided in paragraph (4), all required hours may be met through Class I activities. Except as provided in paragraph (4), any Class I activity without a stated maximum number of hours may be used to accrue all required hours.~~

Formatted: Font color: Red, Strikethrough

(3) Twenty-four (24) Month Requirement – Continuing competence credit is awarded for the clock hours spent in an activity as provided in paragraphs (5) and (6). Except as provided in paragraph (4), all required hours may be met through Class I activities. Except as provided in paragraph (4), any Class I activity without a stated maximum number of hours may be used to accrue all required hours. For purposes of Class I and Class II activities, the American

Formatted: Normal

Formatted: Normal, Indent: Left: 0.38", Hanging: 0.38"

(Rule 1150-01-.12, continued)

Physical Therapy Association or its sections, the Tennessee Physical Therapy Association and accredited Tennessee schools of physical therapy and Tennessee physical therapy assistant schools are deemed to be appropriate continuing education unit (CEU) granting agencies and courses offered by these entities are deemed to be pre-approved.

(a) **Physical Therapist – Thirty (30) hours are required for the twenty-four (24) months that precede the licensure renewal month.**

~~1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5).~~

1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5), and only ten (10) may be acquired online.

2. Up to ten (10) of the thirty (30) hour requirement may be from Class II activities as provided in paragraph (6).

Formatted: Indent: Left: 1.25", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

~~(b) Physical Therapist Assistant – Twenty (20) hours are required for the twenty-four (24) months that precede the licensure renewal month.~~

~~1. At least ten (10) hours of the twenty (20) hour requirement must be from Class I activities as provided in paragraph (5).~~

~~2. Up to ten (10) hours of the twenty (20) hour requirement may be from Class II activities as provided in paragraph (6).~~

Formatted: Font color: Red, Strikethrough

Formatted: Font color: Red, Strikethrough

Formatted: Normal

(b) Physical Therapist Assistant – Thirty (30) hours are required for the twenty-four (24) months that precede the licensure renewal month.

1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5), and only ten (10) may be acquired online.

2. Up to ten (10) hours of the thirty (30) hour requirement may be from Class II activities as provided in paragraph (6).

Formatted: Not Strikethrough

Formatted: Normal

~~(4) Four (4) of the hours required in parts (3) (a) 1. and (3) (b) 1. consist of ethics and jurisprudence education courses. These four (4) hours are required every other twenty-four (24) month period.~~

(4) Four (4) of the hours required in parts (3) (a) 1. and (3) (b) 1. must consist of ethics and jurisprudence education courses. These four (4) hours are required every renewal cycle.

(a) **Ethics and Jurisprudence – The Tennessee Physical Therapy Association (TPTA) is the sole approval entity for ethics and jurisprudence courses. All ethics and jurisprudence courses approved by the TPTA shall be deemed approved by the Board. Any ethics and jurisprudence course not approved by the TPTA will fail to meet the requirements of this rule. The TPTA shall only approve courses that are a minimum of two (2) hours each in duration. They shall be Class I continuing competence as provided in paragraph (5), and shall as a minimum include education in:**

1. **Ethics:**

(i) **APTA Code of Ethics;**

(Rule 1150-01-.12, continued)

- (ii) APTA Guide for Professional Conduct;
- (iii) APTA Standards for Ethical Conduct for the Physical Therapist Assistant;
- (iv) APTA Guide for Conduct of the Physical Therapist Assistant;
- (v) Model for ethical decision making; and
- (vi) Case analysis.

2. Jurisprudence:

- (i) The Occupational and Physical Therapy Practice Act (Tennessee Code Annotated, Title 63, Chapter 13, Parts 1 and 3);
- (ii) General Rules Governing the Practice of Physical Therapy (Official Compilation, Rules and Regulations, Chapter 1150-01);
- (iii) Board of Physical Therapy Policy Statements;
- (iv) Licensure process;
- (v) Scope of practice;
- (vi) Licensure renewal;
- (vii) Disclosures to patients;
- (viii) Offenses that may lead to disciplinary action;
- (ix) Supervision of Physical Therapist Assistants;
- (x) Supervision of Physical Therapy assistive personnel; and
- (xi) Supervision of others (students, volunteers).

~~(b) Course approval — Aside from ethics and jurisprudence courses approved under subparagraph (a) above, the Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6) of this rule. It is the licensee's responsibility, using his/her professional judgment, to determine if the courses being taken are applicable, appropriate, and meet the requirements of this rule. However, TPTA must seek the Board's approval for offering ethics and jurisprudence courses by submitting the following information to the Board's office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:~~

(b) Course approval — Aside from ethics and jurisprudence courses approved under subparagraph (a) above, and those pre-approved courses offered pursuant to paragraph (3) of this rule, the Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6) of this rule. It is the licensee's responsibility, using his/her professional judgment, to determine if the courses offered by other entities are applicable, appropriate, and meet the requirements of this rule. However, TPTA must seek the Board's approval for offering ethics and jurisprudence courses by submitting the

(Rule 1150-01-.12, continued)

following information to the Board's office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:

1. Course description or outline;
2. Names of all lecturers;
3. Brief resume of all lecturers; and
4. How certification of attendance is to be documented.

Each course approved by TPTA must be approved every twelve (12) months.

(5) Class I acceptable continuing competence evidence shall be any of the following:

- (a) External peer review of practice with verification of acceptable practice by a recognized entity, e.g., American Physical Therapy Association. Continuing competence credit is twenty (20) hours per review with a maximum of one (1) review each twenty-four (24) month period.
- (b) Internal peer review of practice with verification of acceptable practice. Continuing competence credit is two (2) hours per review with a maximum of two (2) reviews during each twenty-four (24) month period.
- ~~(c) Courses, seminars, workshops, and symposia attended by the licensee which have been approved for continuing education units (CEUs) by appropriate CEU-granting agencies.~~
- ~~(c) Courses, seminars, workshops, and symposia attended by the licensee which have been pre-approved for continuing education units by appropriate CEU-granting agencies.~~
- ~~(d) Courses, seminars, workshops, and symposia attended by the licensee and approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., Chattanooga State Technical Community College, East Tennessee State University, etc.).~~
- ~~(d) Relevant and appropriate courses, seminars, workshops, and symposia attended by the licensee and approved by other State Boards of Physical Therapy, accredited schools of physical therapy and physical therapy assistant schools, or health-related nonprofit organizations. The Board or its designee retains the right to determine whether any submitted course complies with the requirements of this rule.~~
- (e) Home study courses or courses offered through electronic media approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., U.T. Center for the Health Sciences, Volunteer State Community College), and that include objectives and verification of satisfactory completion.
- (f) University credit courses - Continuing competence credit is twelve (12) hours per semester credit hour.

(Rule 1150-01-.12, continued)

- (g) Participation as a presenter in continuing education courses, workshops, seminars or symposia which have been approved by recognized health-related organizations. Continuing competence credit is based on contact hours and may not exceed twenty (20) hours per topic.
 - (h) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review. Continuing competence credit is ten (10) hours per event with a maximum of two (2) events each twenty-four (24) month period.
 - (i) Teaching a physical therapy or physical therapist assistant credit course when that teaching is an adjunct responsibility and not the primary employment. Continuing competence credit is based on contact hours not to exceed twenty (20) hours. If the same course is taught more than once, contact hours may only be counted once.
 - (j) Certification of clinical specialization by the American Board of Physical Therapy Specialties (ABPTS). Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which certification or recertification is awarded.
 - (k) Certification of clinical specialization by organizations other than the ABPTS (e.g. the McKenzie Institute, the Neuro Developmental Treatment Association, the Ola Grimsby Institute, etc.) may be recognized as continuing competence credit for up to twenty-six (26) hours, in the twenty-four (24) month period in which certification or recertification is awarded. The number of continuing competence credit hours awarded is determined by the Board.
 - (l) Awarding of an advanced degree from an accredited University. Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which the advanced degree is awarded.
 - (m) Participating in a clinical residency program. Continuing competence credit is five (5) hours credit for each week of residency with a maximum of twenty-six (26) hours per program.
- (6) Class II acceptable continuing competence evidence shall be any of the following
- (a) Self-instruction from reading professional literature. Continuing competence credit is limited to a maximum of one (1) hour each twenty-four (24) month period.
 - (b) Attendance at a scientific poster session, lecture, panel or symposium that does not meet the criteria for Class I. Continuing competence credit is one (1) hour per hour of activity with a maximum of two (2) hours credit each twenty-four (24) month period.
 - (c) Serving as a clinical instructor for an accredited physical therapist or physical therapist assistant educational program. Continuing competence credit is one (1) hour per sixteen (16) contact hours with the student(s).
 - (d) Acting as a clinical instructor for physical therapist participating in a residency program or as a mentor for a learner for a formal, nonacademic mentorship. Continuing competence credit is one (1) hour per sixteen (16) contact hours.
 - (e) Participating in a physical therapy study group consisting of two (2) or more physical therapists or physical therapist assistants. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.

(Rule 1150-01-.12, continued)

- (f) Attending and/or presenting in-service programs. Continuing competence credit is one (1) hour per eight (8) contact hours with a maximum of four (4) hours credit each twenty-four (24) month period.
- (g) Serving the physical therapy profession as a delegate to the APTA House of Delegates, on a professional board, committee, or task force. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.

(7) Unacceptable activities for continuing competence include, but are not limited to:

- (a) Attending courses regarding:
 1. Regulations of the United States Department of Labor's Occupational Safety and Health Administration (OSHA);
 2. Regulations of the Tennessee Department of Labor and Workforce Development's Division of Occupational Safety and Health (TOSHA);
 3. Cardiopulmonary resuscitation (CPR); and
 4. Safety;
- (b) Meetings for purposes of policy decisions;
- (c) Non-educational meetings at annual association, chapter or organization meetings;
- (d) Entertainment or recreational meetings or activities; and
- (e) Visiting exhibits.

(8) Documentation of compliance

~~(a) Each licensee must retain documentation of completion of all continuing competence requirements of this rule for a period of five (5) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.~~

(a) Each licensee must retain completion documents, certificates, transcripts and syllabi of all continuing competence requirements of this rule for a period of five (5) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(b) Each sponsor or provider of CEUs must retain records of any CEU offered for a period of not less than five (5) years.

~~(c)~~ (b) The licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing competence activities.

~~(d)~~ (e) Any licensee who fails to complete the continuing competence activities or who falsely certifies completion of continuing competence activities may be subject to disciplinary action pursuant to T.C.A. §§ 63-13-304, 63-13-312, 63-13-313, and 63-13-315.

~~(e)~~ (4) Examples of documentation

Formatted: Normal

Formatted

Formatted: Normal

Formatted

Formatted: Normal

Formatted: Normal, Indent: Left: 0.75", Hanging: 0.38"

Formatted

Formatted: Not Strikethrough

Formatted: Font color: Red, Strikethrough

Formatted: Not Strikethrough

Formatted: Font color: Red, Strikethrough

Formatted: Not Strikethrough

Formatted: Font color: Red, Strikethrough

(Rule 1150-01-.12, continued)

1. A signed peer review report or an official program or outline of the course attended or taught or copy of the publication which clearly shows that the objectives and content were related to physical therapy and shows the number of contact hours, as appropriate. The information also should clearly identify the licensee's responsibility in teaching or authorship.
 2. A CEU certificate or verification of completion of home study which identifies the sponsoring entity, or a copy of the final grade report in the case of a University credit course(s), or specialization certificate, or proof of attendance with a copy of the program for the other acceptable Class I or II activities, or documentation of self-instruction from reading professional literature.
- (9) Reinstatement/Reactivation of an Expired or Retired License
- (a) Expired or retired for three (3) years or less – An individual whose license has expired or has been retired for three (3) years or less shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 - (b) Expired or retired more than three (3) years
 1. An individual whose license has expired or has been retired for more than three (3) years shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 2. The Board may, at its discretion, require additional education, supervised clinical practice, successful passage of examinations, or issue a provisional license.
- (10) The Board, in cases of documented illness, disability, or other undue hardship, may waive the continuing competence requirements and/or extend the deadline to complete continuing competence requirements. To be considered for a waiver of continuing competence requirements, or for an extension of the deadline to complete the continuing competence requirements, a licensee must request such in writing with supporting documentation before the end of the twenty-four (24) month period in which the continuing competence requirements were not met.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-408, 63-13-304, 63-13-308, 63-13-309, and 63-13-311.
Administrative History: Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003. Amendment filed September 22, 2005; effective December 6, 2005. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed August 18, 2006; effective November 1, 2006. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010. Amendment filed December 2, 2014; effective March 2, 2015.

1150-01-.13 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning physical therapy services, the importance of the interests affected by the choice of a physical

* 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)
Brigina T. Wilkerson	x				
Bethany R. Buttrey	X				
David Harris				X	
David Finch	X				
Minty R. Ballard	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 08/14/2015 (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: 04/06/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/15 (mm/dd/yy)

Date: 3/14/16

Signature: [Handwritten Signature]

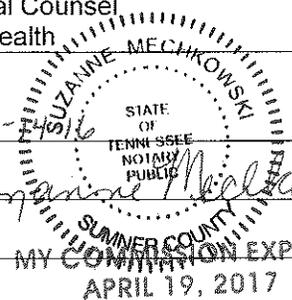
Name of Officer: Thomas Aumann
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 3-14-16

Notary Public Signature: [Handwritten Signature]

My commission expires on: APRIL 19, 2017



Tennessee Board of Physical Therapy
Rule 1150-01-.15
General Rules Governing the Practice of Physical Therapy
Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels

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. Slattery III
Herbert H. Slattery III
Attorney General and Reporter
3/23/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/31/16

Effective on: 6/29/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 MAR 31 PM 3:36
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Board of Physical Therapy
<u>SUBJECT:</u>	Continuing Education
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 63-13-304
<u>EFFECTIVE DATES:</u>	June 29, 2016 through June 30, 2017
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>This rule amendment will:</p> <ul style="list-style-type: none">- Delete the date from the first sentence of the introductory paragraph;- Amend paragraph (3) to deem which courses are appropriate; amend part (3)(a)1 to allow only ten hours of Class I activities to be obtained online;- Amend subparagraph (3)(b) to increase continuing education hours for assistants from 20 to 30 hours;- Amend paragraph (4) to require the courses every renew cycle, amended subparagraph (4)(b) to provide that, aside from the courses provided by the entities listed in Paragraph 3, courses are not pre-approved by the Board and it is the licensee's responsibility to use professional judgment to determine if classes provided by other entities are appropriate and meet the requirements;- Amend subparagraph (5)(d) to allow the Board to retain the right to determine whether such courses comply with the rules and to remove the list of non-profit organizations specified in the existing rule;- Amend subparagraph (8)(a) to require licensees to maintain completion documents, certificates, transcripts, and syllabi; and- Amend subparagraph (8)(b) to require each sponsor or provider of CEUs to retain records of any CEU offered for a period of not less than five (5) years.

Public Hearing Comments

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

Tennessee Board of Physical Therapy
Rulemaking Hearing August 14, 2015

Public Comments

Cathy Hinton, with the Tennessee Physical Therapy Association (TPTA), addressed the Board with concerns that the proposed language in Rule 1150-01-.12(3) did not specifically address Physical Therapy Assistant schools as those schools are also required to obtain continuing education hours.

The Board reviewed the existing rule and found that, while it seemed inclusive of both physical therapy schools and physical therapy assistant schools, that for clarity it would be better to include the language in the rule amendment. The Board voted to adopt this change.

Ms. Hinton further requested that the Board add the same language to the amendment for Rule 1150-01-.12(5)(d).

The Board voted to adopt this change.

Lastly, Ms. Hinton requested the Board to add the word "Tennessee" to the amendment for 1150-01-.12(5)(d) to make it mirror the amendment to paragraph (3) above.

The Board did not adopt this change, because it stated that this portion of the rule is not Tennessee specific.

Mr. Allen Meade, also with TPTA, signed the sheet to comment, but stated that Ms. Hinton addressed all of his concerns.

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.

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

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

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

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

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Physical Therapy

Rulemaking hearing date: August 14, 2015

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

The rules affect those individuals engaged in the practice of physical therapy, physical therapy assistants, and the Board of Physical Therapy. The licensees will benefit from the clarity the rules provide.

- 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 proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

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

The Board does not anticipate that there will be any adverse impacts to small businesses or consumers due to these rule amendments.

- 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 methods of achieving the purpose and/or objectives of the proposed rule amendments.

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

Federal: None.

State: None.

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

These proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

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

33

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

For Department of State Use Only

Sequence Number: 03-40-16
Rule ID(s): 6163
File Date: 3/31/16
Effective Date: 6/29/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Physical Therapy
Division:	
Contact Person:	Thomas Aumann, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Thomas.Aumann@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
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.12	Continuing Competence

**RULES
OF
THE TENNESSEE BOARD OF PHYSICAL THERAPY**

**CHAPTER 1150-01
GENERAL RULES GOVERNING THE PRACTICE OF PHYSICAL THERAPY**

TABLE OF CONTENTS

1150-01-.01	Definitions	1150-01-.13	Advertising
1150-01-.02	Scope of Practice and Supervision	1150-01-.14	Code of Ethics
1150-01-.03	Necessity of Licensure	1150-01-.15	Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels
1150-01-.04	Qualifications for Licensure	1150-01-.16	Duplicate (Replacement) License
1150-01-.05	Procedures for Licensure	1150-01-.17	Change of Address and/or Name
1150-01-.06	Fees	1150-01-.18	Mandatory Release of Client Records
1150-01-.07	Application Review, Approval and Denial	1150-01-.19	Board Meetings, Officers, Consultants, Records, and Declaratory Orders
1150-01-.08	Examinations	1150-01-.20	Consumer Right-To-Know Requirements
1150-01-.09	Renewal of License	1150-01-.21	Professional Peer Assistance
1150-01-.10	Provisional License		
1150-01-.11	Retirement and Reactivation of License		
1150-01-.12	Continuing Competence		

1150-01-.01 DEFINITIONS. As used in these rules, the terms and acronyms shall have the following meanings ascribed to them:

- (1) The Act – The statute governing the practice of occupational and physical therapy in Tennessee as codified at Title 63, Chapter 13 of the Tennessee Code Annotated.
- (2) Advertising – Includes, but is not limited to, business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual, radio, video, internet, or television broadcasting or any other means designed to secure public attention.
- (3) American Physical Therapy Association – When the acronym “APTA” appears in these rules, it is intended to mean the American Physical Therapy Association.
- (4) Applicant – Any individual seeking licensure by the board and who has submitted an official application and paid the application fee.
- (5) Board – The Board of Physical Therapy.
- (6) Board administrative office – The office of the Unit Director assigned to the board located at 665 Mainstream Drive, Nashville, TN 37243.
- (7) Board Designee – Any person who has received a written delegation of authority from the board to perform board functions subject to review and ratification by the full board where provided by these rules.
- (8) Clinical Student – A student enrolled in a CAPTE approved developing program or a CAPTE accredited physical therapy program or regionally accredited post professional physical therapist program.
- (9) Closed file – An administrative action which renders an incomplete or denied file inactive.
- (10) Commission on Accreditation of Physical Therapy Education (CAPTE) – An agency approved by the Board of Physical Therapy to accredit schools of physical therapy pursuant to T.C.A. § 63-13-307(a).

(Rule 1150-01-.01, continued)

- (11) Consultation – A meeting that is conducted either face-to-face or by some other medium such as, but not limited to, telephone, facsimile, mail, or electronic means, wherein two or more health professionals discuss the diagnosis, prognosis, and treatment of a particular case.
- (12) Continuing Competence – The ongoing application of professional knowledge, skills and abilities which relate to occupational performance objectives in the range of possible encounters that is defined by that individual's scope of practice and practice setting.
- (13) Department – Tennessee Department of Health.
- (14) Division – The Division of Health Related Boards, Department of Health, from which the board receives administrative support.
- (15) Examination Service – The testing service whose examination has been adopted by the board.
- (16) Fee – Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also, the required fee(s) pursuant to these rules.
- (17) Good Moral Character – The quality of being well regarded in personal behavior and professional ethics.
- (18) Guide to Physical Therapist Practice – The APTA document, adopted by the Board pursuant to rule 1150-01-.02 that explains physical therapy scope of practice, preferred practice patterns, and appropriate utilization of services.
- (19) He/she Him/her – When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (20) HRB – When the acronym "HRB" appears in the text of these rules, it represents Health Related Boards.
- (21) Internationally Educated – An individual who has graduated from a PT or PTA program outside the United States and its jurisdictions.
- (22) License – Document issued to an applicant who has successfully completed the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.
- (23) Licensee – Any person duly licensed by the board to engage in the practice of physical therapy.
- (24) Licensed Physical Therapist (PT) – Any person who has met the qualifications for licensed physical therapist and holds a current, unsuspended and unrevoked license which has been lawfully issued by the board.
- (25) Licensed Physical Therapist Assistant (PTA) – Any person who has met the qualifications for licensed physical therapist assistant and holds a current, unsuspended and unrevoked license that has been lawfully issued by the board. PTAs perform physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist.
- (26) Manual Therapy Techniques – Consist of a broad group of passive interventions in which physical therapists use their hands to administer skilled movements designed to modulate pain; increase joint range of motion; reduce or eliminate soft tissue swelling, inflammation, or

(Rule 1150-01-.01, continued)

restriction; induce relaxation; improve contractile and noncontractile tissue extensibility; and improve pulmonary functions. These interventions involve a variety of techniques, such as the application of graded forces, which are not performed beyond the joint's normal range of motion. These interventions may be applied to all joints of the body as deemed appropriate.

- (27) Person – Any individual, firm, corporation, partnership, organization, or political entity.
- (28) Physical Therapy Assistive Personnel -
 - (a) Physical therapy aide – Aides, technicians, and transporters trained by and under the direction of physical therapists who perform designated and supervised routine physical therapy tasks.
 - (b) Other assistive personnel – Other trained or educated health care personnel not defined in paragraph (25) or subparagraph (28) (a) of this rule who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, "other assistive personnel" or "other support personnel" may be identified by the title specific to their training or education.
- (29) Physical Therapy Treatment Diagnosis – Both the process and the end result of evaluating information obtained from the examination, which the physical therapist then organizes into defined clusters, syndromes, or categories to help determine the most appropriate intervention strategies.
- (30) Recognized credentialing agency – An agency approved by the board which evaluates the educational credentials of international graduates who have not attended CAPTE - accredited or board approved schools of physical therapy pursuant to T.C.A. §63-13-307(a).
- (31) Recognized educational institution – Any educational institution that is accredited by CAPTE and which is approved by the board.
- (32) Relative – A parent, foster parent, parent-in-law, child, spouse, brother, foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother-in-law, daughter-in-law, sister-in-law, or other family member who resides in the same household.
- (33) Restriction – Any action deemed appropriate by the board to be required of a disciplined licensee during any period of probation, suspension, or revocation with leave to apply or as a prerequisite to the lifting of probation or suspension, or any action deemed appropriate by the board to be required of an applicant for licensure.
- (34) Use of a title or description – To hold oneself out to the public as having a particular status, including but not limited to, by the use of signs, mailboxes, address plates, stationery, announcements, advertising, the Internet, business cards, or other means of professional identification.
- (35) Volunteer personnel – Uncompensated individuals contemplating a career in physical therapy, and are limited to observation of physical therapy functions and are prohibited from the delivery of physical therapy services.
- (36) Written evidence – Includes, but is not limited to, written verification from supervisors or other professional colleagues familiar with the applicant's work.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-304, and 63-13-307.
Administrative History: Original rule filed June 6, 1978; effective July 6, 1978. Amendment filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987;

(Rule 1150-01-.01, continued)

effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed July 29, 2002; effective October 12, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed February 2, 2007; effective April 18, 2007. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed August 19, 2010; effective November 17, 2010.

1150-01-.02 SCOPE OF PRACTICE AND SUPERVISION.

(1) Scope of Practice

- (a) The scope of practice of physical therapy shall be under the written or oral referral of a licensed doctor of medicine, chiropractic, dentistry, podiatry or osteopathy, with the following exceptions, as provided in T.C.A. § 63-13-303.

 1. The initial evaluation which may be conducted without such referral;
 2. A licensed physical therapist may treat a patient for an injury or condition that was the subject of a prior referral if all of the following conditions are met:
 - (i) The physical therapist, within four (4) business days of the commencement of therapy, consults with the referring licensed physician, osteopathic physician, dentist, chiropractor, podiatrist, or other referring practitioner;
 - (ii) For all episodes of physical therapy subsequent to that which was initiated by the referral, the physical therapist treats the patient for not more than ten (10) treatment sessions or fifteen (15) consecutive calendar days, whichever occurs first, whereupon the physical therapist must confer with the referring practitioner in order to continue the current episode of treatment; and
 - (iii) The physical therapist commences any episode of treatment provided pursuant to part (1) (a) 2. of this rule within one (1) year of the referral by the referring practitioner.
 3. No physical therapist may provide treatment pursuant to part two (2) of this subparagraph without having been licensed to practice physical therapy for at least one (1) year and without satisfying other requirements set by the Board.
 4. A licensed physical therapist may provide physical assessments or instructions including recommendation of exercise to an asymptomatic person without the referral of a referring practitioner.
 5. In emergency circumstances, including minor emergencies, a licensed physical therapist may provide assistance to a person to the best of a therapist's ability without the referral of a referring practitioner, provided the physical therapist shall refer to the appropriate health care practitioner, as indicated, immediately thereafter. For the purposes of this part of this subparagraph, emergency circumstances means instances where emergency medical care is called for. Emergency medical care means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(Rule 1150-01-.02, continued)

- (i) Placing the patient's health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part.

(b) Practice of Physical Therapy

1. Examining, evaluating and testing individuals with mechanical physiological and developmental impairments, functional limitations, and disability or other health and movement-related conditions in order to determine a physical therapy treatment diagnosis, prognosis, a plan of therapeutic intervention, and to assess the ongoing effect of intervention; and
2. Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional training; manual therapy; therapeutic massage; assistive and adaptive orthotic, prosthetic, protective and supportive equipment; airway clearance techniques; debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities including patient-related instruction and electrophysiologic studies (motor and sensory nerve conduction, and somatosensory evoked potentials)
 - (i) Invasive kinesiological electromyography may be performed only in a university academic setting as part of a research project that has been approved by the educational institution's Internal Review Board without a referral or;
 - (ii) Notwithstanding the provisions of subpart (i), diagnostic electromyography must be performed by a licensed physical therapist who has complied with the requirements of paragraph 1150-01-.04 (4) and;
 - (iii) Notwithstanding the provisions of subpart (i), diagnostic and invasive electromyography may only be performed when there is a referral for such service from:
 - (I) an allopathic physician licensed under T.C.A. §§ 63-6; or
 - (II) an osteopathic physician licensed under T.C.A. §§ 63-9; or
 - (III) a doctor of dentistry licensed under T.C.A. §§ 63-5; or
 - (IV) a doctor of podiatry licensed under T.C.A. §§ 63-3; and
3. Reducing the risk of injury, impairments, functional limitation and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and
4. Engaging in administration, consultation, education and research; and
5. Manual Therapy Techniques – Consist of a broad group of passive interventions in which physical therapists use their hands to administer skilled movements designed to modulate pain; increase joint range of motion; reduce or eliminate soft tissue swelling, inflammation, or restriction; induce relaxation; improve contractile and noncontractile tissue extensibility; and improve pulmonary

(Rule 1150-01-.02, continued)

functions. These interventions involve a variety of techniques, such as the application of graded forces, which are not performed beyond the joint's normal range of motion. These interventions may be applied to all joints of the body as deemed appropriate.

- (c) Substandard Care
1. Over-utilization of appropriate physical therapy services or the lack thereof.
 2. Providing treatment intervention that is unwarranted by the condition of the patient.
 3. Providing treatment that is beyond the point of reasonable benefit.
 4. Abandoning the care of a patient without informing the patient of further care options.
 5. Failing to practice in accordance with the standards set forth in the "Guide to Physical Therapist Practice," pursuant to rule 1150-01-.02 (1) (f).
- (d) "Physical therapy" or "physiotherapy" are identical and interchangeable terms. "Practice of physical therapy" and "physical therapy assistive personnel" are defined in rule 1150-01-.01.
- (e) Nothing in this rule shall be construed as authorizing a physical therapist, or physical therapist assistant, or any other person to practice medicine, chiropractic, osteopathy, or podiatry.
- (f) The board adopts, as if fully set out herein, and as it may from time to time be amended, the current "Guide to Physical Therapist Practice" issued by the American Physical Therapy Association. Information to acquire a copy may be obtained by contacting either of the following:
1. American Physical Therapy Association
1111 North Fairfax Street
Alexandria, VA 22314-1488
Telephone: (703) 684-2782
Telephone: (800) 999-2782
Fax: (703) 684-7343
T.D.D: (703) 683-6748
Internet: www.apta.org
 2. Board of Physical Therapy
665 Mainstream Drive
Nashville, TN 37243
Telephone: (615) 532-3202 ext. 25135
Telephone: (888) 310-4650 ext. 25135
Fax: (615) 532-5164
Internet: www.state.tn.us/health
- (g) Universal Precautions for the Prevention of HIV Transmission - The board adopts, as if fully set out herein, rules 1200-14-03-.01 through 1200-14-03-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

Field Code Changed

(Rule 1150-01-.02, continued)

(2) Supervision.

- (a) Supervision of licensed physical therapist assistants - Supervision, as applied to the licensed physical therapist assistant, means that all services must be performed under the supervision of a physical therapist licensed and practicing in Tennessee. Guidance for the rendering of such services is as follows:
1. The licensed physical therapist shall perform the initial evaluation of the patient with the development of a written treatment plan, including therapeutic goals, frequency and time period of services.
 2. The licensed physical therapist shall perform and document re-evaluations, assessments, and modifications in the treatment plan at least every thirty (30) days. For patients seen longer than sixty (60) days, the licensed physical therapist shall inspect the actual act of therapy services rendered at least every sixty (60) days.
 3. The licensed physical therapist may not supervise a physical therapist assistant that is delivering services at a site further than sixty (60) miles or one (1) hour from the licensed physical therapist. The supervising licensed physical therapist must be available to communicate by telephone or other means whenever the physical therapist assistant is delivering services.
 4. The discharge evaluation must be performed and the resulting discharge summary must be written by the licensed physical therapist.
 5. The licensed physical therapist and the physical therapist assistant shall be equally responsible and accountable for carrying out the provisions of this subparagraph.
- (b) Supervision of physical therapy assistive personnel (See rule 1150-01-.01).
1. A physical therapist may use physical therapy aides for designated tasks that do not require clinical decision making by the licensed physical therapist or clinical problem solving by the licensed physical therapist assistant. Direct supervision must apply to physical therapy aides and is interpreted to mean that services are provided under the supervision of an on-site physical therapist or physical therapist assistant licensed and practicing in Tennessee.
 2. A physical therapist may use other assistive personnel for selected physical therapy designated tasks consistent with the training, education, or regulatory authority of such personnel. Other assistive personnel (nationally certified exercise physiologists or certified athletic trainer and massage therapists, etc) must perform the delegated task under the on-site supervision of a physical therapist. The physical therapist shall then co-sign all related documentation in the patient records.
 3. "On-site supervision" means the supervising physical therapist or physical therapist assistant must:
 - (i) Be continuously on-site and present in the department or facility where assistive personnel are performing services; and
 - (ii) Be immediately available to assist the person being supervised in the services being performed; and

(Rule 1150-01-.02, continued)

- (iii) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.
- (c) A physical therapist may concurrently supervise no more than the equivalent of three (3) full-time physical therapist assistants. A physical therapist may concurrently supervise no more than the equivalent of two (2) full-time assistive personnel or physical therapy aides. A physical therapist assistant may concurrently supervise no more than the equivalent of two (2) full-time physical therapy aides.
- (d) Pursuant to rule 1150-01-.01, physical therapists and physical therapist assistants shall provide direct onsite supervision of volunteers. Volunteers may not provide physical therapy to patients.
- (e) A physical therapist shall provide on-site supervision, as defined in part (b) 3. of paragraph (2) of this rule, to physical therapy clinical students at all times and will be in accordance with the APTA guidelines for clinical education which suggest a minimum of one (1) year of licensed clinical experience prior to functioning as a clinical instructor for physical therapist students.
- (f) A physical therapist assistant shall provide on-site supervision, as defined in part (b) 3. of paragraph (2) of this rule, to physical therapist assistant clinical students at all times and will be in accordance with the APTA guidelines for clinical education which suggest a minimum of one (1) year of licensed clinical experience prior to functioning as a clinical instructor for physical therapist assistant students.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-102, 63-13-103, 63-13-104, 63-13-108, 63-13-109, 63-13-301, 63-13-303 through 63-13-307, 63-13-311, and Public Chapter 264 of the Public Acts of 1993.
Administrative History: Original rule filed June 6, 1978; effective July 6, 1978. Amendment filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 23, 2002; effective April 8, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed September 22, 2005; effective December 6, 2005. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010.

1150-01-.03 NECESSITY OF LICENSURE.

- (1) Prior to engaging in the practice of physical therapy in Tennessee, a person must hold a current Tennessee license.
- (2) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 13 of the Tennessee Code Annotated to represent himself as a physical therapist or physical therapist assistant or to hold himself out to the public as being licensed by means of using a title on, including but not limited to, signs, mailboxes, address plates, stationery, announcements, advertising, the internet, telephone listings, calling cards, or other means of professional identification.
- (3) Physical therapy is one of the healing arts and as such the practice of which is restricted to those persons credentialed by the Board of Physical Therapy. Persons engaging in the practice of physical therapy without being credentialed or expressly exempted by the laws are in violation of T.C.A. §63-1-123.

(Rule 1150-01-.03, continued)

- (4) No other person shall hold himself out to the public by a title or description of services incorporating the words "physical therapist" or "physical therapist assistant" nor shall state or imply that he is licensed as such unless that person is licensed or expressly exempted pursuant to T.C.A. §§63-13-301, et seq.
- (5) Licensee Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Physical Therapist" or "Physical Therapist Assistant" as applicable, and to use the acronyms "P.T." or "P.T.A." as applicable, and to practice physical therapy, as defined in T.C.A. § 63-13-103. Any person to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 1150-01-.13 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the licensee to disciplinary action pursuant to T.C.A. § 63-13-312 (3) and (14).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-123, 63-1-145, 63-1-146, 63-13-102, 63-13-103, 63-13-108, 63-13-301, 63-13-302, 63-13-304, 63-13-306, 63-13-307, 63-13-308, 63-13-310, 63-13-312 and 63-13-315. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981. Amendment filed April 28, 1983; effective May 31, 1983. Repeal rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed September 24, 2009; effective December 23, 2009.

1150-01-.04 QUALIFICATIONS FOR LICENSURE.

- (1) To qualify for licensure by examination, a Physical Therapist or a Physical Therapist Assistant must:
 - (a) Be of good moral character; and
 - (b) If sitting for the physical therapist examination, be a graduate of a school of physical therapy accredited by CAPTE; or, if sitting for the physical therapist assistant examination, be a graduate of a school for physical therapist assistants accredited by CAPTE; and
 - (c) Pass to the satisfaction of the Board an examination conducted by it to determine fitness for practice as a physical therapist or physical therapist assistant.
- (2) To qualify for licensure by reciprocity a physical therapist or physical therapist assistant must possess a current and unrestricted license from another U.S. jurisdiction and comply with either (a), (b) or (c) below.
 - (a) Credentials required for individuals who attained certification, registration or licensure in another state or country from July, 1995, to date:
 1. Be of good moral character;
 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE and approved by the Board of Physical Therapy;
 3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a criterion referenced passing point.

(Rule 1150-01-.04, continued)

- (b) Credentials required for applicants who attained certification, registration, or licensure in another state or country from December 29, 1981 to July, 1995.
 - 1. Be of good moral character;
 - 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE and approved by the Board of Physical Therapy;
 - 3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 - 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a minimum converted score of seventy-five (75), based on one point five (1.5) sigma below the national mean for the examination. This applies to the score of each individual part as well as the total score.
 - (c) Credentials required for applicants who attained certification, registration or licensure in another state or country from July 1, 1976 to December 28, 1981:
 - 1. Be of good moral character;
 - 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE or a physical therapist or physical therapist assistant program approved by the American Medical Association;
 - 3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 - 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a minimum converted score of seventy-five (75), based on one point five (1.5) sigma below the national mean for the examination. This applies to the score of each individual part as well as the total score.
 - (d) Credentials required for applicants who were registered, certified or licensed as a PT or PTA in another state or country prior to July 1, 1976, must comply with the applicable provisions of T.C.A. §63-13-307(c).
- (3) Internationally Educated. In addition to meeting the requirements outlined either in Rule 1150-01-.04(1) except 1150-01-.04(1)(b), or 1150-01-.04(2) except 1150-01-.04(2)(b)2, international graduates must:
- (a) Have submitted directly to the Board's administrative office a validly issued and error-free "Comprehensive Credential Evaluation Certificate for the Physical Therapist" (Type 1 Certificate) from the Foreign Credentialing Commission on Physical Therapy (FCCPT) for the purpose of evaluating and verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE.
 - 1. Submitting the "Visa Credential Verification Certificate," also issued by the FCCPT, will not constitute meeting this requirement.
 - 2. Applicants who cannot obtain a Type 1 Certificate from the FCCPT based on their ineligibility to sit for the Test of English as a Foreign Language internet Based Test (TOEFL iBT) must submit all other components of the Type 1 Certificate directly to the Board's administrative office, for the purpose of

(Rule 1150-01-.04, continued)

evaluating and verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE; or

- (b) Have submitted directly to the Board's administrative office a validly issued and error-free certification from any agency verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE.
 - 1. The agency must evaluate the curriculum in a manner similar to the FCCPT educational credentials review.
 - 2. The result or outcome of the evaluation is the issuance of certification that the Board considers to be equivalent to the "Comprehensive Credential Evaluation Certificate for the Physical Therapist" (Type 1 Certificate) from the FCCPT.
 - (c) Submit proof of United States or Canada citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include notarized copies of birth certificates, naturalization papers or current visa status.
 - (d) Have credentials that comply with the applicable provisions of T.C.A. § 63-13-307 (d) if the applicant was registered, certified, or licensed as a physical therapist or physical therapist assistant in another state or country prior to July 1, 1976.
 - (e) After receiving written approval from the Board regarding the credentials in subparagraph (a), have participated in and successfully completed a Board-approved supervised clinical practice period to provide a broad exposure to general physical therapy skills, pursuant to guidelines approved and issued by the Board.
 - 1. The supervised clinical practice period shall be four hundred and eighty (480) hours and shall be accomplished at a rate of no more than forty (40) hours or no less than ten (10) hours per week.
 - 2. The supervising licensed physical therapist shall submit the evaluation form contained in the guidelines supplied by the Board to the Board's administrative office upon completion of the supervisory period.
 - 3. If the Board determines the supervised clinical period has not been successfully completed, the Board may require additional time in supervised clinical practice, additional coursework, and/or and oral examination.
 - 4. Supervision provided by the applicant's parents, spouse, former spouse, siblings, children, cousins, in-laws (present or former), aunts, uncles, grandparents, grandchildren, stepchildren, employees, present or former physical therapist, present or former romantic partner, or anyone sharing the same household shall not be acceptable toward fulfillment of licensure requirements. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payments for the actual supervisory hours.
- (4) Electrophysiologic studies
- (a) Applicants for licensure as a Physical Therapist who seek to conduct diagnostic electromyography (invasive needle study of multiple muscles for diagnosis of muscle and nerve disease), pursuant to rule 1150-01-.02 (See Practice of Physical Therapy), while practicing must submit to the Board's administrative office documented evidence of possessing current ECS certification from the American Board of Physical Therapy Specialties.

(Rule 1150-01-.04, continued)

- (b) Applicants for licensure as a Physical Therapist who seek to conduct surface electrophysiological studies (motor and sensory conduction, and somatosensory evoked potentials), and kinesiologic studies (invasive needle study of the muscles to determine the degree and character of a muscle during certain movements) pursuant to rule 1150-01-.02 (See Practice of Physical Therapy), while practicing must submit to the Board's administrative office documented evidence of possessing the theoretical background and technical skills for safe and competent performance of such studies.
 - (c) Supervision - The supervision of applicants who seek to conduct diagnostic electromyography, surface electrophysiological studies, and kinesiologic studies shall be consistent with sound medical practice.
- (5) In determining the qualifications of applicants for licensure as a physical therapist or physical therapist assistant, only a majority vote of the Board of Physical Therapy shall be required.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-304, 63-13-306, and 63-13-307.
Administrative History: Original rule filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Amendment filed January 31, 2000; effective April 15, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed June 3, 2004; effective August 17, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendment filed September 22, 2005; effective December 6, 2005. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010. Amendment filed December 2, 2014; effective March 2, 2015.

1150-01-.05 PROCEDURES FOR LICENSURE.

- (1) Procedures for all applicants. To become licensed as a physical therapist or physical therapist assistant in Tennessee, a person must comply with the following procedures and requirements.
 - (a) An application packet shall be requested from the Board's administrative office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and these rules to the Board's administrative office. It is the intent of these rules that all steps necessary to accomplish the filing of the required documentation be completed prior to filing either the application for licensure or the application for examination.
 - (c) Applications will be accepted throughout the year.
 - (d) An applicant shall pay the nonrefundable application fee, the State regulatory fee and, if applicable, the reciprocity fee as provided in Rule 1150-01-.06 when submitting the application.
 - (e) An applicant shall submit with his application a "passport" style photograph taken within the preceding 12 months.
 - (f) It is the applicant's responsibility to request a college transcript from his degree granting institution, pursuant to T.C.A. §63-13-307, be submitted directly from the school to the Board's administrative office. The institution granting the degree must be accredited by CAPTE at the time the degree was granted, or for internationally

(Rule 1150-01-.05, continued)

- educated graduates, an institution granting an equivalent degree. The transcript must show that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for licensure.
- (g) An applicant shall submit an original letter of recommendation from a physical therapist or physical therapist assistant licensed in the United States that attests to the applicant's good moral character. The letter cannot be from a relative.
 - (h) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any crime in any country, state, or municipality, except minor traffic violations.
 - 2. The denial of a licensure or the discipline of licensee by any state or country.
 - 3. Loss or restriction of licensure.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under the country's or state's statutory, common, or case law.
 - (i) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
 - (j) Personal resumes are not acceptable and will not be reviewed.
 - (k) Application review and licensure decisions shall be governed by Rule 1150-01-.07.
 - (l) The burden is on the applicant to prove by a preponderance of the evidence that his course work and credentials are equivalent to the Board's requirements.
 - (m) The license fee must be received in the Board's administrative office on or before the 30th day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.
 - (n) A license will be issued after all requirements, including payment of a license fee pursuant to Rule 1150-01-.06, have been met.
- (2) Additional procedure for licensure by examination - Passage of required examination pursuant to Rule 1150-01-.08 is a prerequisite to licensure.
 - (3) Additional procedures for licensure by reciprocity
 - (a) Passage of the required examination pursuant to Rule 1150-01-.04 and 1150-01-.08 is a prerequisite to licensure by reciprocity. Passing level examination scores must be submitted directly from the examining service to the Board's administrative office. Candidates qualifying for licensure by reciprocity must have passed the licensing examination pursuant to Rule 1150-01-.04.
 - (b) It is the applicant's responsibility to request that verification of licensure status be submitted directly to the Board's administrative office from all states in which the applicant is or has ever been licensed.
 - (4) Additional procedures for internationally educated applicants

(Rule 1150-01-.05, continued)

- (a) Passage of the required examination pursuant to rule 1150-01-.08 is a prerequisite to licensure.
- (b) It is the applicant's responsibility to have his professional education evaluated and verified as equivalent by a credentialing agency approved by the Board, pursuant to Rule 1150-01-.04. No applicant shall be approved for licensure as a physical therapist or physical therapist assistant until the Board is satisfied that the applicant's education is substantially equivalent to the requirements of accredited educational programs.
- (c) An applicant shall submit proof of United States or Canada citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include notarized copies of birth certificates, naturalization papers or current visa status.
- (d) An applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of license) from each such licensing/certification agency which indicates the applicant holds or has held an active license and whether it is in good standing presently or was at the time it became inactive.
- (e) When necessary, all required documents shall be translated into English and such translation and the original document must be certified as to authenticity by the issuing source. Both versions must be submitted.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-307, and 63-13-312. **Administrative History:** Original rule filed June 6, 1978; effective July 6, 1978. Amendment filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed June 3, 2004; effective August 17, 2004. Amendment filed March 14, 2006; effective May 28, 2006.

1150-01-.06 FEES.

- (1) The fees authorized by statutes are established as follows:
 - (a) Application fee - A nonrefundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.
 - (b) Duplicate (Replacement) License - To be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license or renewal certificate.
 - (c) Endorsement/Verification - A fee paid whenever an individual requests the Board endorse him to another state or whenever a request is made to verify a license.
 - (d) Reinstatement fee - A fee to be paid to the Board to reactivate a license which has been administratively revoked due to the licensee's failure to renew.
 - (e) License fee - A nonrefundable fee to be paid prior to the issuance of the "artistically designed" license.
 - (f) Provisional License/Application fee - A nonrefundable fee to be paid by all applicants or licensees seeking a provisional license.

(Rule 1150-01-.06, continued)

- (g) Renewal fee - A fee to be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.
- (h) Late renewal fee - A fee to be paid when a licensee has failed to renew his license in a timely manner and the license has not yet been administratively revoked.
- (i) Reciprocity - A fee to be paid in addition to the application fee.
- (j) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.
- (2) All fees shall be established, reviewed and changed by the Board.
- (3) All fees must be submitted to the Board's administrative office by certified or personal check or money order. Checks or money orders are to be made payable to the Board of Physical Therapy.
- (4) Fee Schedule:
- | | PT | PTA |
|---|----------|----------|
| (a) Application Fee | \$100.00 | \$ 90.00 |
| (b) Duplicate (replacement) License Fee | \$ 25.00 | \$ 25.00 |
| (c) Endorsement/Verification Fee | \$ 25.00 | \$ 25.00 |
| (d) License Fee | \$ 25.00 | \$ 25.00 |
| (e) Provisional License/Application Fee | \$ 25.00 | \$ 25.00 |
| (f) Reciprocity | \$100.00 | \$100.00 |
| (g) Reinstatement Fee | \$100.00 | \$100.00 |
| (h) Renewal Fee (biennial) | \$ 65.00 | \$ 65.00 |
| (i) Late Renewal Fee | \$ 50.00 | \$ 50.00 |
| (j) State Regulatory Fee (biennial) | \$ 10.00 | \$ 10.00 |

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-13-108, 63-13-304, 63-13-306 through 63-13-309, and 63-13-316. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981. Amendment filed April 13, 1984; effective May 13, 1984. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Amendment filed January 3, 1990; effective February 17, 1990. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Withdrawal to rule 1150-01-.06 (4)(d), effective April 15, 2000, filed and effective February 28, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed January 16, 2003; effective April 1, 2003. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed December 27, 2011; effective March 26, 2012.

1150-01-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

- (1) An application packet shall be requested from the Board's administrative office.
- (2) Applications for licensure will be accepted throughout the year.

(Rule 1150-01-.07, continued)

- (3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director. The Board will ratify licensure action taken by the Unit Director or designated Board member.
- (4) If an application for licensure is incomplete when received in the Board's administrative office, the applicant will be notified of such deficiency. The individual will not be deemed eligible to take the examination until the application is judged to be complete and accurate by the administrative office.
- (5) The Board may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the Board wishes additional information.
- (6) If a completed application has been denied and ratified as such by the Board, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 - (c) An applicant has a right to a contested case hearing if the licensure denial was based on subjective or discretionary criteria.
 - (d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the Board's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal may be requested. Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial.
- (7) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to sit for the examination or if the applicant has already been licensed before the falseness of such information has been made known to the Board, such license shall be subject to suspension or revocation by the Board.
- (8) If the Board finds it has erred in the issuance of a license, the Board will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from date of receipt of the notification.
- (9) Abandonment of Application
 - (a) An application shall be deemed abandoned and closed if:
 1. The application has not been completed by the applicant within twelve (12) months after it was initially reviewed by the Board; or
 2. The applicant fails to sit for the written exam, if applicable, within six (6) months after being notified of eligibility.

(Rule 1150-01-.07, continued)

- (b) Whenever the applicant fails to complete the application process as stated in (a) above, written notification will be mailed to the applicant notifying him that the file has been closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.
- (10) If an applicant requests an entrance for licensure and, after Board review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, e.g., reciprocity to examination.
- (11) An applicant shall submit an original letter of recommendation from a physical therapist or physical therapist assistant licensed in the United States that attests to the applicant's good moral character. The letter cannot be from a relative of the applicant.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-301, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-307, and 63-13-312. **Administrative History:** Original rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed December 2, 2014; effective March 2, 2015.

1150-01-.08 EXAMINATIONS. In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

- (1) The Board adopts as its examination for physical therapists and physical therapist assistants the National Physical Therapy Examinations endorsed by the Federation of State Boards of Physical Therapy or successor examinations.
- (2) Examination Application
 - (a) All applicants for examination shall apply for admission directly with the Federation of State Boards of Physical Therapy (FSBPT) by contacting:

Federation of State Boards of Physical Therapy	Telephone	(703) 299-3100
509 Wythe Street	Fax	(703) 299-3110
Alexandria, VA 22314	Internet	www.fsbpt.org

Application forms and instructions will be provided by the Board's administrative office.
 - (b) All educational requirements must be completed prior to filing an application for licensure or examination.
- (3) Eligibility Approval
 - (a) Only a person who has filed the required application, paid the fees, and been notified of acceptance by the Board shall be permitted to take the examination.
 - (b) The FSBPT will compile an applicant list and forward to the Board. The Board will review the applicant list provided by the FSBPT, determine the eligible applicants, and notify the FSBPT of such determination.
 - (c) An examination shall be administered only to bona fide candidates for initial licensure or candidates who are not licensed in another jurisdiction and do not have a qualifying exam score in another jurisdiction.

(Rule 1150-01-.08, continued)

- (d) An applicant for licensure and/or examination who has not met the requirements as set forth in T.C.A. §63-13-306 and §63-13-307 shall be refused permission to take the examination.
- (4) Eligibility Notification
- (a) The FSBPT will compile eligibility lists and forward to the Computer Based Testing Provider. The FSBPT will send a letter to each candidate containing a toll-free number to call to schedule the examination.
 - (b) The candidate will contact the Computer Based Testing Provider to schedule the examination at the location of their choice.
 - 1. Candidates must take the examination within sixty (60) days of the date on the eligibility letter provided by the FSBPT. If the candidate does not take the examination within this time period, they will be removed from the eligibility listings of the Computer Based Testing Provider and will be required to begin the examination application process again.
 - 2. Candidates may reschedule the examination up to two (2) working days prior to the scheduled test date by calling the toll-free number provided to them in their eligibility letter without penalty. Candidates who fail to give such notice to the Computer Based Testing Provider, and who fail to sit for the Examination as scheduled, will forfeit the examination fees paid and will be required to begin the examination application process.
- (5) Administration
- (a) Candidates must arrive at the test site at least fifteen (15) minutes prior to their scheduled appointment with the Computer Based Testing Provider.
 - (b) Candidates must have government-issued photo identification (passport, driver's license, etc.) as well as another piece of identification which contains a signature.
 - (c) All candidates will be thumb-printed and photographed at the testing center.
 - (d) All sessions will be videotaped.
- (6) Passing level. Candidates qualifying for licensure by examination must pass the examination with a criterion reference passing point. This passing point shall be set to equal a scaled score of six hundred (600) based on a scale ranging from two hundred to eight hundred (200-800).
- (7) Results
- (a) No information regarding pass/fail status will be available to candidates at the test site.
 - (b) Upon receipt of the examination group score reports in the Board's administrative office, the results will be mailed to each candidate with ten (10) working days. Scores will not be provided except in writing and by mail.
 - (c) Hand scoring services are available from the FSBPT at the request of the candidate. The FSBPT may charge a fee for this service.
- (8) Retaking

(Rule 1150-01-.08, continued)

- (a) A candidate who fails the examination is eligible to repeat the licensure examination process described in this rule. An applicant who fails to qualify for licensure after a total of two (2) examination attempts, in any state, shall wait at least three (3) months after the last unsuccessful attempt before reapplying for examination.
 - (b) If the individual neglects, fails to pass, or refuses to take the examination within twelve (12) months after being deemed eligible to sit for the examination, the application shall be denied and the file shall be closed. However, such individual may thereafter, make a new application pursuant to Rule 1150-01-.04, 1150-01-.05, 1150-01-.07, and 1150-01-.08.
- (9) Remediation – Applicants who have twice failed the examination must obtain an Examination Performance Feedback report. This is a detailed diagnostic score report provided by the FSBPT for a fee. The applicant must develop a remediation plan. Such plan may be developed with the assistance of faculty at his/her accredited physical therapy educational program. The plan must outline the measures to be taken to address the weak areas, and must include the observation of physical therapy being practiced in a clinical setting for a minimum of twenty (20) hours during the three (3) month period described in subparagraph (8) (a).
- (a) The applicant must sign and submit the written plan for remediation to the Board prior to implementation of the plan,
 - (b) Plans developed with assistance of an accredited physical therapy educational program should contain the signature of the faculty member recommending the remediation plan.
 - (c) The Board's consultant or any Board member may preliminarily review and approve the written plan, and a final decision will be made at the next Board meeting.
 - (d) If the plan is preliminarily approved, it can be implemented. When the Board gives final approval to the plan, the applicant must complete the plan and submit a report to the Board detailing the completion of each element of the remediation plan. Applicants will only be allowed to retake the examination after the remediation process has been approved and completed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-301, 63-13-304, 63-13-306, and 63-13-307.
Administrative History: Original rule filed August 16, 1990; effective September 30, 1990. Repeal filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Amendment filed January 31, 2000; effective April 15, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed January 19, 2005; effective April 4, 2005. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed August 19, 2010; effective November 17, 2010.

1150-01-.09 RENEWAL OF LICENSE.

- (1) Renewal Application
 - (a) The due date for license renewal is the expiration date indicated on the licensee's renewal certificate.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

(Rule 1150-01-.09, continued)

www.tennesseeanytime.org

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (c) To be eligible for renewal, an individual must submit to the Division of Health Related Boards on or before the expiration date all of the following:
 1. A completed and signed board renewal application form; and
 2. The renewal and State regulatory fees as provided in Rule 1150-01-.06; and
 3. A statement attesting to the completion of continuing competence requirements, as provided in Rule 1150-01-.12.
 - (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-01-.10.
 - (e) Anyone submitting a signed renewal form or letter which is found to be untrue may be subjecting himself to disciplinary action as provided in Rule 1150-01-.15.
- (2) Reinstatement of an expired license may be accomplished upon payment of the reinstatement fee and the renewal fee as provided in Rule 1150-01-.06, and by submitting proof of completing continuing competence requirements as provided in Rule 1150-01-.12.
 - (3) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any Board member or the Board's designee.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-13-104, 63-13-108, 63-13-303, 63-13-304, 63-13-306 through 63-13-310, and 63-13-312 through 63-13-315. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 29, 2002; effective October 12, 2002. Amendment filed January 16, 2003; effective April 1, 2003.

1150-01-.10 PROVISIONAL LICENSE.

- (1) A provisional license shall be issued for an internationally educated applicant who has complied with all the licensure qualifications of Rule 1150-01-.04 except the supervised clinical practice period required by subparagraph 1150-01-.04 (3) (e).
- (2) A provisional license may be issued for a physical therapist or physical therapist assistant whose license has been retired or expired for greater than three (3) years and whose license is presently unencumbered with respect to disciplinary action.
- (3) An applicant or a licensee seeking a provisional license shall pay the nonrefundable Provisional License/Application fee and, if applicable, the State Regulatory fee, the Reinstatement fee, and the Reciprocity fee as provided in Rule 1150-01-.06 when submitting the application.
- (4) Duration of License

(Rule 1150-01-.10, continued)

- (a) For applicants who are internationally educated, provisional licenses are valid for no less than twelve (12) weeks and no more than forty-eight (48) weeks. The provisional license may not be renewed.
- (b) For physical therapists or physical therapist assistants whose licenses have been retired or expired for greater than three (3) years, provisional licenses are valid for a period of time as determined by the Board. The provisional license may not be renewed.
- (5) A physical therapist with a provisional license must work under the direct on-site supervision of a physical therapist who possesses an active, unencumbered license to practice physical therapy in Tennessee and who has completed a minimum of one (1) year of licensed clinical experience.
- (6) A physical therapist assistant with a provisional license must work under the direct on-site supervision of a physical therapist or physical therapist assistant who possesses an active, unencumbered license to practice as a physical therapist or as a physical therapist assistant in Tennessee and who has completed a minimum of one (1) year of licensed clinical experience.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-304, 63-13-307, 63-13-308 and 63-13-309.
Administrative History: Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009.

1150-01-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) A person who holds a current license and does not intend to practice as a physical therapist or physical therapist assistant in Tennessee may apply to convert an active license to inactive ("retired") status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:
 - (a) Obtain from the Board's administrative office an affidavit of retirement form; and
 - (b) Complete and submit the affidavit affirming that, while in retired status, the licensee will not practice or in any way indicate or imply that he holds an active Tennessee license or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed physical therapist or physical therapist assistant; or
 - (c) Submit a letter, which has been signed and notarized, requesting his license to be placed in retirement. Such letter must contain a statement indicating that the licensee understands that he can not practice or in any way indicate or imply that he holds an active Tennessee license or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed PT or PTA.
- (3) License holders whose licenses have been retired may reactivate their licenses in the following manner:
 - (a) Submit a written request for licensure reactivation to the Board's administrative office including a statement describing all relevant experiences education during the period of retirement or inactivity; and

(Rule 1150-01-.11, continued)

- (b) Pay the current licensure renewal fees and State regulatory fee as provided in Rule 1150-01-.06. If retirement reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will additionally require payment of the reinstatement fee as prescribed in Rule 1150-01-.06.
 - (c) Complete the continuing competence requirements, as provided in Rule 1150-01-.12.
- (4) Licensure reactivation applications shall be treated as licensure applications and review and decisions shall be governed by Rule 1150-01-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-308, and 63-13-309. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003.

1150-01-.12 CONTINUING COMPETENCE. ~~Continuing Competence. On January 1, 2003, the Board shall begin to notify applicants for renewal of continuing competence requirements as provided in T.C.A. §63-13-304(6). The Board shall require each licensed physical therapist and physical therapist assistant to participate in a minimum number of experiences to promote continuing competence for the twenty-four (24) months that precede the licensure renewal month. Beginning January 1, 2005, all applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.~~

Continuing Competence. The Board shall notify applicants for renewal of continuing competence requirements as provided in T.C.A. §63-13-304(6). The Board shall require each licensed physical therapist and physical therapist assistant to participate in a minimum number of experiences to promote continuing competence for the twenty-four (24) months that precede the licensure renewal month. Beginning January 1, 2005, all applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.

Formatted: Normal

- (1) The requirements for continuing competence are defined as planned learning experiences which occur beyond the entry level educational requirements for physical therapists and physical therapist assistants. Content of the experience must relate to physical therapy whether the subject is intervention, examination, research, documentation, education, management, or some other content area. The purpose of this requirement is to assist in assuring safe and effective practices in the provision of physical therapy services to the citizens of Tennessee.
- (2) For applicants approved for initial licensure by examination, successfully completing the requirements of Rules 1150-01-.04, .05, and .08, as applicable, shall be considered proof of sufficient competence to constitute compliance with this rule for the initial period of licensure except for the ethics and jurisprudence education requirements of paragraph (4). Applicants approved for initial licensure by examination must successfully complete four (4) hours of ethics and jurisprudence education during their initial period of licensure

~~(3) Twenty four (24) Month Requirement – Continuing competence credit is awarded for the clock hours spent in an activity as provided in paragraphs (5) and (6). Except as provided in paragraph (4), all required hours may be met through Class I activities. Except as provided in paragraph (4), any Class I activity without a stated maximum number of hours may be used to accrue all required hours.~~

Formatted: Font color: Red, Strikethrough

(3) Twenty-four (24) Month Requirement – Continuing competence credit is awarded for the clock hours spent in an activity as provided in paragraphs (5) and (6). Except as provided in paragraph (4), all required hours may be met through Class I activities. Except as provided in paragraph (4), any Class I activity without a stated maximum number of hours may be used to accrue all required hours. For purposes of Class I and Class II activities, the American

Formatted: Normal
Formatted: Normal, Indent: Left: 0.38", Hanging: 0.38"

(Rule 1150-01-.12, continued)

Physical Therapy Association or its sections, the Tennessee Physical Therapy Association, and accredited Tennessee schools of physical therapy and Tennessee physical therapy assistant schools are deemed to be appropriate continuing education unit (CEU) granting agencies and courses offered by these entities are deemed to be pre-approved.

(a) Physical Therapist – Thirty (30) hours are required for the twenty-four (24) months that precede the licensure renewal month.

~~1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5).~~

1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5), and only ten (10) may be acquired online.

2. Up to ten (10) of the thirty (30) hour requirement may be from Class II activities as provided in paragraph (6).

Formatted: Indent: Left: 1.25", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

~~(b) Physical Therapist Assistant – Twenty (20) hours are required for the twenty-four (24) months that precede the licensure renewal month.~~

~~1. At least ten (10) hours of the twenty (20) hour requirement must be from Class I activities as provided in paragraph (5).~~

~~2. Up to ten (10) hours of the twenty (20) hour requirement may be from Class II activities as provided in paragraph (6).~~

Formatted: Font color: Red, Strikethrough

Formatted: Font color: Red, Strikethrough

Formatted: Normal

(b) Physical Therapist Assistant – Thirty (30) hours are required for the twenty-four (24) months that precede the licensure renewal month.

1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5), and only ten (10) may be acquired online.

2. Up to ten (10) hours of the thirty (30) hour requirement may be from Class II activities as provided in paragraph (6).

Formatted: Not Strikethrough

Formatted: Normal

~~(4) Four (4) of the hours required in parts (3) (a) 1. and (3) (b) 1. consist of ethics and jurisprudence education courses. These four (4) hours are required every other twenty-four (24) month period.~~

(4) Four (4) of the hours required in parts (3) (a) 1. and (3) (b) 1. must consist of ethics and jurisprudence education courses. These four (4) hours are required every renewal cycle.

(a) Ethics and Jurisprudence – The Tennessee Physical Therapy Association (TPTA) is the sole approval entity for ethics and jurisprudence courses. All ethics and jurisprudence courses approved by the TPTA shall be deemed approved by the Board. Any ethics and jurisprudence course not approved by the TPTA will fail to meet the requirements of this rule. The TPTA shall only approve courses that are a minimum of two (2) hours each in duration. They shall be Class I continuing competence as provided in paragraph (5), and shall as a minimum include education in:

- 1. Ethics:
 - (i) APTA Code of Ethics;

(Rule 1150-01-.12, continued)

- (ii) APTA Guide for Professional Conduct;
 - (iii) APTA Standards for Ethical Conduct for the Physical Therapist Assistant;
 - (iv) APTA Guide for Conduct of the Physical Therapist Assistant;
 - (v) Model for ethical decision making; and
 - (vi) Case analysis.
2. Jurisprudence:
- (i) The Occupational and Physical Therapy Practice Act (Tennessee Code Annotated, Title 63, Chapter 13, Parts 1 and 3);
 - (ii) General Rules Governing the Practice of Physical Therapy (Official Compilation, Rules and Regulations, Chapter 1150-01);
 - (iii) Board of Physical Therapy Policy Statements;
 - (iv) Licensure process;
 - (v) Scope of practice;
 - (vi) Licensure renewal;
 - (vii) Disclosures to patients;
 - (viii) Offenses that may lead to disciplinary action;
 - (ix) Supervision of Physical Therapist Assistants;
 - (x) Supervision of Physical Therapy assistive personnel; and
 - (xi) Supervision of others (students, volunteers).
- (b) ~~Course approval — Aside from ethics and jurisprudence courses approved under subparagraph (a) above, the Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6) of this rule. It is the licensee's responsibility, using his/her professional judgment, to determine if the courses being taken are applicable, appropriate, and meet the requirements of this rule. However, TPTA must seek the Board's approval for offering ethics and jurisprudence courses by submitting the following information to the Board's office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:~~
- (b) Course approval — Aside from ethics and jurisprudence courses approved under subparagraph (a) above, and those pre-approved courses offered pursuant to paragraph (3) of this rule, the Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6) of this rule. It is the licensee's responsibility, using his/her professional judgment, to determine if the courses offered by other entities are applicable, appropriate, and meet the requirements of this rule. However, TPTA must seek the Board's approval for offering ethics and jurisprudence courses by submitting the

(Rule 1150-01-.12, continued)

following information to the Board's office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:

1. Course description or outline;
2. Names of all lecturers;
3. Brief resume of all lecturers; and
4. How certification of attendance is to be documented.

Each course approved by TPTA must be approved every twelve (12) months.

- (5) Class I acceptable continuing competence evidence shall be any of the following:
- (a) External peer review of practice with verification of acceptable practice by a recognized entity, e.g., American Physical Therapy Association. Continuing competence credit is twenty (20) hours per review with a maximum of one (1) review each twenty-four (24) month period.
 - (b) Internal peer review of practice with verification of acceptable practice. Continuing competence credit is two (2) hours per review with a maximum of two (2) reviews during each twenty-four (24) month period.
 - ~~(c) Courses, seminars, workshops, and symposia attended by the licensee which have been approved for continuing education units (CEUs) by appropriate CEU granting agencies.~~
 - ~~(c) Courses, seminars, workshops, and symposia attended by the licensee which have been pre-approved for continuing education units by appropriate CEU granting agencies.~~
 - ~~(d) Courses, seminars, workshops, and symposia attended by the licensee and approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., Chattanooga State Technical Community College, East Tennessee State University, etc.).~~
 - (d) Relevant and appropriate courses, seminars, workshops, and symposia attended by the licensee and approved by other State Boards of Physical Therapy, accredited schools of physical therapy and physical therapy assistant schools, or health-related nonprofit organizations. The Board or its designee retains the right to determine whether any submitted course complies with the requirements of this rule.
 - (e) Home study courses or courses offered through electronic media approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., U.T. Center for the Health Sciences, Volunteer State Community College), and that include objectives and verification of satisfactory completion.
 - (f) University credit courses - Continuing competence credit is twelve (12) hours per semester credit hour.

(Rule 1150-01-.12, continued)

- (g) Participation as a presenter in continuing education courses, workshops, seminars or symposia which have been approved by recognized health-related organizations. Continuing competence credit is based on contact hours and may not exceed twenty (20) hours per topic.
 - (h) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review. Continuing competence credit is ten (10) hours per event with a maximum of two (2) events each twenty-four (24) month period.
 - (i) Teaching a physical therapy or physical therapist assistant credit course when that teaching is an adjunct responsibility and not the primary employment. Continuing competence credit is based on contact hours not to exceed twenty (20) hours. If the same course is taught more than once, contact hours may only be counted once.
 - (j) Certification of clinical specialization by the American Board of Physical Therapy Specialties (ABPTS). Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which certification or recertification is awarded.
 - (k) Certification of clinical specialization by organizations other than the ABPTS (e.g. the McKenzie Institute, the Neuro Developmental Treatment Association, the Ola Grimsby Institute, etc.) may be recognized as continuing competence credit for up to twenty-six (26) hours, in the twenty-four (24) month period in which certification or recertification is awarded. The number of continuing competence credit hours awarded is determined by the Board.
 - (l) Awarding of an advanced degree from an accredited University. Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which the advanced degree is awarded.
 - (m) Participating in a clinical residency program. Continuing competence credit is five (5) hours credit for each week of residency with a maximum of twenty-six (26) hours per program.
- (6) Class II acceptable continuing competence evidence shall be any of the following
- (a) Self-instruction from reading professional literature. Continuing competence credit is limited to a maximum of one (1) hour each twenty-four (24) month period.
 - (b) Attendance at a scientific poster session, lecture, panel or symposium that does not meet the criteria for Class I. Continuing competence credit is one (1) hour per hour of activity with a maximum of two (2) hours credit each twenty-four (24) month period.
 - (c) Serving as a clinical instructor for an accredited physical therapist or physical therapist assistant educational program. Continuing competence credit is one (1) hour per sixteen (16) contact hours with the student(s).
 - (d) Acting as a clinical instructor for physical therapist participating in a residency program or as a mentor for a learner for a formal, nonacademic mentorship. Continuing competence credit is one (1) hour per sixteen (16) contact hours.
 - (e) Participating in a physical therapy study group consisting of two (2) or more physical therapists or physical therapist assistants. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.

(Rule 1150-01-.12, continued)

- (f) Attending and/or presenting in-service programs. Continuing competence credit is one (1) hour per eight (8) contact hours with a maximum of four (4) hours credit each twenty-four (24) month period.
 - (g) Serving the physical therapy profession as a delegate to the APTA House of Delegates, on a professional board, committee, or task force. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.
- (7) Unacceptable activities for continuing competence include, but are not limited to:
- (a) Attending courses regarding:
 1. Regulations of the United States Department of Labor's Occupational Safety and Health Administration (OSHA);
 2. Regulations of the Tennessee Department of Labor and Workforce Development's Division of Occupational Safety and Health (TOSHA);
 3. Cardiopulmonary resuscitation (CPR); and
 4. Safety;
 - (b) Meetings for purposes of policy decisions;
 - (c) Non-educational meetings at annual association, chapter or organization meetings;
 - (d) Entertainment or recreational meetings or activities; and
 - (e) Visiting exhibits.
- (8) Documentation of compliance

~~(a) Each licensee must retain documentation of completion of all continuing competence requirements of this rule for a period of five (5) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.~~

(a) Each licensee must retain completion documents, certificates, transcripts and syllabi of all continuing competence requirements of this rule for a period of five (5) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(b) Each sponsor or provider of CEUs must retain records of any CEU offered for a period of not less than five (5) years.

~~(c)(b) The licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing competence activities.~~

~~(d)(e) Any licensee who fails to complete the continuing competence activities or who falsely certifies completion of continuing competence activities may be subject to disciplinary action pursuant to T.C.A. §§ 63-13-304, 63-13-312, 63-13-313, and 63-13-315.~~

~~(e)(d) Examples of documentation~~

- Formatted: Normal
- Formatted
- Formatted: Normal
- Formatted
- Formatted: Normal
- Formatted: Normal, Indent: Left: 0.75", Hanging: 0.38"
- Formatted
- Formatted: Not Strikethrough
- Formatted: Font color: Red, Strikethrough
- Formatted: Not Strikethrough
- Formatted: Font color: Red, Strikethrough
- Formatted: Not Strikethrough
- Formatted: Font color: Red, Strikethrough

(Rule 1150-01-.12, continued)

1. A signed peer review report or an official program or outline of the course attended or taught or copy of the publication which clearly shows that the objectives and content were related to physical therapy and shows the number of contact hours, as appropriate. The information also should clearly identify the licensee's responsibility in teaching or authorship.
 2. A CEU certificate or verification of completion of home study which identifies the sponsoring entity, or a copy of the final grade report in the case of a University credit course(s), or specialization certificate, or proof of attendance with a copy of the program for the other acceptable Class I or II activities, or documentation of self-instruction from reading professional literature.
- (9) Reinstatement/Reactivation of an Expired or Retired License
- (a) Expired or retired for three (3) years or less – An individual whose license has expired or has been retired for three (3) years or less shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 - (b) Expired or retired more than three (3) years
 1. An individual whose license has expired or has been retired for more than three (3) years shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 2. The Board may, at its discretion, require additional education, supervised clinical practice, successful passage of examinations, or issue a provisional license.
- (10) The Board, in cases of documented illness, disability, or other undue hardship, may waive the continuing competence requirements and/or extend the deadline to complete continuing competence requirements. To be considered for a waiver of continuing competence requirements, or for an extension of the deadline to complete the continuing competence requirements, a licensee must request such in writing with supporting documentation before the end of the twenty-four (24) month period in which the continuing competence requirements were not met.

Authority: T.C.A. §§ 4-5-202, 4-5-204, ~~63-13-108~~, 63-13-304, 63-13-308, 63-13-309, and 63-13-311.
Administrative History: Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003. Amendment filed September 22, 2005; effective December 6, 2005. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed August 18, 2006; effective November 1, 2006. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010. Amendment filed December 2, 2014; effective March 2, 2015.

1150-01-.13 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning physical therapy services, the importance of the interests affected by the choice of a physical

(Rule 1150-01-.13, continued)

therapist and the foreseeable consequences of unrestricted advertising by physical therapists which is recognized to pose special possibilities for deception, require that special care be taken by physical therapists to avoid misleading the public. The physical therapist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by physical therapists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

(2) Definitions

- (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a physical therapist who is licensed to practice in Tennessee.
- (b) Licensee - Any person holding a license to practice physical therapy in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of physical therapists to serve his or her particular needs.
- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted Fee - Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

(3) Advertising Fees and Services

- (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed unless otherwise stated in advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
- (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.

(Rule 1150-01-.13, continued)

- (e) Time Period of Advertised Fees.
1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §§ 63-13-312 and 63-13-313.
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective patient.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality or competency of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of therapeutic procedures or products that involve significant risks without including:
 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 2. The availability of alternatives; and
 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.

(Rule 1150-01-.13, continued)

- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
 - (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
 - (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
 - (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
 - (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.

(Rule 1150-01-.13, continued)

- (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public communication.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-13-108, 63-13-302, 63-13-304, 63-13-310, 63-13-312, and 63-13-313. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed August 18, 2006; effective November 1, 2006.

1150-01-.14 CODE OF ETHICS. The Board adopts for licensed physical therapists, as if fully set out herein, and as it may from time to time be amended, the current "Code of Ethics" issued by the American Physical Therapy Association. The Board adopts for licensed physical therapist assistants, as if fully set out herein, and as it may from time to time be amended, the current "Standards of Ethical Conduct for the Physical Therapist Assistant" issued by the American Physical Therapy Association. Information to acquire copies may be obtained by contacting either of the following:

- (1) American Physical Therapy Association
1111 North Fairfax Street
Alexandria, VA 22314-1488
Telephone: (703) 684-2782
Telephone: (800) 999-2782
Fax: (703) 684-7343
T.D.D.: (703) 683-6748
Internet: www.apta.org
- (2) Board of Physical Therapy
665 Mainstream Drive
Nashville, TN 37243
Telephone: (615) 532-3202 ext. 25135
Telephone: (888) 310-4650 ext. 25135
Fax: (615) 532-5164
Internet: www.state.tn.us/health

Field Code Changed

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-104, 63-13-108, 63-13-302, and 63-13-304. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Original rule filed March 15, 1996; effective May 29, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed September 22, 2005; effective December 6, 2005. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly.

1150-01-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SCREENING PANELS.

- (1) Upon a finding by the Board that a physical therapist or physical therapist assistant has violated any provision of the T.C.A. §§ 63-13-101, et seq., or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
 - (a) Advisory Censure - This is a written action issued to the physical therapist or physical therapist assistant for minor or near infractions. It is advisory in nature and does not constitute a formal disciplinary action.
 - (b) Formal Censure or Reprimand - This is a written action issued to a physical therapist or physical therapist assistant on close scrutiny for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a physical therapist or physical therapist assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the license previously issued.
 - (e) Licensure Revocation - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. If revoked, it relegates the violator to the status he possessed prior to application for licensure. However, the Board may, in its discretion, allow the reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.
 - (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
 1. During any period of probation, suspension; or
 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
 4. As a stand-alone requirement(s) in any disciplinary order.
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.

(Rule 1150-01-.15, continued)

- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
- (b) Procedures
1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
 2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
 3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
 4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.

(Rule 1150-01-.15, continued)

5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(Rule 1150-01-.15, continued)

(c) Form Petition

Petition for Order of Compliance
Board of Physical Therapy

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights

(Rule 1150-01-.15, continued)

have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(Rule 1150-01-.15, continued)

(c) Form Petition

Petition for Order Modification
Board of Physical Therapy

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

(5) Civil Penalties.

(a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed.

(b) Schedule of Civil Penalties

1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted or authorized by the Board, guilty of a willful and knowing violation of the Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent,

(Rule 1150-01-.15, continued)

substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing as a physical therapist or physical therapist assistant without a permit, license, certification, or other authorization from the Board is one of the violations of the Physical Therapy Practice Act for which a Type A Civil Penalty is assessable.

2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board guilty of a violation of the Physical Therapy Practice Act or regulations promulgated pursuant thereto in such a manner as to impact directly on the care of patients or the public.
3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board guilty of a violation of the Physical Therapy Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to patients or the public, nor directly impact their care, but have only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties

1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 nor more than \$1,000.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public; and
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and

(Rule 1150-01-.15, continued)

- (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.
- (6) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-13-313.
- (7) Reconsiderations and Stays - The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.
- (8) Screening Panels - Any screening panel(s) established pursuant to Tennessee Code Annotated § 63-1-138:
- (a) Shall have concurrent authority with the Board members and any individual Physical Therapist or Physical Therapist Assistant designated by the Board pursuant to paragraph (6) of Rule 1150-01-.19, to do the acts enumerated in paragraph (6) of Rule 1150-01-.19 subject to the conditions contained therein.
 - 1. A screening panel(s) comprised of two (2) or more persons shall elect a chairperson prior to convening to conduct business.
 - 2. A screening panel(s) comprised of two (2) or more persons is required to conduct the informal hearings authorized in subparagraph (b) immediately below.
 - (b) After completion of an investigation by the Division, may upon request of either the state, or the licensee who is the subject of an investigation but only with the agreement of the state, or upon agreement of both the licensee and the state, conduct a non-binding informal hearing and make recommendations as a result thereof as to what, if any, terms of settlement of any potential disciplinary action are appropriate.
 - 1. Neither the Rules of Civil Procedure, the Rules of Evidence, nor Contested Case Procedural Rules under the Administrative Procedures Act shall apply in informal hearings before the screening panel(s). However, Rule 31 of the Rules of the Tennessee Supreme Court may serve as general guidance as to the principles of mediation and alternative dispute resolution.
 - (i) Evidence may be presented or received in any manner and in whatever order agreed upon by the parties.
 - (ii) In the absence of an agreement of the parties the screening panel chairperson shall determine the manner and order of presentation of evidence.
 - 2. A licensee who is the subject of an investigation being considered by a screening panel cannot be compelled to participate in any informal hearing.
 - 3. Proposed settlements reached as a result of any informal hearing will not become binding and final unless they are:
 - (i) Approved by a majority of the members of the screening panel which issued them; and

(Rule 1150-01-.15, continued)

- (ii) Agreed to by both the Department of Health, by and through its attorney(s), and the licensee; and
 - (iii) Subsequently presented to and ratified by the Board.
4. The activities of the screening panels and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act and shall remain confidential. The members of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the boards, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution or civil lawsuit which may result from or be incident to cases processed before them.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-304, 63-13-312, 63-13-313, and 63-13-314. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 29, 2002; effective October 12, 2002. Amendment filed September 8, 2004; effective November 22, 2004. Amendment filed February 2, 2007; effective April 18, 2007. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed September 24, 2009; effective December 23, 2009.

1150-01-.16 DUPLICATE (REPLACEMENT) LICENSE.

- (1) A license holder whose "artistically designed" license has been lost or destroyed may be issued a new license upon receipt of a written request in the Board's administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document, accompanied by a recent photograph, signed and notarized, and the required fee pursuant to Rule 1150-01-.06.
- (2) A license holder whose renewal certificate license has been lost or destroyed may be issued a new license upon receipt of a written request in the Board's administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document, accompanied by a recent photograph, signed and notarized, and the required fee pursuant to Rule 1150-01-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-104, 63-1-106, 63-13-104, 63-13-108, 63-13-304, and 63-13-303. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000.

1150-01-.17 CHANGE OF ADDRESS AND/OR NAME.

- (1) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Board his current mailing address, giving both old and new addresses. Such notification should be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and license number.
- (2) Change of Name - An individual registered with the Board shall notify the Board in writing within thirty (30) days of a name change. The notice shall provide both the old and new name, a notarized photocopy of the official document involved, and must reference the individual's profession and license number.

(Rule 1150-01-.17, continued)

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-108, 63-13-104, 63-13-108, 63-13-304, and 63-13-308.

Administrative History: Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000.

1150-01-.18 MANDATORY RELEASE OF CLIENT RECORDS.

- (1) Upon request from a client or the client's authorized representative, an individual licensed with this Board shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.
- (2) It shall be the provider's option as to whether copies of the records or a summary will be given to the client.
- (3) Requests for records shall be honored by the provider in a timely manner.
- (4) The individual requesting the records shall be responsible for payment of reasonable costs to the provider for copying and mailing of the records.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-1-102, 63-2-101, 63-2-102, 63-13-104, 63-13-108, 63-13-304, and 63-13-317. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000.

1150-01-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS.

- (1) Purpose of Board - The Board is charged by law with the responsibility of regulating the practice of physical therapy.
- (2) Board Meetings.
 - (a) The time, place, and frequency of Board meetings shall be at the discretion of the Board except at least one (1) meeting shall be held annually.
 - (b) Special meetings are called at the discretion of the Chair or at the request of two (2) members of the Board, provided all members are adequately notified.
 - (c) Three (3) members of the Board shall at all times constitute a quorum.
 - (d) Non-board members present at meetings may address the Board only on recognition by the chairperson.
 - (e) All meetings of the Board shall be open to the public.
- (3) The Board shall elect annually from its members the following officers:
 - (a) Chair - who shall preside at all Board meetings.
 - (b) Secretary - who shall preside in the absence of the chair and who along with the Board's Unit Director, shall be responsible for correspondence from the Board.
- (4) Responsibilities of the Board include, but are not limited to:
 - (a) Adopting and revising rules and regulations as may be necessary to carry out its powers and duties;

(Rule 1150-01-.19, continued)

- (b) Adopting and/or administering examinations;
 - (c) Denying, withholding, or approving the license of an applicant and renewing licenses pursuant to Rule 1150-01-.09;
 - (d) Appointing designees to assist in the performance of its duties; and
 - (e) Conducting hearings.
- (5) Board Conflict of Interest - Any Board member having an immediate personal, private, or financial interest in any matter pending before the Board shall disclose the fact in writing and shall not vote upon such matter.
- (6) The Board has the authority to select a Board consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
- (a) Recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
 - (b) Recommend whether and under what terms a complaint case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently ratified by the full Board before it will become effective.
 - (c) Undertake any other matters authorized by a majority vote of the Board.
- (7) Records and Complaints
- (a) All requests, applications, notices, other communications and correspondence shall be directed to the Board's administrative office. Any requests or inquiries requiring a Board decision or official Board action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the administrative office and presented to the Board at the meeting. Such documentation not timely received shall be set over to the next Board meeting.
 - (b) All records of the Board, except those made confidential by law, are open for inspection and examination under the supervision of an employee of the Division at the Board's administrative office.
 - (c) Copies of public records shall be provided to any person upon payment of the cost of copying.
 - (d) Complaints made against a licensed practitioner become public information upon the filing of a notice of charges.
- (8) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.

Authority: T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 4-5-223, 4-5-224, 63-1-117, 63-13-102 through 63-13-105, 63-13-108, and 63-13-304. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed June 10, 1999; effective August 24, 1999. Repeal and new rule filed March 16, 2000; effective May 30, 2000.

1150-01-20 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

- (1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:
 - (a) Conviction of any felony.
 - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 1. Sex.
 2. Alcohol or drugs.
 3. Physical injury or threat of injury to any person.
 4. Abuse or neglect of any minor, spouse or the elderly.
 5. Fraud or theft.
 - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-51-101, et seq., and Public Chapter 373 of the Public Acts of 1999. **Administrative History:** Original rule filed February 10, 2000; effective April 25, 2000.

1150-01-21 PROFESSIONAL PEER ASSISTANCE. As an alternative to disciplinary action, or as part of a disciplinary action, the Board shall utilize the services of a professional assistance program, as approved by the Board, for situations regarding licensee substance abuse, chemical abuse, or lapses in professional and/or ethical judgments. Information regarding persons entering the program upon referral by this Board shall be confidential.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-304, and 63-13-312. **Administrative History:** Original rule filed March 16, 2000; effective May 30, 2000.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Brigina T. Wilkerson	X				
Bethany R. Buttrey	X				
David Harris				X	
David Finch	X				
Minty R. Ballard	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 08/14/2015 (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: 04/24/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/15 (mm/dd/yy)

Date: 3/14/16

Signature: [Handwritten Signature]

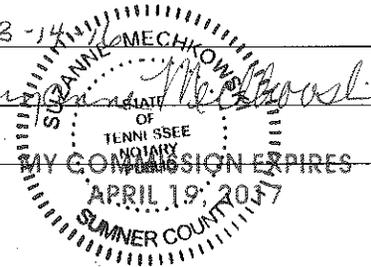
Name of Officer: Thomas Aumann
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 3-14-16

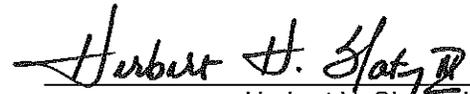
Notary Public Signature: [Handwritten Signature]

My commission expires on: _____



Tennessee Board of Physical Therapy
Rule 1150-01-.12
General Rules Governing the Practice of Physical Therapy
Continuing Competence

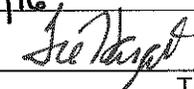
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
3/23/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/31/16

Effective on: 6/29/16


Tre Hargett
Secretary of State

RECEIVED
2016 MAR 31 PM 3:35
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Weights and Measures; New Fee and Licensing Structure

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 43-1-701, et. seq. requires that the department of agriculture establish fees for its regulatory programs through promulgation of rules under the UAPA. Tennessee Code Annotated Section 47-26-901, et seq. establishes that basic units of weight and measure, tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology shall govern weighing and measuring equipment and transactions in the state.

EFFECTIVE DATES: June 21, 2016, through June 30, 2017

FISCAL IMPACT: These rules will generate an additional seven hundred sixteen thousand one hundred twenty-three dollars (\$716,123) of revenue to the Agriculture Regulatory Fund. The additional revenue will cover approximately ninety-nine percent (99%) of the cost of providing weights and measures inspections services by the department, up from fifty-three percent (53%) cost recovery provided by the current fee structure.

STAFF RULE ABSTRACT: This rule creates a new division heading for the Tennessee Department of Agriculture's Weights and Measures program rules and creates a new fee and licensing structure for the program pursuant to amendments to Tennessee Code Annotated, Sections 43-1-703, 47-26-806, 47-26-909, 47-26-1008, and 47-26-1110.

Public Hearing Comments

The Department of Agriculture held a public hearing on October 30, 2015. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-01 Packaging and Labeling; 0080-05-08 Certified Public Weighers; 0080-05-09 Method of Sale of Commodities; 0080-08-01 Sales and Fees; 0080-08-02 Certified Public Weigher Regulations; 0080-08-03 Public Weighmaster Regulations; and 0080-08-04 Serviceperson Regulations. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Mr. Daniel Wanke, on behalf of the Surety & Fidelity Association of America (SFAA), indicated that SFAA members issue the vast majority of bonds that secure regulatory obligations. He further indicated SFAA's support for the rule's proposed requirement that certified public weighers post a \$25,000 surety bond incident to their application for licensure. However, SFAA opposes the proposed requirement that the bond be non-cancellable during the term of the license because non-cancellability would unnecessarily expose sureties to greater liability and affect the bonds' availability in the marketplace.

Response:

The Department appreciates Mr. Wanke's comments. Upon review, the Department elects to remove from this rule the bond requirement for certified public weigher licenses. In support of this amendment to the rule, the Department notes that it is unaware of any certified public weigher bond being called since the security requirement for the license was originally instituted by statute in 1981. Additionally, the Department has discovered that the proposed bond requirement of \$25,000 is likely insufficient to secure beneficiaries against damages likely to arise out of violations of the law. In light of this, the Department has determined that requiring licensees to acquire greater security for violations that have been seemingly unlikely to occur would unduly burden licensees seeking the license. Therefore, consistent with the legislature's amendment earlier this year to remove statutory bond requirements for this license, the Department elects to remove the license's bond requirements from its rules as well.

Comment:

Mr. Bob Wallace of Admiral Propane and the Tennessee Propane Gas Association offered his organizations' lack of opposition to fee increases for the annual device fee assessed on liquefied propane gas meters pursuant to T.C.A. §47-26-909. However, Mr. Wallace requested the Department's consideration for mandating annual inspections of liquefied propane gas meters and that those inspections be conducted prior to November 1 of each year so as to avoid inspection of meters during high demand periods for liquefied petroleum.

Response:

The Department appreciates Mr. Wallace's comments and support for this rule. The Department notes that it always strives to conduct inspection services at a time least inconvenient to licensees and the public, while also allowing that proper inspections be conducted. In this case, and with promulgation of this rule, it is also the Department's goal to provide LPG meter inspections on an annual basis. However, the Department believes that solidifying those goals in rule is ill-suited to address variables that change over time for both industry and the Department, e.g. reduced staffing of industry during warm weather months when industry staff will be needed to make LPG equipment available for testing and governmental budget fluctuations that could later decrease departmental staff available to conduct testing. For this reason, the Department acknowledges the comments and offers its agreement with their goals for this program. The Department is committed to meeting those goals, but declines to amend the rule in a manner that might in the future unreasonably obligate either industry or the Department.

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:

Businesses subject to the proposed rule include those that use commercial weighing and measuring equipment, or that employ certified public weigher(s), public weighmaster(s), or equipment servicepersons.

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

Approximately 1,869 weighmasters, 1,085 certified public weighers, and 986 servicepersons or service agencies are registered with the department. Additionally, approximately 8,000 small businesses that use commercial weighing and measuring equipment are registered with the department.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

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

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been reduced or increased in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (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:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

This rule is consistent with title 47, chapter 26, parts 8 – 11 of Tennessee Code for regulation and license and fee requirements of certified public weighers, commercial weights and measures equipment, public weighmasters and servicepersons.

- (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.

Exemption of small businesses from this rule may compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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)

No impact is expected on local governments.

9-15

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

For Department of State Use Only
Sequence Number: 03-12-16
Rule ID(s): 6138-6144
File Date: 3/23/16
Effective Date: 6/21/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@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
0080-05-01	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-05-08	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-05-09	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-08-01	Commodity Sales and Fees
Rule Number	Rule Title
0080-08-01-.01	Method of Sale of Commodities
0080-08-01-.02	Weights and Measures Equipment Fees
0080-08-01-.03	Metrology Fees

Chapter Number	Chapter Title
0080-08-02	Certified Public Weigher Regulations
Rule Number	Rule Title
0080-08-02-.01	License Application and Fees
0080-08-02-.02	Record of Shipment

Chapter Number	Chapter Title
0080-08-03	Public Weighmaster Regulations
Rule Number	Rule Title
0080-08-03-.01	License Application and Fees
0080-08-03-.02	Notice of Enforcement Action Against Licensee

Chapter Number	Chapter Title
0080-08-04	Serviceperson Regulations
Rule Number	Rule Title
0080-08-04-.01	Registration Application and Fees
0080-08-04-.02	Notice of Enforcement Action Against Registrant

New

Division 0080-08 Weights and Measures is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-08-01
Commodity Sales and Fees

0080-08-01-.01 Method of Sale of Commodities

The department adopts by reference, as if fully stated herein, the standards titled "Uniform Regulation for the Method of the Sale of Commodities" as published in the National Institute of Standards and Technology (NIST) Handbook 130 issued by the U.S. Department of Commerce, as it may be amended from time to time, provided that its Sections 2.19 Kerosene and 2.20 Gasoline-Oxygenate Blends are not adopted and shall not apply to methods of sale regulated by the department.

Authority: T.C.A. §§ 4-3-203; 47-26-909.

0080-08-01-.02 Weights and Measures Equipment Fees

Annual fee requirements for commercial weighing and measuring equipment in the state are assessed according to T.C.A. §43-1-703(f), and are as follows:

(1) Liquid measuring equipment.

- (a) Regular Flow. Regular flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A regular flow device is rated by its manufacturer as capable of measuring volumes dispensed at a rate less than 20 gallons per minute, or the metric equivalent. The fee for regular flow

SS-7039 (November 2014)

RDA 1693

liquid measuring devices is based on the number of grade selection buttons at the facility, as follows:

1. 1 – 6 grade selection buttons: Tier 1 fee;
2. 7 – 12 grade selection buttons: Tier 2 fee;
3. 13 – 18 grade selection buttons: Tier 3 fee;
4. 19 – 24 grade selection buttons: Tier 4 fee;
5. 25 – 30 grade selection buttons: Tier 5 fee;
6. 31 – 36 grade selection buttons: Tier 6 fee;
7. 37 – 54 grade selection buttons: Tier 7 fee;
8. 55 – 78 grade selection buttons: Tier 9 fee;
9. More than 78 grade selection buttons: Tier 10 fee.

(b) High Flow. High flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A high flow device is rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than or equal to 20 gallons per minute, or the metric equivalent.

1. 1 – 6 dispensers: Tier 3 fee;
2. More than 6 dispensers: Tier 6 fee.

(c) Liquefied Products. Liquefied products refer to liquid measuring equipment kept or used for measuring the following liquids sold at retail.

1. Liquefied Petroleum Gas Measuring Equipment: Tier 3 fee per meter;
2. Liquefied Natural Gas Measuring Equipment: Tier 6 fee per meter.

(d) Bulk Meters. The following fees apply to liquid measuring equipment kept or used for measuring liquids sold in non-retail transactions and liquid measuring meters mounted on vehicles.

1. Liquefied Petroleum Gas Bulk Meter: Tier 3 fee per meter;
2. Mass Flow Meter: Tier 11 fee per meter;
3. Vehicle Tank Meter: Tier 3 fee per meter;
4. Liquid Measuring Equipment – Wholesale, ≤ 100 gallons/minute: Tier 3 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate less than or equal to 100 gallons per minute, or the metric equivalent;
5. Liquid Measuring Equipment – Wholesale, > 100 gallons/minute: Tier 4 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than 100 gallons per minute, or the metric equivalent.

(2) Gaseous material measuring equipment. The following fees apply to devices kept or used for measuring gaseous materials sold in retail or non-retail transactions.

Compressed Natural Gas Measuring Equipment: Tier 6 fee per meter.

(3) Scales. The following fees are payable based on the number of scales used or kept in commerce.

- (a) Small Scales. Small scales mean weighing equipment rated by its manufacturer as capable of weighing up to 2,500 pounds, or the metric equivalent.
1. 1 – 5 small scales: Tier 1 fee;
 2. 6 – 20 small scales: Tier 4 fee;
 3. More than 20 small scales: Tier 6 fee.
- (b) Large Scales. Large scales mean weighing equipment rated by its manufacturer as capable of weighing 2,500 pounds or more, or the metric equivalent.
1. 1 – 2 large scales: Tier 4 fee;
 2. More than 2 large scales: Tier 6 fee.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-909.

0080-08-01-.03 Metrology Fees [RESERVED]

Chapter 0080-08-02
Certified Public Weigher Regulations

0080-08-02-.01 License Application and Fees

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
- (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a certified public weigher license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) An applicant for licensure under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.
- (5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-805; 47-26-806.

0080-08-02-.02 Record of Shipment

- (1) A certified public weigher shall prepare a record of shipment for any natural resource product sold by a producer or supplier. The certified public weigher shall prepare the record of shipment in writing prior to shipment of the natural resource product to its purchaser. The record of shipment shall contain the

following information:

- (a) Signature of the certified public weigher;
 - (b) Seal of the certified public weigher;
 - (c) Name of the supplier or producer;
 - (d) Name of the purchaser;
 - (e) Date of the transaction;
 - (f) Gross vehicular weight;
 - (g) License number(s) for the truck(s) on which the product is shipped; and
 - (h) The number of axles on each respective truck.
- (2) For each facility where a certified public weigher operates a scale or weight recording equipment, the certified public weigher shall maintain:
- (a) A file listing of all trucks weighed at the facility within the previous 12 months. For each truck included in the listing, the certified public weigher shall record the license number and the number of axles on the truck; and
 - (b) A copy of each record of shipment prepared by the certified public weigher within the previous 12 months.

Authority: T.C.A. §§ 4-3-203; 47-26-805.

Chapter 0080-08-03
Public Weighmaster Regulations

0080-08-03-.01 License Application and Fees

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
- (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address; and
 - (c) Proof of qualifications for a public weighmaster license.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a public weighmaster license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) An applicant for licensure under this chapter shall remit its application and biennial license fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the license fee by the following July 31, the applicant shall also be required to pay a \$25 late charge prior to renewal of the applicant's license.
- (5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1003; 47-26-1008; 47-26-1010.

0080-08-03-.02 Notice of Enforcement Action Against Licensee

Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to licensee's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1003.

Chapter 0080-08-04
Serviceperson Regulations

0080-08-04-.01 Registration Application and Fees

- (1) Application for registration as a serviceperson under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address;
 - (c) Proof of the applicant's registration in its state of incorporation, registration with the Tennessee Department of Revenue, or business license issued by a local governmental authority, if applicable;
 - (d) Name and address of applicant's registered agent for service of process, if any.
 - (e) Certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which applicant's competence is being registered;
 - (f) Certification by the applicant that the individual or agency has in possession or available for use, and shall use, all necessary testing equipment and standards, and proof that such testing equipment and standards have been certified by the department or by another state weights and measures laboratory that can show current traceability to the National Institute of Standards and Technology;
 - (g) Certification by the applicant that the individual or agency has full knowledge of all appropriate weights and measures laws, orders, rules, and regulations, and has a copy of the most recent edition of the National Institute of Standards and Technology (NIST) Handbook 44, or any subsequent document that replaces it; and
 - (h) Proof of qualifications for a serviceperson registration.
- (2) Registrants shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a serviceperson registration is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) The fee for a service agency registration is a Tier 3 biennial fee under T.C.A. §43-1-703(f).
- (5) An applicant for registration under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the registration period. Any registration issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the

registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's registration.

(6) The department may deny any application for registration that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1104; 47-26-1105; 47-26-1110; 47-26-1117.

0080-08-04-.02 Notice of Enforcement Action Against Registrant

Notice of an enforcement action against a registrant, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to registrant's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1117.

Repeal

Chapter 0080-05-01
Packaging and Labeling

Chapter 0080-05-01 Packaging and Labeling is repealed in its entirety.

**RULES
OF
TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF QUALITY AND STANDARDS**

**CHAPTER 0080-5-1
PACKAGING AND LABELING**

The Department of Agriculture adopts the standards titled "Uniform Packaging and Labeling Regulation" as adopted by the National Conference on Weights and Measures and published in the most recent version of the National Institute of Standards and Technology (NIST) Handbook 130 issued by the U. S. Department of Commerce.

Authority: T.C.A. §47-26-207. *Administrative History:* Original rule certified June 5, 1974. Repealed by Public Chapter 261; effective July 1, 1983. Repeal and new rule filed June 20, 1983; effective September 14, 1983. Repeal and new rule filed January 23, 1995; effective April 8, 1995.

Chapter 0080-05-08
Certified Public Weighers

Chapter 0080-05-08 Certified Public Weighers is repealed in its entirety.

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
MARKETING DIVISION**

**CHAPTER 0080-5-8
CERTIFIED PUBLIC WEIGHERS**

TABLE OF CONTENTS

0080-5-8-.01 Contents of the Record of Shipment 0080-5-8-.02 Maintenance of Records

~~0080-5-8-.01 CONTENTS OF THE RECORD OF SHIPMENT.~~

- ~~(1) The Record of Shipment, prepared by the certified public weigher to serve as the ticket for the purchaser, shall contain the following information:
 - ~~(a) The signature of the certified public weigher;~~
 - ~~(b) The seal of the certified public weigher;~~
 - ~~(c) The name of the supplier;~~
 - ~~(d) The name of the purchaser;~~
 - ~~(e) The date of transaction; and~~
 - ~~(f) The gross vehicular weight.~~~~

- ~~(2) The certified public weigher shall maintain within his easy access a file that contains a listing of all trucks regularly weighed at that facility. This file shall contain the following information and be updated on a regular basis:
 - ~~(a) The number of axles on the truck, and~~
 - ~~(b) The license number of the truck.~~~~

- ~~(3) A record of shipment must contain the number of axles and the license number of the particular truck in addition to the information required in paragraph (1) if the information is not contained in a file as provided in paragraph (2).~~

~~*Authority:* T.C.A. §§71-805 and 71-810. *Administrative History:* Original rule filed January 5, 1983; effective February 4, 1983.~~

~~0080-5-8-.02 MAINTENANCE OF RECORDS.~~

~~A copy of each record of shipment prepared by the certified public weigher shall be maintained on the plant site for at least one (1) year.~~

~~*Authority:* T.C.A. §§71-805 and 71-810. *Administrative History:* Original rule filed January 5, 1983; effective February 4, 1983.~~

Chapter 0080-05-09
Method of Sale of Commodities

Chapter 0080-05-09 Method of Sale of Commodities is repealed in its entirety.

**RULES
OF
TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF QUALITY AND STANDARDS**

**CHAPTER 0080-5-9
METHOD OF SALE OF COMMODITIES**

~~The Department of Agriculture adopts the standards titled "Uniform Regulation for the Method of the Sale of Commodities" as adopted by the National Conference on Weights and Measures and published in the most recent version of the National Institute of Standards and Technology, (NIST) Handbook 130 issued by the U.S. Department of Commerce, with the exception that the Department does not adopt Section 2.19-Kerosene, and 2.20-Gasoline-Oxygenate Blends.~~

Authority: T.C.A. §47-26-207. Administrative History: Original rule filed June 4, 1986; effective July 4, 1986. Repeal and new rule filed January 23, 1995; effective April 8, 1995.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 01/04/2016 (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: September 4, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). October 30, 2015

Date: Jan 4, 2016

Signature: Julius T. Johnson

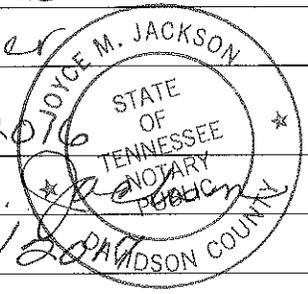
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: Jan 4, 2016

Notary Public Signature: [Signature]

My commission expires on: 09/11/2016



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

3/15/2016
Date

Department of State Use Only

RECEIVED
 2016 MAR 23 AM 11:48
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

[Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Fee Schedules for Licenses Under Department of Agriculture's Plant Certification Program; Tennessee Plant Pest Act Regulations

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 43-6-104 and 43-1-701 et seq.

EFFECTIVE DATES: June 22, 2016 through June 30, 2017

FISCAL IMPACT: The agency reports that the proposed rules are expected to generate an additional two hundred thirty-two thousand two hundred dollars (\$232,200) of revenue to the Agricultural Regulatory Fund. The additional revenue will help cover approximately fifty-three percent (53%) of the cost of providing plant certification inspection services by the department, up from forty-two percent (42%) cost recovery provided by the current fee structure.

STAFF RULE ABSTRACT: This rule reorganizes, retitles, clarifies, and simplifies the previous requirements of the Tennessee Plant Pest Act regulations. It requires additional information from license applicants in order to verify their businesses and contact information. The rule also amends fee schedules for licenses issued under the Department of Agriculture's plant certification program pursuant to amendments to Tennessee Code Annotated, Sections 43-1-703 and 43-6-101 et seq.

Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-06-01 Plant Sales and Distribution; 0080-06-21 Administrative Fees; 0080-06-25 Civil Penalty Matrix; and 0080-06-26 Rules and Regulations Governing Quarantine of Sudden Oak Death. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Mr. Nathan Stilley, Mr. Jon Flanders, and others, objected to the license fee structure as proposed in the rule's notice of rulemaking hearing. They maintain that the fee increase is too large and too disparate across firms of similar size. Mr. Stilley contends that the fee increase is untimely because the last license fee increase occurred recently.

Response:

The Department appreciates Mr. Stilley's, Mr. Flanders', and others' concerns and finds merit regarding the fee amounts and their previously proposed gradation among firms in the industry. For this reason, the fee increases and the categories of firms affected have been revised to narrow both the range of fee amounts required and the gradation of fees among firms.

Notwithstanding this change in the rule, the Department notes that license fees for plant certification programs were last increased in 2002. Since that time, the Department has been called upon for consecutive and significant budget cuts. The Department believes that further cuts to the plant certification section programs may unduly increase the risk of pests, pest plants, and disease in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time.

The current cost recovery for plant certification programs from license fees is approximately 42%. Changes included in this rule are anticipated to increase that recovery to 53%. While no fee increase is ever desired, the Department believes this middle-ground increase is an appropriate balance to provide needed funds to departmental programs while also not creating an even greater burden on licensees to bridge the remaining cost gap. The Department also believes that the schedule of fees created by this rule appropriately reflects the amount of time and resources the Department commits to providing regulatory services to individual firms.

Comment:

Mr. Jon Flanders stated his desire for the Department to receive greater appropriations from the state budget to offset fee increases for affected firms.

Response:

The Department appreciates Mr. Flanders' support for its programs.

Comment:

Representative Judd Matheny and Mr. Travis Wanamaker, on behalf of the Middle Tennessee Nursery Association, and Kim Holden, on behalf of the Tennessee Nursery and Landscape Association, offered their support for the rule as amended. Rep. Matheny and Mr. Wanamaker stated their appreciation for the Department's efforts to account for the needs this rule is intended to meet.

Response:

The Department appreciates Rep. Matheny's, Mr. Wanamaker's, and Ms. Holden's comments. The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

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:

Businesses subject to the proposed rule include greenhouses, nurseries, plant dealers, florists, landscapers, wild plant collectors, and any business requiring certification of sweet potato plants or turfgrass, as well as any plant related business requiring a compliance agreement for movement of their plants or products.

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

Approximately 3,400 affected firms will be subject to the proposed rule.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

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

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been adjusted in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (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:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

This rule is consistent with 7 U.S.C.A. §7711, et seq. for federal requirements regarding movement of plants. Most states maintain similar requirements to the requirements of this rule for restrictions on movement of plants or materials harboring pests, pest plants, or disease.

- (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.

Exemption of small businesses from this rule may expose the state to greater risk of pests, pest plants, and disease, and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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)

No impact is expected on local governments.

24-27

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

For Department of State Use Only

Sequence Number: 03-18-16
 Rule ID(s): 6154-6157
 File Date: 3/24/16
 Effective Date: 6/22/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@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
0080-06-01	Plant Sales and Distribution
Rule Number	Rule Title
0080-06-01-.01	Scope
0080-06-01-.02	Definitions
0080-06-01-.03	License, Certificate, and Packing Requirements
0080-06-01-.04	License Application and Fees
0080-06-01-.05	Inspections
0080-06-01-.06	Requirements of Licensees
0080-06-01-.07	Violations
0080-06-01-.08	Compliance Agreements
0080-06-01-.09	Repealed
0080-06-01-.10	Repealed
0080-06-01-.11	Repealed
0080-06-01-.12	Repealed
0080-06-01-.13	Repealed
0080-06-01-.15	Stop Movement Orders
0080-06-01-.16	Repealed
0080-06-01-.17	Repealed
0080-06-01-.18	Repealed

0080-06-01-.19	Repealed
0080-06-01-.20	Repealed
0080-06-01-.21	Repealed

Chapter Number	Chapter Title
0080-06-21	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-25	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-26	Rules and Regulations Governing Quarantine of Sudden Oak Death (Phytophthora Ramorum)
Rule Number	Rule Title
0080-06-26-.12	Penalty

Amendments

Division 0080-06 ~~Division of Regulatory Services~~ is amended by re-titling the division "Plant Certification".

Authority: T.C.A. §4-3-203.

Chapter 0080-06-01 ~~Regulations Governing Nurseries, Dealers and Agents~~ is amended by re-titling the chapter "Plant Sales and Distribution".

Authority: T.C.A. §4-3-203.

Rule 0080-06-01-.01 Regulations is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
REGULATIONS GOVERNING NURSERIES, DEALERS AND AGENTS Plant Sales and Distribution

0080-06-01-.01 ~~REGULATIONS~~ Scope

- (1) ~~These regulations shall apply to all nursery stock as defined in the "Tennessee Plant Pest Act," T.C.A. 43-6-101, et seq., except such classes of plants or plant material as may be made the subject of special regulations under the authority and provision of said Act. This chapter applies to any person who grows or keeps plants for sale or distribution. This chapter also applies to any person who owns or possesses any live organism, regulated article, or other material determined by the department to be capable of harboring pests, pest plants, or disease.~~
- (2) ~~Persons licensed under this chapter shall be responsible for permitted operations until the applicable license expires or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license under this chapter.~~
- (3) ~~Licenses issued under this chapter are not transferable from person to person.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.02 ~~DEFINITIONS~~ Definitions

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Plant Pest Act, T.C.A. §43-6-101, et seq.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Plant Pest Act, compiled at T.C.A. §43-6-101, et seq.;
 - (b) Annual plants mean plants or parts of plants that perform their entire life cycle from seed to flower to seed within a single growing season. All roots, stems, and leaves of annual plants die annually, and only their dormant seed bridges the gap between one generation of annual plants and the next;
- (1) ~~(c)~~ "Certificate" and certification means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that any nursery stock, a plant, product, shipment or other officially regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal regulatory requirements. Such documents Certificates are known by the purpose for their issuance: which they were issued, e.g. Phytosanitary Certificate (for the purpose of verifying compliance with phytosanitary [quarantine] requirements), etc.; Nursery Stock Certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals, etc. (for the purpose of verifying compliance with registration or certification requirements).
- (2) ~~"Certification" means the act (by a duly authorized regulatory official of the Department of Agriculture) of affirming, declaring, or verifying compliance with phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal requirements.~~
- (3) ~~"Collected Plants" refers to non-cultivated or feral plants gathered from the environment.~~
- (4) ~~"Consignee" means any person to whom any plant, nursery stock, horticultural product, agricultural commodity, or plant product is shipped for handling, sale, resale, or any other purpose.~~
- (5) ~~"Consignor" means any person who ships or delivers to any consignee any plant, nursery stock, horticultural product, agricultural commodity or plant product for handling, planting, sale, resale, or any other purpose.~~
- (d) Compliance agreement means a voluntary agreement between the department and a person regarding certification of plants or regulated articles for their lawful movement to a particular state or location;
- (6) ~~"Infected" means any article, nursery stock, plant, or product that has been determined by the Department of Agriculture to be contaminated with an infectious, transmissible, or contagious pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.~~
- (7) ~~(e)~~ "Infested" means a pest is present contaminated with pest or infected with disease or the article, nursery stock, plant, or product was so exposed to infestation pest or disease that it would be reasonable to believe an infestation exists contamination or infection can reasonably be expected to occur;
- (8) ~~(f)~~ "Landscaper(s)" includes, but is not limited to, means any person(s) who keeps at a premises, or procures for transplantation, nursery stock for installation on the property of another person on a commercial basis moves and installs plants or who advertises or solicits business for the movement and installation of plants in the state;

- (9) ~~(g) "Move", distribute, ship, transport, or words of similar import means to ship, offer for shipment, receive for transport, carry, or in any manner relocate a regulated article from one place to another, relocate, or to offer to relocate, in any manner an item from one real property to another;~~
- (10) ~~"Native Wild Plants" means uncultivated plants that are collected or dug up in the wild. A plant that has been collected or dug up that is brought into a nursery setting and cultivated for a minimum of one growing season shall be considered a nursery plant.~~
- (h) Not primarily engaged in the business of producing and selling plants or seedlings means that revenue received in the previous calendar year for the sale or production of plants does not exceed 15% of gross revenue from farm operations during that period, as shown on applicable federal tax return documents;
- (11) ~~"Package" means a plant or shipment of plants that, having been separated to form a single unit, would be identifiable to a particular certificate holder by an invoice or accompanying certificate.~~
- (12) ~~(i) "Person" means an individual, firm partnership, or corporation, or any other form of legal entity;~~
- (13) ~~"Plant" means any part of a plant, tree, plant product, shrub, vine, fruit, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit.~~
- (14) ~~(j) "Pest" or disease means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm that is injurious to agriculture or the environment:~~
- (a) Any infectious, transmissible, or contagious disease of any plant, or any disorder of any plant. Pest or disease includes insect pests and plant diseases as defined under the Act and may also include any form of animal or plant life; any infectious plant disease; or any plant disorder that manifests symptoms or behavior which, after an investigation and a hearing, is determined by a duly constituted any federal, or state or local pest prevention agency to be characteristic of an infectious disease, transmissible, or contagious disease.
- (b) Any form of animal life.
- (c) Any form of plant life.
- (15) ~~(k) "Pest plants" means any plant species, and parts thereof that might be used for propagation, which are that is injurious to the agricultural, horticultural, silvicultural, or other interests of the state;~~
- (l) Plant means nursery stock, annual plants, wild plants, or any part of nursery stock, annual plants, or wild plants. Exceptions: the definition of plant does not include any harvested fruit, nut, or vegetable; cut flower; or non-rooted part of a plant that is incapable of propagation; however, such parts of a plant may be determined by the department to be regulated articles under certain circumstances;
- (16) ~~(m) "Quarantine" means a legal instrument duly imposed or enacted by the Department of Agriculture as a means of mitigating pest risk. These actions include, but are not limited to: confinement or restriction of entry, movement, shipment, or transportation of plants known or suspected to be infected or infested with regulated pests; the restriction of movement of infested plants, pest plants, or regulated articles by a duly authorized federal or state regulatory official for the purpose of mitigating risks associated with pests, pest plants, or disease;~~
- (n) Regulated article means any item or material, biological or otherwise, that is determined by the department to support or to be capable of supporting the dissemination of any pest, pest plant, or disease;
- (17) ~~(o) "Stop Movement Order" means a written directive, issued by a duly authorized federal or state regulatory official, to a person who owns or controls any appliance, nursery stock, plant, plant product, or other article, which is determined to be or is likely to be infested with regulated pest(s), such that movement from one location to another is prohibited, except as otherwise prescribed in the directive. to prohibit or limit the movement of plants or regulated articles;~~

- (p) Wild plants mean uncultivated, feral plants or parts of plants that are gathered from the environment and are capable of propagation. A wild plant that is cultivated for at least one growing season shall be considered nursery stock and not a wild plant.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.03 Inspection of Sales/Transport is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.03 INSPECTION OF SALES/TRANSPORT License, Certificate, and Packing Requirements

- (1) No nursery stock and other rooted plants or propagating materials shall be sold, offered for sale, or transported within or into in the state of Tennessee unless it has been inspected and the owner of same holds a copy of a valid certificate or license from a duly authorized federal or state regulatory official is affixed to the plant, its shipment, or its invoice affirming that said nursery stock the plant is true to its name (scientific and/or approved common name) and apparently free of insect pests, pest plants, and/or plant diseases.
- (2) Any person or firm selling nursery stock on a wholesale basis must obtain a valid Nursery, Greenhouse, Florist, Native Wild Plant, Certified Sod, Plant Dealer, or Landscaper Certificate from the person or firm that is purchasing nursery stock, other plants, or propagating material. These records shall be kept for a minimum of three years. No nursery stock or annual plant shall be transported with a wild plant in the same package or lot unless the wild plant is individually packaged or segregated.
- (3) Certificates and Licenses.
- (a) Unless otherwise stated, all licenses issued under this chapter shall serve as certification that plants and plant parts sold or held by the licensee are apparently free of pests, pest plants, and disease.
- (b) Certificates or licenses issued for wild plants shall be separate and distinct from certificates or licenses issued for nursery stock or annual plants.
- (c) Each use of a certificate or license after its expiration shall constitute a separate violation of this chapter.
- (d) Each use of a certificate or license that is falsified in any manner or that is used in any manner to falsify the contents of a shipment or lot of plants shall constitute a separate violation of this chapter.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.04 Application is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.04 APPLICATION License Application and Fees

All persons desiring certification of nursery stock and other plants or propagating materials shall make application to the Commissioner, Tennessee Department of Agriculture by or before September 30 of each calendar year. All

persons desiring certification of stock grown in greenhouses (greenhouse stock) shall make application to the Commissioner, Tennessee Department of Agriculture by or before December 31 of each calendar year. Applicants may be required to furnish information as to the amounts and kinds of stock for which application for certification is made, and locations where such stock is being grown or held. In the case of native wild plants, applicants may be required to furnish information as to the kinds to be collected and the area from which collections will be made. Applicants must also furnish any other information necessary for inspection and certification.

- (1) All persons to whom these rules apply shall obtain a license in accordance with this chapter.
- (2) Application for any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Date of birth for any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:
 1. Applicant's registration in its state of incorporation;
 2. Applicant's registration with the Tennessee Department of Revenue; or,
 3. Applicant's business license issued by a local governmental authority;
 - (d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, address of the principal place of business, and address of the facility to be licensed;
 - (e) Name and address of applicant's registered agent for service of process, if any;
 - (f) Identification of plants intended to be grown and sources of plants intended to be kept for sale or distribution during the licensure year;
 - (g) Other information as necessary for departmental certification of plants or regulated articles.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) Applicants for licensure shall include with their application payment of an annual license fee as appropriate for the following categories of licenses.
 - (a) Greenhouse License. A greenhouse license is required for each location where a person uses a greenhouse to grow or propagate nursery stock or annual plants for sale or distribution on a commercial basis. The annual fee for a greenhouse license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the total growing or propagating area for plants under greenhouse structure(s), as follows:
 1. Less than 600 square feet: Tier 4 fee;
 2. 600 to 1,000 square feet: Tier 6 fee;
 3. 1,001 to 25,000 square feet: Tier 7 fee;
 4. More than 25,000 square feet: Tier 9 fee.
 - (b) Nursery License. A nursery license is required for each location where a person grows or propagates nursery stock or annual plants for sale or distribution on a commercial basis. The

annual fee for a nursery license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the total growing or propagating area for plants, as follows:

1. Less than 600 square feet: Tier 4 fee;
2. 600 square feet to one acre: Tier 6 fee;
3. More than one acre to 25 acres: Tier 7 fee;
4. More than 25 acres: Tier 9 fee.

(c) Plant Dealer License. A plant dealer license is required for each location where a person who is not the original grower of nursery stock or annual plants sells, offers for sale, distributes, or holds the plants for distribution on a commercial basis. The annual fee for a plant dealer license is assessed under T.C.A. §43-1-703(f) and is determined according to the size of the area where plants are sold, offered for sale, distributed, or held for distribution, as follows:

1. Less than 100 square feet: Tier 2 fee;
2. 100 to 1,000 square feet: Tier 7 fee;
3. More than 1,000 square feet: Tier 10 fee.

(d) Florist License. A florist license is required for each location where a person otherwise subject to licensure as a plant dealer is engaged in business as a florist. The fee for a florist license is a Tier 2 annual fee under T.C.A. §43-1-703(f).

(e) Landscaper License. A landscaper license is required for any person engaged in business as a landscaper. The fee for a landscaper license is a Tier 6 annual fee under T.C.A. §43-1-703(f).

(f) Wild Plant Collector License. A wild plant collector license is required for any person who acquires wild plants to be grown or kept for sale or distribution on a commercial basis. The fee for a wild plant collector license is a Tier 5 annual fee under T.C.A. §43-1-703(f).

(g) Sweet Potato License. A sweet potato license is required for any person who sells, offers for sale, distributes, holds for distribution, or holds as certified stock on a commercial basis any viable sweet potato plant or plant part. The fee for a sweet potato license is a Tier 5 annual fee under T.C.A. §43-1-703(f).

(h) Turfgrass License. A turfgrass license is required for any person who sells, offers for sale, distributes, or holds for distribution turfgrass sod on a commercial basis. A turfgrass license issued under this part shall serve as departmental certification that turfgrass sod sold or held by the licensee is apparently free of pests, pest plants, disease, weeds, and other grasses. The fee for a turfgrass license is a Tier 5 annual fee under T.C.A. §43-1-703(f).

(i) Educational/Nonprofit Plant Organization License. An educational/nonprofit plant organization license may be issued to any person in lieu of any license otherwise required under this chapter. A person may be eligible for an educational/nonprofit plant organization license if the person operates primarily as an educational or nonprofit organization. There is no fee for an educational/nonprofit plant organization license; however, proof of the licensee's valid status as an educational or nonprofit organization in the person's state of incorporation may be required by the department prior to issuing the license.

(j) The fee for any license under this chapter shall be waived for any licensee not primarily engaged in the business of producing and selling plants or seedlings.

(5) It is the intent of the department that licensees not be unduly required to pay multiple license fees under this chapter. In order to minimize requirements for multiple licenses, the department may, in lieu of requiring separate licensure for ancillary plant operations, determine in its discretion the primary business of any licensee and aggregate under the fee structure of that business license category any additional

areas of the licensee's ancillary operations where plants are grown, sold, offered for sale, distributed or held for distribution on a commercial basis.

- (6) The fee for nematode sample analysis is a Tier 1 fee under T.C.A. §43-1-703(f). No nematode sample analysis shall be conducted by the department prior to receipt of the analysis fee.
- (7) The fee for phytosanitary certificates shall be equivalent to those of the United States Department of Agriculture, Animal Health Inspection Service (USDA APHIS), as set in 7 C.F.R. §354.3.
- (8) An applicant for licensure under this chapter shall remit its application and annual license fee to the department on or before July 1 of each year. All licenses issued under this chapter shall expire on June 30 following their issuance. If an applicant for renewal fails to remit payment of the license fee on or before July 16 of the licensure year for which renewal is sought, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the applicant's license.
- (9) Applications for licensure may be denied where applicants do not undergo prior to the licensure year an adequate inspection of their plants necessary for certification. Applicants are encouraged to notify the department as early as possible of their intention to seek licensure so that adequate inspection of plants can be conducted prior to the licensure year.
- (10) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-6-106; 43-6-113.

Rule 0080-06-01-.05 Inspections of Nurseries is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.05 INSPECTIONS OF NURSERIES-Inspections

- (1) Each nursery shall be inspected for injurious pests by the Commissioner at least once each year and as often as individual circumstances warrant and require. Scope of inspections. The department may enter any property or location during normal business hours where the department has reason to believe that plants are being grown or kept for sale or distribution. The department may enter such place for the purposes of inspecting any plant or regulated article as necessary for the prevention or mitigation of pests, pest plants, and disease or for the purposes of examining and copying records necessary to determine compliance with this chapter. Inspection shall include the examination of only such plants, regulated articles, facilities, inventory, records, and invoices as are necessary to determine compliance with the Act and this chapter.
- (2) Fields in which nursery stock is being grown shall be maintained essentially free of weeds and grasses. Failure or refusal to maintain fields or blocks in such condition shall be grounds for refusal of inspection and certification. Sampling receipts. If the department obtains a sample in the course of any inspection, the department shall provide to the person inspected, or his agent, a receipt describing the samples obtained.
- (3) It shall be the nursery's responsibility to furnish adequate lighting adequate for the effective inspection of

~~packing sheds, storage areas, or other indoor areas where nursery stock is inspected. Refusal or failure to provide such lighting shall be grounds for refusal of inspection and certification. Frequency of inspections. Inspections shall be commenced and completed with reasonable promptness. The department shall notify the person inspected, or his agent, upon completion of any inspection conducted. The department shall conduct inspections of persons under this chapter as often as the department deems necessary for the prevention or mitigation of pests, pest plants, and disease.~~

- ~~(4) If the inspection shows that the nursery is essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee and payment for penalties, if applicable, a certificate affirming this fact shall be issued. Such certificates shall expire on September 30 of each year.~~
- ~~(5) If the inspection of a nursery reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- ~~(6) If the owner of such infested or infected plant material neglect [sic] or refuses to carry out the order for treatment or destruction, certification of the nursery shall be denied; or, if such nursery already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.06 Inspection of Greenhouses is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.06 INSPECTION OF GREENHOUSES Requirements of Licensees

- (1) ~~Each greenhouse shall be inspected for injurious pests by the Commissioner at least once each year and as often as individual circumstances warrant and require. Persons subject to this chapter shall:~~
- ~~(a) Maintain their establishment and operation in a manner necessary to show that plants in their possession are apparently free of pests, pest plants, and disease;~~
 - ~~(b) Maintain records and invoices of any plant sold, offered for sale, distributed, or held for distribution in the state within the previous three years. Such records must be sufficient to show that the plant was received from a certified source and compliant with any applicable quarantine;~~
 - ~~(c) Maintain areas where plants are being grown or kept so as to be readily accessible for inspection;~~
 - ~~(d) Provide lighting necessary for adequate inspection of all plants and areas where plants may be grown or held;~~
 - ~~(e) Provide full access to facilities, inventory, records, and invoices necessary to departmental inspection;~~
 - ~~(f) Comply with any order issued by the department for the prevention or mitigation of pests, pest plants, or disease; and,~~
 - ~~(g) Give full information as to the source of plants currently or previously held in their possession.~~
- (2) ~~If the inspection reveals that the greenhouse is essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee, and payment for penalties, if applicable, a certificate affirming this fact shall be issued. Persons subject to this chapter shall not:~~

- (a) Engage in business or activity for which a license is required under this chapter without first securing the applicable license from the department;
 - (b) Sell, offer for sale, or move any plant in violation of the Act or this chapter;
 - (c) Sell, offer for sale, or move any plant previously received without a valid license or certificate affirming the plant to be apparently free of pests, pest plants, and disease;
 - (d) Move or allow movement of any regulated article or other material determined by the department to be capable of harboring pests, pest plants, or disease without first receiving a valid license, certificate, or other written authorization from the department for movement of the item;
 - (e) Interfere with an authorized representative of the department in the performance of his duties;
 - (f) Violate any federal or state quarantine of plants, regulated articles, or other material;
 - (g) Violate a compliance agreement to which the department is a party; or,
 - (h) Sell, offer for sale, move, or allow movement of any apparently infested material.
- (3) ~~Such certificates shall expire on December 31 of each year.~~
- (4) ~~If the inspection of a greenhouse reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (5) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification of the greenhouse shall be denied; or, if such greenhouse already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.07 Inspection of Collected Plant Dealers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.07 INSPECTION OF COLLECTED PLANT DEALERS. Violations

- (1) ~~The range from which plants are collected may be inspected for injurious pests during the growing season. At least once a year, during the packing and shipping season and as often as individual circumstances warrant and require, the collected plants present will be inspected for injurious pests. Violations of the Act or this chapter are punishable against any person when committed by either the person or his agent.~~
- (2) ~~If the inspection shows that the collected plants are essentially free of insect pests, pest plants, and/or plant diseases, and the firm submits the appropriate application, certification fee, and payment for penalties, if applicable, a certificate affirming this fact shall be issued. Each violation of the Act or this chapter is grounds for issuance of stop movement order(s) against any plant, regulated article, or other material held by the violator or his agent; denial or revocation of any license issued under this chapter; actions for injunction; and imposition of civil penalties or criminal charges against the violator.~~
- (3) ~~Such certificates shall expire on September 30 of each year.~~
- (4) ~~The certificate issued for collected plants shall be separate and distinct from that issued for nursery-~~

grown stock.

- (5) ~~If the collected plant inspection reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (6) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the collected plant dealer shall be denied; or, if such collected plant dealer already holds a certificate, such certificate shall be revoked.~~
- (7) ~~Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.08 Inspection of Plant Dealers or Landscapers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.08 INSPECTION OF PLANT DEALERS OR LANDSCAPERS. Compliance Agreements

- (1) ~~Plant dealers or landscapers may be inspected for injurious pests by the Commissioner as often as individual circumstances warrant and require. Any breach of a compliance agreement shall constitute a separate violation of this chapter.~~
- (2) ~~If the plant dealer or landscaper completes and submits the appropriate application, certification fee, and payment for penalties, if applicable, a Nursery Plant Dealer certificate shall be issued. Compliance agreement certification fees.~~
 - (a) Licensees. Departmental fees for compliance agreement certification shall be waived for any person licensed under this chapter.
 - (b) Non-licensees. The fee for compliance agreement certification for persons not licensed under this chapter is a Tier 3 annual fee under T.C.A. §43-1-703(f). Nonpayment of the compliance agreement certification fee shall be grounds for immediate rescission of any compliance agreement.
- (3) ~~Such certificates shall expire on September 30 of each year. Revocation of any license issued under this chapter shall be grounds for immediate rescission of any compliance agreement to which the licensee or the department is a party.~~
- (4) ~~If the inspection of a plant dealer or landscaper reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- (5) ~~If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the nursery plant dealer shall be denied; or, if such plant dealer or landscaper already holds a certificate, such certificate shall be revoked.~~
- (6) ~~Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-01-.15 Seizure of Stock is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Chapter 0080-06-01
Plant Sales and Distribution

0080-06-01-.15 SEIZURE OF STOCK. Stop Movement Orders

- (1) ~~Nursery stock, other plants, or propagating material found to be infested by an insect pest, pest plant, and/or infected by a plant disease while being moved in, into, or from the state, or being moved in violation of any section of the Plant Pest Act or any of the regulations promulgated thereunder, shall be seized, and a stop movement order placed on the items by the Commissioner. The owner of such seized stock, at the discretion of the Commissioner and depending on the mitigation of the problem, will be given the option of:~~
 - (a) ~~Having the stock treated at the expense of the owner, consignor, and/or~~
 - (b) ~~Having the stock returned to its origin at the expense of the owner, consignor and/or consignee, and/or~~
 - (c) ~~Having the stock destroyed at the expense of the owner, consignor and/or consignee. The department may issue a stop movement order for any plant, regulated article, or other material being moved in violation of the Act or this chapter or that is found to be infested or to be capable of harboring pests, pest plants, or disease.~~
- (2) ~~It shall be illegal for the owner, consignor, consignee, carrier or other person to move or deliver such seized stock until it is released by the Commissioner. A stop movement order may be lifted by the department when the owner or possessor of the item subject to the order performs one of the following actions at the owner's or possessor's expense:~~
 - (a) ~~The item is treated as ordered by the department to mitigate or prevent dissemination of pests, pest plants, and disease;~~
 - (b) ~~The item is returned to its origin as ordered by the department; or,~~
 - (c) ~~The item is destroyed as ordered by the department to prevent dissemination of any pest, pest plant, or disease.~~
 - (d) ~~If none of the actions under subparagraphs (a)-(c) is taken by the owner or possessor of the item within 10 days of the stop movement order being issued, the department may order the item be destroyed at its owner's expense.~~
- (3) ~~Any person aggrieved by an order of the department issued under the Act or this chapter, may petition the department for review of the order under T.C.A. §43-6-105 and the Uniform Administrative Procedures Act. Petitions for review of a departmental order must be submitted to the department in writing within 10 days of the order being issued. If no petition is filed with the department within the 10 day period, the department's order shall become final and will not be subject to review.~~

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Rule 0080-06-26-.12 Penalty is amended by deleting the language, "found in chapter 0080-6-25".

0080-06-26-.12 PENALTY.

Any person, firm, or corporation who shall violate any of the provisions of this quarantine shall be deemed guilty of a misdemeanor as provided in T.C.A. Section 43-6-112 of the Plant Pest Act, and shall be liable to the penalties as prescribed therein as well as applicable civil penalties found in chapter 0080-6-25.

Repeal

Chapter 0080-06-01
Plant Sales and Distribution

Rule 0080-06-01-.09 Inspection of Florists is repealed in its entirety.

~~0080-06-01-.09 INSPECTION OF FLORISTS.~~

- ~~(1) — If a florist completes and submits the appropriate application, certification fee, and payment for penalties, if applicable, a florist certificate shall be issued.~~
- ~~(2) — Such certificates shall expire on September 30 of each year. Florists may be inspected for injurious pests by the Commissioner as often as individual circumstances warrant and require.~~
- ~~(3) — If the inspection of a florist reveals an infestation by an insect pest, pest plant, or plant disease, the infested or infected plant material shall be treated if there is a practical and effective treatment available, or destroyed, as determined and ordered by the Commissioner.~~
- ~~(4) — If the owner of such infested or infected plant material neglects or refuses to carry out the order for treatment or destruction, certification for the florist shall be denied; or, if such florist already holds a certificate, such certificate shall be revoked. Whenever a certificate is revoked, it shall be surrendered immediately to the Commissioner, on written order signed by the Commissioner.~~

Rule 0080-06-01-.10 Use of Certificates is repealed in its entirety.

~~0080-06-01-.10 USE OF CERTIFICATES.~~

- ~~(1) — All nursery stock shipped, sold, delivered or transported for sale or delivery in this state shall have affixed to each invoice, package, or plant (when sold or delivered without packaging):
 - ~~(a) — a tag bearing a copy of the valid certificate and/or~~
 - ~~(b) — an actual copy of the valid certificate covering such nursery stock.~~~~
- ~~(2) — In the event both native wild plants and nursery grown plants are delivered in the same package or lot without being individually packaged, they must be segregated, and certification for each of the two classes must be displayed on the invoice for each.~~
- ~~(3) — All copies of certificates, tags and/or invoices bearing certificate designation shall expire on the same date as the certificates under which they are printed, unless such certificates shall be revoked prior to that date. In case of revocation of a certificate, all copies of certificates, tags and/or invoices bearing certificate designation shall be immediately surrendered to the Commissioner, on written order signed by the Commissioner. Use of all copies of certificates, tags and/or invoices bearing certificate designation beyond their expiration date shall be a violation of these regulations.~~

Rule 0080-06-01-.11 Revocation of Rules is repealed in its entirety.

~~0080-06-01-.11 REVOCATION OF RULES.~~

~~All Rules and Regulations heretofore promulgated on this subject are hereby rescinded revoked and suspended [sic]~~

Rule 0080-06-01-.12 Plant Dealers, Landscapers, and Florists Certificates is repealed in its entirety.

~~0080-06-01-.12 PLANT DEALER, LANDSCAPER AND FLORIST CERTIFICATES.~~

~~It shall be illegal for any person to engage in the business of being a Plant Dealer, Landscaper or Florist without first having secured a Nursery Plant Dealer certificate, Landscaper certificate, or Florist certificate from the Tennessee Department of Agriculture. Such certificate shall be issued when the firm has remitted its application, appropriate certification fee and payment for penalties, if applicable; when it has affirmed that all nursery stock handled has been secured from a source holding a valid certificate issued by the proper official of this state or other state(s); and when it has furnished to the Commissioner with a list of such certified sources from which it proposes to secure nursery stock. It shall be the responsibility of the nursery plant dealer or florist holding a certificate under these regulations to maintain such records as are necessary to demonstrate that stock sold, displayed for sale, held or transported was in fact secured from such stipulated certified sources. An itemized sales invoice showing the source of the acquisition shall accompany unpackaged stock being moved by means other than common carrier.~~

Rule 0080-06-01-.13 Out of State Nurseries is repealed in its entirety.

~~0080-06-01-.13 OUT-OF-STATE NURSERIES.~~

~~A certificate may be issued to out-of-state nurseries that grow, or contract for the production of, nursery stock in Tennessee. This certificate is valid only for stock grown or produced in Tennessee. Such nurseries will be subject to the same requirements as in-state nurseries.~~

Rule 0080-06-01-.16 Revocation of Rules is repealed in its entirety.

~~0080-06-01-.16 REVOCATION OF RULES.~~

~~All Rules and Regulations heretofore promulgated on this subject are hereby rescinded, revoked and suspended.~~

Rule 0080-06-01-.17 Interference with Duties is repealed in its entirety.

~~0080-06-01-.17 INTERFERENCE WITH DUTIES.~~

~~It shall be illegal for any person or firm to interfere with an authorized representative of the Tennessee Department of Agriculture in the performance of their duties.~~

Rule 0080-06-01-.18 Violation of Quarantine is repealed in its entirety.

~~0080-06-01-.18 VIOLATION OF QUARANTINE.~~

~~It shall be illegal for any person or firm to violate a plant quarantine or compliance agreement to which the Tennessee Department of Agriculture is a party.~~

Rule 0080-06-01-.19 Movement of Other Materials is repealed in its entirety.

~~0080-06-01-.19 MOVEMENT OF OTHER MATERIALS.~~

~~It shall be illegal for any person or firm to move live organisms or other material capable of harboring insect pests, pest plant, and/or plant diseases, as determined by the Commissioner, without a valid certificate or permit from the Tennessee Department of Agriculture.~~

Rule 0080-06-01-.20 Infested Materials is repealed in its entirety.

~~0080-06-01-.20 INFESTED MATERIALS.~~

~~It shall be illegal for any person or firm to sell or offer for sale plant materials, soil or other materials apparently infested by insect pests, pest plants, and/or infected by plant diseases.~~

Rule 0080-06-01-.21 Civil Penalties for Violations is repealed in its entirety.

~~0080-06-01-.21 CIVIL PENALTIES FOR VIOLATIONS.~~

In addition to the revocation of one's certificate, violators may be subject to civil penalties as published in rule 0080-06-25 and T.C.A. § 4-3-204.

Authority: T.C.A. §§ 4-3-203; 43-6-106.

Chapter 0080-06-21
Administrative Fees

Chapter 0080-06-21 Administrative Fees is repealed in its entirety.

~~0080-6-21-.01 ADMINISTRATIVE FEES.~~

~~(1) The Department adopts the following fee schedule for the corresponding services. (Educational institutions shall be exempt from payment of these fees.)~~

~~(a) Certification of nursery stock or other plant material:~~

~~1. Florist certification
Twenty five [sic] dollars — (\$25.00)~~

~~2. Greenhouse grown plants certification
Two Hundred Dollars — (\$200.00)~~

~~(i) Greenhouse grown plants being grown in areas less than 600 square feet.
One hundred dollars — (\$100.00)~~

~~3. Irish potato certification
One hundred dollars — (\$100.00)~~

~~4. Native wild plant certification
Two Hundred Dollars — (\$200.00)~~

~~5. Native wild plant dealer
Two Hundred Dollars — (\$200.00)~~

~~6. Nursery stock certification
Two Hundred Dollars — (\$200.00)~~

~~(i) Nursery stock grown in areas less than 600 square feet.
One hundred dollars — (\$100.00)~~

~~(ii) The following persons are exempt from the fees imposed under Tenn. Code Ann. §43-1-703(f)(8), the greenhouse plant certification fee, or any licensure or plant certification fee established by this rule:~~

~~(i) Any person engaged in the production of tobacco seedlings, and any farmer who produces and sells plants or seedlings in connection with such person's farming operations, but who is not primarily engaged in the business of producing and selling plants or seedlings. For purposes of this chapter, "not primarily engaged" means receipts from selling plants or seedlings do not exceed 15% of gross farm receipts for the average of the two previous years or one year if the operation has only been in existence for one year, as shown in federal tax return documents.~~

~~7. Strawberry plant certification
One hundred dollars — (\$100.00)~~

8. ~~_____~~ Sweet potato certification (plants, slip)
~~_____~~ One hundred dollars — (\$100.00)
9. ~~_____~~ Sweet potato certification (seed)
~~_____~~ One hundred dollars — (\$100.00)
10. ~~_____~~ Turfgrass certification
~~_____~~ Two Hundred Dollars — (\$200.00)
11. ~~_____~~ Vegetable plant certification
~~_____~~ Two Hundred Dollars — (\$200.00)
- (b) ~~_____~~ Plant dealer certificates (each):
~~_____~~ Two Hundred Dollars — (\$200.00)
1. ~~_____~~ Plant dealers that sell only annual plants and cover an area equal to or less than 100 square feet of space with plant materials.
~~_____~~ Thirty Dollars — (\$30.00)
- (c) ~~_____~~ Phytosanitary certificates (each):
~~_____~~ Equivalent to federal U.S. Department of Agriculture, Animal Health Inspection Service (USDA APHIS) fees in 7 CFR Part 354.3.
- (d) ~~_____~~ Pesticide dealer license (each):
~~_____~~ Fifty dollars — (\$50.00)
- (e) ~~_____~~ Pesticide dealer license late fee (each):
~~_____~~ Twenty five dollars — \$25.00 This is in addition to the regular fee in (1)(d).
- (f) ~~_____~~ Pesticide product registration (each):
~~_____~~ One hundred dollars — (\$100.00)
- (g) ~~_____~~ Pesticide product registration late fee (each):
~~_____~~ Fifty dollars — (\$50.00) this is in addition to the regular fee in (1)(f).
- (h) ~~_____~~ Special local need (24-C) fee (each):
~~_____~~ Two hundred fifty dollars — (\$250.00)
- (i) ~~_____~~ Nematode sample analysis (each): Ten dollars — (\$10.00)
- (j) ~~_____~~ Commercial pesticide applicator certification (each exam):
~~_____~~ Fifteen dollars — (\$15.00)
- (k) ~~_____~~ Commercial pesticide applicator recertification or replacement card (each card):
~~_____~~ Five dollars — (\$5.00)
- (l) ~~_____~~ Private pesticide applicator certification (each):
~~_____~~ Ten dollars — (\$10.00)
- (m) ~~_____~~ Pest control charter (each):
~~_____~~ Two hundred dollars — (\$200.00)
- (n) ~~_____~~ Pest control license (per category):
~~_____~~ Twenty dollars — (\$20.00)
- (o) ~~_____~~ Solicitor/technician cards:
~~_____~~ Twenty dollars — (\$20.00)
- (p) ~~_____~~ Consultant or custom applicator license exams (each):
~~_____~~ One hundred fifty dollars — (\$150.00)

(q) Aerial applicator license (each):
Two hundred dollars (\$200.00)

(r) Aerial decals (each):
One hundred fifty dollars (\$150.00)

Authority: T.C.A. §4-3-203.

Chapter 0080-06-25
Civil Penalty Matrix

Chapter 0080-06-25 Civil Penalty Matrix is repealed in its entirety.

0080-6-25-.01 CIVIL PENALTY MATRIX PURSUANT TO LAWFUL PROCEEDING RESPECTING LICENSING

Offense	Penalty				
	1st	2nd	3rd	4th	5th
(1) Any person and/or firm who knowingly introduces into the State any live or reproductive stages of insect, disease, virus, or any other plant pest or pest plant injurious to the agriculture environment.	\$500	\$500	\$500	\$500	\$500
(2) Any person and/or firm who refrains from providing full information to an authorized agent as to the origin and sources of insects, disease organism, or species of articles in their possession likely to carry insects, plant pests, and/or plant diseases.	\$500	\$500	\$500	\$500	\$500
(3) Any person and/or firm who refuses an authorized agent entry to inspect plant(s), plant parts, plant products, or other articles or things that may be, in the opinion of the authorized agent, capable of disseminating or carrying insects, pest plants, plant pests, and/or plant diseases.	\$500	\$500	\$500	\$500	\$500
(4) Any person and/or firm who has plant stock governed by the Plant Pest Act that is sold, offered for sale, or transported within or into the State of Tennessee before it has been inspected by an authorized agent and does not have a valid copy of a state certificate of inspection affirming said stock has been inspected and is apparently free of insects, plant pests, and plant diseases.	Warning	\$500	\$500	\$500	\$500
(5) Any person and/or firm whose plant stock is shipped, sold, delivered, and/or transported for sale in this State that does not have a certificate or tag(s) that bears a copy of the valid certificate covering such stock.	Warning	\$100	\$250	\$500	\$500
(6) Any person and/or firm whose nursery grown plants and native wild collected plants are	\$500	\$500	\$500	\$500	\$500

- ~~being packaged in such manner(s) as to falsify~~
~~the classes of stock contained in the~~
~~packages(s) [sic]~~
- (7) ~~Any person and/or firm whose plant stock is~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~shipped under an expired certification.~~
- (8) ~~Any person and/or firm whose plant stock is~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~
~~Shipped under false certification.~~
- (9) ~~Any person and/or firm who sells, trades,~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~and/or delivers plants that are not in a viable~~
~~condition.~~
- (10) ~~Any person and/or firm who does not~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~maintain their plant stock in a viable~~
~~condition.~~
- (11) ~~Any person and/or firm whose plant stock~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~offered for sale or transported within or into~~
~~the State and not properly labeled with~~
~~scientific and/or approved common name,~~
~~which may render stock not true to name.~~
- (12) ~~Any person and/or firm who (knowingly)~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~
~~receives plant stock that does not meet the~~
~~requirement(s) of the Plant Pest Act.~~
- (13) ~~Any person and/or firm who sells, offers for~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~sale, stores and/or holds for sale, and/or~~
~~transports into or within the State strawberry~~
~~plant(s) that does/do not meet the~~
~~requirement(s) of the Regulations Governing~~
~~Strawberry Plant Growers and Dealers [sic]~~
- (14) ~~Any person and/or firm who offers for sale,~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~stores or holds for sale, and/or transports~~
~~within or into the State turfgrass sod that has~~
~~not been inspected and approved By [sic] the~~
~~Tennessee Department of Agriculture and~~
~~does not have with the turfgrass sod a copy of~~
~~the non-certified sod permit, certified sod~~
~~certificate, or nursery certificate covering~~
~~said sod.~~
- (15) ~~Any person and/or firm who moves soil, live~~ ~~Warning~~ ~~\$100~~ ~~\$250~~ ~~\$500~~ ~~\$500~~
~~organisms, and/or materials capable of~~
~~harboring insect(s), and/or plant disease~~
~~pest(s) without a permit from the Tennessee~~
~~Department of Agriculture.~~
- (16) ~~Plants, soil, or material infected with harmful~~ ~~\$250~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~
~~organisms and not treated and/or used in~~
~~accordance with the Department of~~
~~Agriculture.~~
- (17) ~~Any person and/or firm who violates a plant~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~
~~And/or quarantine or compliance agreement.~~
- (18) ~~Any person and/or firm who interferes with~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~ ~~\$500~~

_____ an authorized representative of the Tennessee
_____ Department of Agriculture in the
_____ performance of his/her duties.

(19) _____ Any person and/or firm who fails to maintain _____ Warning \$50 \$100 \$250 \$500
_____ such records as are necessary to demonstrate _____ & seven
_____ that plants sold, displayed for sale, held or _____ days to
_____ transported were in fact secured from _____ comply
_____ certified sources.

(20) _____ Any person and/or firm who sells, moves, _____ \$500 \$500 \$500 \$500 \$500
_____ delivers, or destroys seized plant stock or
_____ plant stock being grown under detention
_____ (until released) by the Tennessee Department
_____ of Agriculture, or treats plants stock with any
_____ chemical(s) until authorized by the Tennessee
_____ Department of Agriculture.

(21) _____ Any person and/or firm who sells, offers for _____ Warning \$100 \$250 \$500 \$500
_____ sale, or moves plants without having first _____ & seven
_____ secured a Nursery and Plant Dealer's _____ days to
_____ Certificate. _____ comply

(22) _____ Any person and/or firm that does not pay _____ Warning \$250 \$500 \$500 \$500
_____ Certification fees due the State [sic] _____ & seven
_____ _____ days to
_____ _____ comply

(23) _____ Any person and/or firm that changes any _____ \$500 \$500 \$500 \$500 \$500
_____ inspection report left by an inspector or the
_____ Tennessee Department of Agriculture [sic]

(24) _____ Any person and/or firm that violates any _____ Warning \$250 \$500 \$500 \$500
_____ provisions of TCA 43-6-201 et. Seq. [sic] and/or
_____ its rules and regulations, for which a civil
_____ penalty is not otherwise set shall be subject to
_____ the following:

Authority: T.C.A. §§ 4-3-203; 43-6-106.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/07/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: 03/07/2016

Signature: Julius T. Johnson

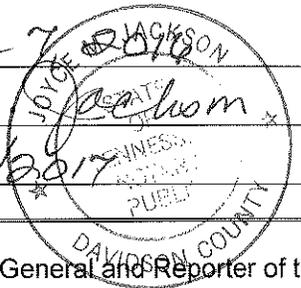
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 7, 2016

Notary Public Signature: Julius T. Johnson

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

3/18/2016
Date

Department of State Use Only

RECEIVED
2016 MAR 24 AM 11:13
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 3/24/16

Effective on: 6/22/16

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Fee Schedules for Licenses and Inspection Services
Conducted by the Department of Agriculture's Agricultural
Inputs Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 43-1-701 et seq.

EFFECTIVE DATES: June 22, 2016 through June 30, 2017

FISCAL IMPACT: The agency reports that the proposed rules are expected to generate an additional two hundred twenty-seven thousand twenty-two dollars (\$227,022) of revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately ninety-nine percent (99%) of the cost of providing agricultural inputs inspection services by the department, up from eighty-one percent (81%) cost recovery provided by the current fee structure.

STAFF RULE ABSTRACT: This rule adjusts fee schedules for licenses and inspection services conducted by the Department of Agriculture's agricultural inputs program, pursuant to amendment of the Agricultural Regulatory Fund law.

Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972; 0080-05-06 Seed Regulations; 0080-05-10 Commercial Fertilizer Regulations; and 0080-05-15 Agricultural Liming Materials. No questions or comments from the public were presented at the hearing.

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:

Businesses subject to the proposed rule include agricultural and vegetable seed sellers, agricultural lime manufacturers, commercial fertilizer registrants, and commercial feed manufacturers and distributors in the state.

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

Approximately 1700 affected firms will be subject to the proposed rule.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are anticipated to be lessened where previous rules required quarterly tonnage reporting of agricultural inputs manufactured or distributed and this rule requires those reports be made annually.

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

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the agricultural inputs program.

- (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:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

Most states maintain similar requirements for reporting of agricultural inputs and payment of license and/or registration fees for inputs manufactured or distributed in those states.

- (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.

Exemption of small businesses from this rule may expose the state to greater risks associated with adulterated or misbranded agricultural inputs and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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)

No impact is expected on local governments.

20-23

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

For Department of State Use Only

Sequence Number: 03-17-16
Rule ID(s): 6150-6153
File Date: 3/24/16
Effective Date: 6/22/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@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
0080-05-05	Regulations Pertaining to Tennessee Commercial Feed Law
Rule Number	Rule Title
0080-05-05-.19	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-06	Seed Regulations
Rule Number	Rule Title
0080-05-06-.05	Repealed
0080-05-06-.14	License Fees and Seed Unit Reports
0080-05-06-.15	Repealed

Chapter Number	Chapter Title
0080-05-10	Commercial Fertilizers Regulations
Rule Number	Rule Title
0080-05-10-.09	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-15	Agricultural Liming Materials
Rule Number	Rule Title
0080-05-15-.07	License Fees and Tonnage Reports

New

Chapter 0080-05-15
Agricultural Liming Materials

0080-05-15-.07 License Fees and Tonnage Reports

- (1) License fee. Every manufacturer of agricultural liming materials shall pay an annual license fee based on the weight of the materials distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of liming materials distributed by 1,000 tons and multiplying the dividend by a Tier 3 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) Annual statement. Every manufacturer required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of agricultural liming materials the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-405; 43-11-410.

Amendments

Chapter 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972 is amended by re-titling the chapter "Regulations Pertaining to Tennessee Commercial Feed Law of 1972".

0080-05-05-.19 Inspection Fees – Reports is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-05
Regulations Pertaining to Tennessee Commercial Feed Law

0080-05-05-.19 INSPECTION FEES – REPORTS – License Fees and Tonnage Reports

- (1) The person responsible for paying the inspection fees shall file a quarterly report stating the tonnage of all commercial feed that the person manufactured or distributed in this State or stating that no tonnage of commercial feed was distributed during that quarter. Each quarterly tonnage report shall be accompanied by payment of the inspection fee due based on the tonnage reported for that quarter. License fee. Every manufacturer, distributor, or guarantor of commercial feed shall pay an annual license fee based on the weight of the feed distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of feed distributed by 350 tons and multiplying the dividend by a Tier 2 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer, distributor, or guarantor pay less than a Tier 2 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) The report of tonnage and inspection fee shall be due and payable on a quarterly basis on the fifteenth day of the following quarter (fifteenth day of April, July, October, and January), covering the tonnage of commercial feeding stuffs sold during the past quarter. Annual statement. Every manufacturer, distributor, or guarantor required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of commercial feed distributed in the state during the previous licensure year, with the following exemptions.
 - (a) Feed need not be reported in the annual statement if:

1. The feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing;
 2. The feed is used as an ingredient in the manufacture of a registered commercial feed; or,
 3. The annual statement is that of a contract feeder.
- (b) Customer-formula feed need not be reported in the annual statement if all the commercial feed used as ingredients in the customer-formula feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing.
- (c) The department may credit payment of annual license fees that have been paid based on reporting of feed exempt from these annual statement reporting requirements.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 44-6-104; 44-6-110.

0080-05-06-.14 Payment of Inspection Fees by Reporting System is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-06
Seed Regulations

0080-05-06-.14 ~~PAYMENT OF INSPECTION FEES BY REPORTING SYSTEM.~~ License Fees and Seed Unit Reports

- (1) ~~Each seedsman shall make application to the Commissioner for a permit to report the quantity of seed sold and to pay the inspection fees applicable under the Tennessee Seed Law. The Commissioner may grant, in his discretion, the permit bearing an assigned number. Upon granting such permit, the Commissioner shall require each seedsman to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold. Such records shall be made available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seedsman shall report quarterly on forms furnished by the Commissioner the quantity and container weights of seeds sold. The reports shall be on the 15th of January, April, July and October. If the report is not filed and the inspection fees are not paid by the 10th day following due date, a penalty of ten percent (10%) shall be added to the inspection fees due. Reports shall be filed each quarter whether or not any sales were made during the reporting period. License fee. Every seed seller—whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall pay an annual license fee based on the quantity of seed units sold in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by subtracting 3,000 seed units from the total number of seed units sold; dividing the difference by 600 seed units; and multiplying the dividend by a Tier 1 fee under T.C.A. §43-1-703(f). In no event shall any seed seller pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.~~
- (2) For purposes of this rule, seed unit means:
- (a) A container of seed six lbs. to 100 lbs.;
 - (b) A hundredweight of seed sold in bulk;
 - (c) A package of tobacco seed two ounces or less; or
 - (d) A case of seed in packages of less than five pounds.
- (3) ~~The seedsman whose name appears on the analysis label affixed to the bag at time of sale will be~~

responsible for the inspection fees. However, in cases when a licensed Tennessee seedsman purchases or receives agricultural or vegetable seeds for seeding purposes from a seedsman located outside the State of Tennessee, the fee may be paid by either seedsman, but final responsibility rests with the Tennessee seedsman. Invoices pertaining to the sale of seed shall indicate which seedsman is responsible for reporting and paying the inspection fee by showing the statement "Tennessee Inspection Fee Paid" or "Tennessee Inspection Fee Not Paid—Responsibility of Purchaser." Any subsequent sale of seed on which the fee has been reported and paid will not be subject to further reporting fees. Annual statement. Every seed seller required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of seed units the seed seller sold in the state during the previous licensure year, provided that no seed units need be reported in the annual statement if the seed units have been previously reported to the department and calculated in the annual license fee of a seed seller in good standing.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-10-114; 43-10-118.

0080-05-10-.09 Tonnage Reports and Inspection Fees is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-10
Commercial Fertilizers Regulations

0080-05-10-.09 ~~TONNAGE REPORTS AND INSPECTION FEES—~~License Fees and Tonnage Reports

~~Each distributor and registrant shall be furnished forms by the Commissioner which will set forth a format whereby codes (for fertilizer materials, counties, manufacturers, etc.) are to be used wherever applicable. Each distributor and registrant shall report in summary form the amount (tons or fractions thereof) of each grade of fertilizer sold, the county in which the fertilizer was distributed (bag, bulk, liquid, or other forms), and whether the fertilizer was for farm or non-farm use. This summary report shall further be used as a basis for the payment of inspection fees and this report along with the inspection fees shall be due quarterly (ending on the last day of March, June, September and December) and submitted by the 15th day of month immediately following. This report may be supplemented by a computerized summary upon approval by the Commissioner or his agent if that computerized summary contains all of the required data in the proper sequence.~~

- (1) License fee. Every person who distributes commercial fertilizer in the state shall pay an annual license fee based on the weight and number of brands of commercial fertilizer distributed in the state during the previous licensure year (July 1 – June 30).
 - (a) Weight. The weight component of the license fee shall be determined by dividing the total number of tons of commercial fertilizer distributed by 1,000 tons and multiplying the dividend by a Tier 5 fee under T.C.A. §43-1-703(f). In no event shall any person pay less than a Tier 3 fee under §43-1-703(f) for the weight component of annual license fee under this chapter.
 - (b) Brands. The brands component of the license fee shall be determined by subtracting 10 brands from the total number of brands of commercial fertilizer distributed; dividing the difference by five brands; and multiplying the dividend by a Tier 6 fee under T.C.A. §43-1-703(f). The brands component shall not apply to any person who distributed 10 brands of commercial fertilizer or less during the previous licensure year.
 - (c) The annual fee for a commercial fertilizer license shall be the sum of the weight component and brands component calculated under this rule.
- (2) Annual statement. Every person required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons and number of brands of commercial fertilizer the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-104; 43-11-113.

Repeal

Chapter 0080-05-06
Seed Regulations

0080-05-06-.05 Labeling Treated Seed is repealed in its entirety.

~~0080-05-06-.05 LABELING TREATED SEED.~~

Any agricultural or vegetable seed for seeding purposes, that has been treated:

- (1) ~~Shall be labeled in type no smaller than eight points to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed, for example~~

~~Treated with _____
(Name of substance or process)
or _____ treated.
(Name of substance or process)~~

~~If the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall also bear a label containing statements as specified by paragraphs (3) and (4) below. The label shall contain the required information in any form that is clearly legible and complies with this regulation. The information may be on the analysis tag, on a separate tag or printed on the container in a conspicuous manner.~~

- (2) ~~Name of substance — the name of any substance as required by paragraph (1) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are free for use by the public and are commonly recognized as names of particular substances such as thiram, captan, lindane, and dichloro. Examples of commonly accepted chemical (generic) names are: bluestone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are BHC (1, 2, 3, 4, 5, 6, Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).~~

- (3) ~~Mercurials and similarly toxic substances —~~

(a) ~~Seeds treated with a mercurial or similarly toxic substance, if any amount whatsoever remains with the seed, shall be labeled to show a representation of a skull and crossbones at least twice the size of the type used for information required to be on the label under paragraph (1) and shall also include in red letters on a background of distinctly contrasting color a statement substantially as follows: "Treated with Poison," "Poison Treated," or "Poison." Such treatment shall appear in type no smaller than eight points.~~

(b) ~~Substances similarly toxic to mercurial include the following: Aldrin (technical), Demeton, Dieldrin, Endrin, Heptachlor, 0, O-diethyl S — (ethylthiomethyl) phosphorodithiolate and 0, O-diethyl S-2 (ethylthion) ethyl Phosphorodithiolate. Any amount of such substances remaining with the seed shall be considered harmful to humans and other vertebrate animals.~~

- (4) ~~Other harmful substances — If any substance, other than one which would be classified as a mercurial or similarly toxic substance under paragraph (3) is used in the treatment of seed; the amount remaining with the seed is considered harmful to humans or other vertebrate animals unless the seed is in containers of four ounces or less. Seed treated with such substances shall be labeled with an appropriate caution statement in type no smaller than eight points worded substantially as follows: "Do not use for food, feed, or oil purposes." This paragraph applies to all chemical substances not within paragraph (3) except that the following substances shall not be deemed harmful when present at a rate less than the number of parts per million indicated:~~

Allethrin — 2 p.p.m.

Malathion — 8 p.p.m.

Methoxychlor — 2 p.p.m.

Piperonyl butoxide — 20 p.p.m. except 8 p.p.m. on Oat and Sorghum

Pyrethrins — 3 p.p.m. except 1 p.p.m. on Oat and Sorghum

- (5) — Fumigants which leave no residue on the seed shall not be deemed harmful, therefore need not be included on label.

Authority: T.C.A. §§ 4-3-203; 43-10-114.

0080-05-06-.15 Seed Inspection Fees for Seeds in Small Containers is repealed in its entirety.

~~0080-05-06-.15 SEED INSPECTION FEES FOR SEEDS IN SMALL CONTAINERS.~~

~~For agricultural or vegetable seeds in containers of five (5) pounds or less not sold by the case:~~

- ~~(1) — Agricultural or vegetable seeds sold in individual containers, with a wholesale value of fifteen dollars (\$15.00) or greater, shall be paid at three (3) cents for each container.~~
- ~~(2) — Agricultural or vegetable seeds sold in individual containers, of less than fifteen dollars (\$15.00) wholesale value, shall be exempt.~~

Authority: T.C.A. §§ 4-3-203; 43-10-114.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/02/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: 03/02/2016

Signature: *Julius T. Johnson*

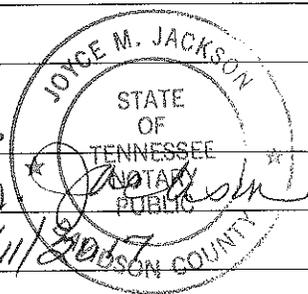
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: 03/02/2016

Notary Public Signature: *Joyce 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

3/18/2016
Date

Department of State Use Only

RECEIVED
 2016 MAR 24 AM 11:10
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 3/24/16

Effective on: 6/22/14

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Dairy Licensure Fee Schedule

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 53-3-101 et seq.
and 43-1-701 et seq.

EFFECTIVE DATES: June 22, 2016 through June 30, 2017

FISCAL IMPACT: These rules are expected to generate an additional
\$135,777 of revenue to the Agricultural Regulatory Fund.

STAFF RULE ABSTRACT: This rule amends fee schedules for licenses issued under
the Department of Agriculture's dairy program.

Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-03-08 Dairy Licensure. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Ms. Beth Farrow and Mr. Eric Goan, on behalf of the Tennessee Dairy Product Association, Mr. John Sanford, on behalf of Dean Foods, and as a member of the Tennessee Dairy Product Association, and others submitted a proposed revision of the rule for the upper limits of dairy and trade products plants licenses and frozen dessert manufacturers.

Response:

The Department appreciates Ms. Farrow's, Mr. Goan's, and Mr. Sanford's concerns and proposal. Upon review, the Department finds the proposal well-suited for both the upper limits of dairy license fees and more even gradation of license fees among firms in the dairy industry. For this reason, the fee increases as proposed have been inserted in this rule.

The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

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:

Businesses subject to the proposed rule include dairy product and trade product plants, frozen dessert manufacturers, milk samplers and testers, and dairy product and trade product distributors.

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

Approximately 28 dairy and trade product plants and frozen dessert manufacturers, 199 milk samplers, 33 milk testers, and 50 distributors are registered with the Department.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

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

The effect of these rules on small businesses is to adjust license fees in an effort to increase cost recovery associated with dairy inspection in this state and to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (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:

No less burdensome methods for achieving this purpose are possible.

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

While dairy inspection requirements among states are greatly similar, states differ with regard to how dairy programs are funded.

- (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.

Exemption of small businesses from this rule will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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)

No impact is expected on local governments.

78

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

For Department of State Use Only

Sequence Number: 03-19-16
Rule ID(s): 6158
File Date: 3/24/16
Effective Date: 6/22/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@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
0080-03-08	Dairy Licensure
Rule Number	Rule Title
0080-03-08-.01	Dairy Manufacturers
0080-03-08-.02	Frozen Dessert Manufacturers
0080-03-08-.03	Distributors
0080-03-08-.04	Samplers and Testers

New

Chapter 0080-03-08
Dairy Licensure

0080-03-08-.01 Dairy Manufacturers

For purposes of this rule, definitions of "milk" and "cream" as defined under 0080-03-02-.01 shall apply.

- (1) Plants receiving fluid milk or cream. Every dairy products plant or trade products plant that receives primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's period of operation and combined weight of milk and cream received during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of milk and cream received and plant operated less than six months: Tier 5 fee.
 - (b) Up to 10,000 pounds of milk and cream received and plant operated six months or more: Tier 9 fee.
 - (c) 10,001 to 1,000,000 pounds of milk and cream received: Tier 10 fee.
 - (d) 1,000,001 to 30,000,000 pounds of milk and cream received: Tier 11 fee.
 - (e) More than 30,000,000 pounds of milk and cream received: the license fee shall be determined by dividing the total pounds of milk and cream received by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (2) Plants not receiving milk or cream. Every dairy products plant or trade products plant that does not receive primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's output of dairy and trade products during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of product manufactured, processed, or packaged: Tier 5 fee.
 - (b) 10,001 to 1,000,000 pounds of product manufactured, processed, or packaged: Tier 10 fee.
 - (c) 1,000,001 to 30,000,000 pounds of product manufactured, processed, or packaged: Tier 11 fee.
 - (d) More than 30,000,000 pounds of product manufactured, processed, or packaged: the license fee shall be determined by dividing the total pounds of product manufactured, processed, or packaged by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (3) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the plant's expected operating period, milk and cream receipts, and dairy and trade product outputs during the licensure year for which application is made.
- (4) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.02 Frozen Dessert Manufacturers

For purposes of this rule, the definition of "mix" as defined under 0080-03-01-.01 shall apply.

- (1) Every frozen dessert manufacturer shall pay an annual license fee based on the manufacturer's period of operation and volume of mix used during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 5,000 gallons of mix used and manufacturer operated less than six months: Tier 5 fee.
 - (b) Up to 5,000 gallons of mix used and manufacturer operated six months or more: Tier 9 fee.
 - (c) 5,001 to 100,000 gallons of mix used: Tier 10 fee.
 - (d) 100,001 to 1,650,000 gallons of mix used: Tier 11 fee.
 - (e) More than 1,650,000 gallons of mix used: the license fee shall be determined by dividing the volume of mix used by 1,650,000 gallons, and multiplying the dividend by a Tier 11 fee.
- (2) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the manufacturer's expected operating period and mix usage during the licensure year for which application is made.
- (3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.03 Distributors

- (1) The fee for a distributor's license shall be a Tier 1 annual license fee under T.C.A. §43-1-703(f) for each truck the distributor uses in the distribution of dairy products, trade products, or frozen desserts.
- (2) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-106.

0080-03-08-.04 Samplers and Testers

- (1) The fee for a samplers license is a Tier 1 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a sampler employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.
- (2) The fee for a milk testers license is a Tier 2 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a tester employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.

- (3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-105.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/07/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: 03/07/2016

Signature: Julius T. Johnson

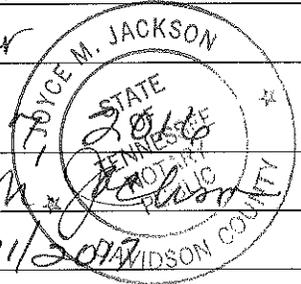
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 7, 2016

Notary Public Signature: Joyce 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
3/18/2016
Date

Department of State Use Only

RECEIVED

2016 MAR 24 AM 11:12

SECRETARY OF STATE PUBLICATIONS

Filed with the Department of State on: 3/24/16

Effective on: 6/22/16

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Medical Examiners Committee on Physician Assistants

DIVISION:

SUBJECT: Physician Assistants - Fees/Continuing Education

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-19-104, 63-19-105, and 63-19-113

EFFECTIVE DATES: June 21, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendment to Rule 0880-03-.06 will reduce the biennial license renewal fee from two hundred twenty-five dollars (\$225.00) to one hundred seventy-five dollars (\$175.00).

The amendment to 0880-03-.12 will include the requirement that fifty of the one hundred hours must be obtained in Category 1 classes, and will further require that at least two of the required Category I classes must be in prescribing practices. The two hours of prescribing practices is required to comply with Public Chapter No. 430, passed by the 108th General Assembly and signed by the Governor on May 16, 2013.

Public Hearing Comments

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

There were no public comments, 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 rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

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

The proposed rule amendments establish clarity, conciseness, and lack of ambiguity.

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

The proposed rule amendments do not affect compliance and/or reporting requirements for small businesses.

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

The proposed rule amendments do not affect schedules or deadlines for compliance reporting requirements for small businesses.

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

The proposed rule amendments do not consolidate or simplify compliance or reporting requirements for small businesses.

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

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

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: *Committee of Physician's Assistants*

- 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:**

All licensed physician assistants will be subject to the proposed rule amendments. These licensed physician assistants will bear the benefit of the proposed rule amendments.

- 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 rule amendments do not affect the reporting requirements or other administrative costs for compliance.

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

The proposed rule amendments should have little effect on small businesses.

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

The proposed rule amendments are not burdensome, intrusive, or costly.

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

Federal: None.

State: None.

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

The proposed rule amendments may not provide exemptions for small businesses.

Impact on Local Governments

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

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

17

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

For Department of State Use Only

Sequence Number: 03-14-16
Rule ID(s): 6146
File Date: 3/23/16
Effective Date: 6/21/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Medical Examiners Committee on Physician Assistants
Division:	
Contact Person:	Mary Katherine Bratton, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee 37243
Phone:	(615) 741-1611
Email:	Mary.Bratton@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
0880-03	General Rules Governing the Practice of a Physician Assistant
Rule Number	Rule Title
0880-03-.06	Fees
0880-03-.12	Continuing Education

(Rule 0880-03-.05, continued)

May 23, 2001. Amendment filed August 6, 2002; effective October 20, 2002. Amendments filed March 17, 2006; effective May 31, 2006.

0880-03-.06 FEES.

- (1) The fees are as follows:
- (a) Application Fee - A fee to be paid by all applicants including those seeking licensure by reciprocity. This fee includes the Initial Licensure Fee and State Regulatory Fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the portion pertaining to the Initial Licensure Fee and the portion of the State Regulatory Fee that applies to initial licensure will be refundable.
 - (b) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the "artistically designed" license. This fee must be received on or before the expiration date of the license.
 - (c) Initial Licensure Fee - A fee to be paid at the time of application for initial licensure after approval by the Committee on Physician Assistants and the Board of Medical Examiners.
 - (d) Late Renewal Fee - A non-refundable fee to be paid when a license holder fails to renew his license on or before the expiration date on the license. This is an additional fee which must be submitted with the Biennial Licensure Renewal Fee and State Regulatory Fee.
 - (e) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" wall license or renewal license.
 - (f) State Regulatory Fee - A fee to be paid by all individuals at the time of application and with all renewal applications.
 - (g) Temporary Licensure Fee - A non-refundable fee to be paid at the time of application for applicants requesting a temporary license.
- (2) All fees must be submitted to the Committee's administrative office by cashier's check, personal check or money order. Checks or money orders are to be made payable to the Committee on Physician Assistants.

(3) Fee Schedule:	Amount
(a) Application Fee (Total)	\$335.00
1. Application Fee	\$ 75.00
2. Initial Licensure Fee	\$250.00
3. State Regulatory Fee	\$ 10.00
(b) Biennial Licensure Renewal Fee	\$225.00
<u>(b) Biennial Licensure Renewal Fee</u>	<u>\$175.00</u>
(c) Late Renewal Fee	\$ 50.00

(Rule 0880-03-.06, continued)

- (d) Replacement License Fee \$ 25.00
 - (e) State Regulatory (biennial) \$ 10.00
 - (f) Temporary Licensure Fee \$ 50.00
- (4) Total Application Fee must be paid at the time of application.

Authority: T.C.A. §§4-3-1011, 4-5-202, 63-1-103, 63-1-106, 63-1-108, 63-1-112, 63-19-104; 63-19-105, and 63-19-113. **Administrative History:** Original rule filed November 27, 1990; effective January 11, 1991. Repeal and new rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Amendment filed October 14, 1998; effective December 28, 1998. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed January 20, 2012; effective April 19, 2012.

0880-03-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

- (1) An application packet shall be requested from the Committee's administrative office.
- (2) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (3) If an application is incomplete when received by the Committee's Administrative Office, or the reviewing Committee member or the Committee consultant determine additional information is required from an applicant before an initial determination can be made, the Committee's administrative office shall notify the applicant of the information required.
 - (a) The applicant shall cause the requested information to be received by the Committee's administrative office on or before the ninetieth (90th) day after the initial letter notifying the applicant of the required information is sent.
 - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the Committee's administrator. If that occurs, the applicant shall be notified that the Committee will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Committee or the Committee consultant.
- (4) If a reviewing Committee member or the Committee consultant initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Committee and the Board at their next meetings. If the Committee and the Board ratify the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:
 - (a) A notification of the denial, limitation, condition or restriction shall be sent by the Committee's Administrative Office by certified mail, return receipt requested. Specific reasons for denial, limitation, condition or restriction will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.

(Rule 0880-03-.11, continued)

- (1) A person who holds a current license and does not intend to practice as a physician assistant may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:
 - (a) Obtain, complete, and submit to the Committee's Administrative Office, an affidavit of retirement form.
 - (b) Submit any documentation which may be required to the Committee's Administrative Office.
- (3) License holders whose license has been retired may re-enter active status by doing the following:
 - (a) Submit a written request for license reactivation to the Committee's Administrative Office.
 - (b) Pay the licensure renewal fee and state regulatory fee as provided in Rule 0880-03-.06.
 - (c) Submit satisfactory evidence of compliance with the continuing education requirements of rule 0880-03-.12 for the two (2) year period immediately preceding the date of application for reactivation.
 - (d) If retirement reactivation is requested prior to the expiration of one year from the date of retirement, the Committee will require payment of the late renewal fee and past due renewal fee.
- (4) License reactivation applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-03-.07.

Authority: T.C.A. §§4-5-202, 63-19-104, and 63-19-113. **Administrative History:** Original rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Amendment filed November 13, 1996; effective January 27, 1997. Repeal and new rule filed March 31, 1999; effective July 29, 1999.

0880-03-.12 CONTINUING EDUCATION. All persons licensed as a P.A. must comply with the following continuing education rules as a prerequisite to licensure renewal.

- (1) Continuing Education - Hours Required
 - ~~(a) All physician assistants must, within a two (2) year period prior to the application for license renewal, complete one hundred (100) hours of continuing medical education satisfactory to the Committee.~~
 - (a) All physician assistants must, within a two (2) year period prior to the application for license renewal, complete one hundred (100) hours of continuing medical education satisfactory to the Committee. At least fifty (50) hours shall be obtained in certified medical education Category I and at least two (2) Category I hours of the required continuing education hours shall address education related to controlled substance prescribing, which must include instruction in the Department's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol and may include topics such as medicine addiction, risk management tools, and other topics approved by the

(Rule 0880-03-.12, continued)
Committee.

- ~~1. At least one (1) Category I hour of the required continuing education hours shall address prescribing practices.~~
- ~~2. The division of hours between Category I and Category II continuing medical education must be consistent with the requirements of the N.C.C.P.A. as described on the most current N.C.C.P.A. "Continuing Medical Education Logging Form."~~

- (b) The Committee approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
- (c) The committee may waive or otherwise modify the requirements of this rule in cases where there is retirement or an illness, disability or other undue hardship which prevents a physician assistant from obtaining the requisite number of continuing education hours required for renewal. Requests for waivers or modification must be sent in writing to the Committee prior to the expiration of the renewal period in which the continuing education is due.

(2) Continuing Education - Proof of Compliance

- (a) All physician assistants must indicate, by their signature on the license renewal form, that they have completed the required number of continuing medical education hours, during whichever of the following two (2) year periods applies to the applicant:
 1. For those certified by the N.C.C.P.A.; the most recent two (2) year period (depending upon the year of initial certification of the applicant by the N.C.C.P.A.) utilized by N.C.C.P.A. to determine whether that person has obtained sufficient continuing medical education hours to maintain his or her professional certification.
 2. For those not certified by the N.C.C.P.A.; the most recent two (2) year period (depending upon the year of birth of the licensee rather than the year of initial certification by the N.C.C.P.A.), which if utilized by the N.C.C.P.A. would determine whether that person would have (had he or she been nationally certified) obtained sufficient continuing medical education hours to maintain his or her professional certification.
- (b) All physician assistants must retain independent documentation of completion of all continuing education hours. This documentation must be retained for a period of four (4) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Committee during its verification process.
 1. Certificates verifying the licensed individual's completion of the continuing education program(s) consist of any one or more of the following:
 - (i) The National Commission on the Certification of Physician Assistants' "Continuing Medical Education Logging Certificate";

(Rule 0880-03-.12, continued)

- (ii) Certificates must include the following: Continuing education program's sponsor, date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
 - (iii) An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
- (c) If a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Committee will request a written description of the training and how it applies to the practice as a physician assistant. If the Committee determines that the training cannot be considered appropriate continuing education, the individual will be given 90 days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.
- (3) Acceptable continuing education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by the A.M.A., the A.A.P.A., or the N.C.C.P.A.
- (4) Violations
- (a) Any physician assistant who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-03-.15.
 - (b) Any physician assistant who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-03-.15 and may not be allowed to renew licensure.
 - (c) Education hours obtained as a result of compliance with the terms of a Committee or Board order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-19-104, and 63-19-105. **Administrative History:** Original rule filed August 5, 1993; effective October 18, 1993. Amendment filed August 18, 1994; effective November 1, 1994. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Amendment filed November 13, 1996; effective January 27, 1997. Amendment filed August 13, 1998; effective October 27, 1998. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed March 9, 2001; effective May 23, 2001. Amendment filed August 6, 2002; effective October 20, 2002. Amendment filed May 18, 2007; effective August 1, 2007.

0880-03-.13 PROFESSIONAL ETHICS. The Committee on Physician Assistants may utilize as guidelines T.A.P.A.'s code of ethics. Violation of this Rule may subject the P.A. to disciplinary action pursuant to Rule 0880-03-.15.

Authority: T.C.A. §§4-5-202, 63-19-104, and 63-19-108. **Administrative History:** Original rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999.

0880-03-.14 TEMPORARY LICENSE.

* 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)
Omar Nava	X				
Benjamin L. Hux	X				
Bret Reeves	X				
Donna Lynch	X				
Ann Arney	X				
James Montag, Jr.	X				
Beverly J. Gardner				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners Committee on Physician Assistants (board/commission/ other authority) on 07/10/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, M.D.	X				
Michael John Baron, M.D.				X	
Neal Beckford, M.D.	X				
Deborah Christiansen, M.D.	X				
Clinton A. Musil, Jr., M.D.				X	
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
Melanie Blake, M.D.	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 Board of Medical Examiners (board/commission/ other authority) on 07/21/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board of Medical Examiners Committee on Physician Assistants
Rules 0880-03-.06 and 0880-03-.12
General Rules Governing the Practice of a Physician Assistant
Fees and Continuing Education

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/01/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 07/10/15 (mm/dd/yy)

Date: 9128119

Signature: *Mary Katherine Bratton*

Name of Officer: Mary Katherine Bratton

Deputy General Counsel

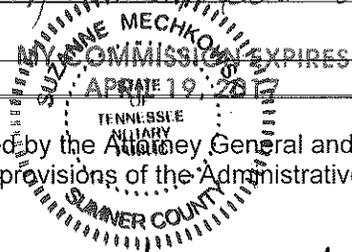
Title of Officer: Department of Health

Subscribed and sworn to before me on: 9-28-15

Notary Public Signature: *Suzanne Meckoni*

My commission expires on: _____

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



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

3/3/2016
Date

Department of State Use Only

RECEIVED
2016 MAR 23 PM 3:55
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Medical Examiners Committee on Physician Assistants

DIVISION:

SUBJECT: Orthopedic Physician Assistants - Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-1-103, 63-1-106, 63-1-108, 63-1-112, 63-19-104, and 63-19-201

EFFECTIVE DATES: June 21, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendment to Rule 0880-10-.06 will reduce the biennial license renewal fee from two-hundred twenty-five dollars (\$225) to one hundred seventy-five dollars (\$175).

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 rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

The proposed rule amendment establishes clarity, conciseness, and lack of ambiguity.

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

The proposed rule amendment does not establish compliance or reporting requirements for small businesses.

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

The proposed rule amendment does not establish compliance or reporting requirements for small businesses.

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

The proposed rule amendment does not establish compliance or reporting requirements for small businesses.

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

The proposed rule amendment does not establish performance, design or operational standards for small businesses.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: *Committee on Physician Assistants*

- 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:**

All licensed orthopedic physician assistants will be subject to the proposed rule amendment. These licensed orthopedic physician assistants will receive the benefit of the proposed rule amendment. Currently, there are twenty-two (22) licensed orthopedic physician assistants 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:**

The proposed rule amendment does not affect the reporting requirements or other administrative costs for compliance.

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

The proposed rule amendment should have little effect on small businesses.

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

The proposed rule amendment is not burdensome, intrusive, or costly.

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

Federal: None.

State: None.

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

The proposed rule amendment does not provide exemptions for small businesses.

Impact on Local Governments

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

The proposed rule amendment should not have an impact on local governments.

19

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 03-16-16
Rule ID(s): 6149
File Date: 3/23/16
Effective Date: 6/21/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Medical Examiners Committee on Physician Assistants
Division:	
Contact Person:	Mary Katherine Bratton, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mary.Bratton@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
0880-10	General Rules Governing the Practice of an Orthopedic Physician Assistant
Rule Number	Rule Title
0880-10-.06	Fees

(Rule 0880-10-.05, continued)

- (e) Result of a criminal background check;
- (f) Certificate of completion or Diploma from an approved orthopedic physician assistant program; and
- (g) Certification/licensure from other state boards.

(17) All applications shall be sworn to and signed by the applicant and notarized.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-19-104, 63-19-201, 63-19-202, 63-19-203, and 63-19-204. **Administrative History:** Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998. Amendment filed June 25, 1998; effective October 30, 1998. Amendments filed March 17, 2006; effective May 31, 2006.

0880-10-.06 FEES.

(1) The fees are as follows:

- (a) Application Fee - A fee to be paid by all applicants. This fee includes the Initial Licensure Fee and State Regulatory Fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the portion pertaining to the Initial Licensure Fee and the portion of the State Regulatory Fee that applies to initial licensure will be refundable.
- (b) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the "artistically designed" license. This fee must be received on or before the expiration date of the license.
- (c) Initial Licensure Fee - A fee to be paid at the time of application for initial licensure after approval by the Committee on Physician Assistants and the Board of Medical Examiners.
- (d) Late Renewal Fee - A non-refundable fee to be paid when a license holder fails to renew his license on or before the expiration date on the license. This is an additional fee which must be submitted with the Biennial Licensure Renewal Fee and State Regulatory Fee.
- (e) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" wall license or renewal certificate.
- (f) State Regulatory Fee - A fee to be paid by all individuals at the time of application and with all renewal applications.

(2) All fees must be submitted to the Committee's administrative office by cashier's check, personal check or money order. Checks or money orders are to be made payable to the Committee on Physician Assistants.

(3) Fee Schedule:	Amount
(a) Application Fee (Total)	\$ 335.00
1. Application Fee	\$ 75.00

(Rule 0880-10-.06, continued)

2.	Initial Licensure Fee	\$ 250.00
3.	State Regulatory Fee	\$ 10.00
(b)	Biennial Licensure Renewal Fee	\$ 225.00
(b)	Biennial Licensure Renewal Fee	\$ 175.00
(c)	Late Renewal Fee	\$ 50.00
(d)	Replacement License Fee	\$ 25.00
(e)	State Regulatory (biennial)	\$ 10.00

(4) Total Application Fee must be paid at the time of application.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-1-106, 63-1-108, 63-1-112, 63-19-104, and 63-19-201. **Administrative History:** Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998. Amendment filed January 20, 2012; effective April 19, 2012.

0880-10-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

- (1) An application packet shall be requested from the committee's administrative office.
- (2) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's Administrator.
- (3) If an application is incomplete when received by the Committee's Administrative Office, or the reviewing Committee member or the Committee consultant determine additional information is required from an applicant before an initial determination can be made, the Committee's Administrative Office shall notify the applicant of the information required.
 - (a) The applicant shall cause the requested information to be received by the Committee's administrative office on or before the ninetieth (90th) day after the initial letter notifying the applicant of the required information is sent.
 - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the Committee's administrator. If that occurs, the applicant shall be notified that the Committee will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Committee or the Committee's consultant.
- (4) If a license is denied, limited, conditioned or restricted by the Committee and subsequently by the Board, the denial, limitation, condition or restriction shall become final and the following shall occur:
 - (a) A notification of the denial, limitation, condition or restriction shall be sent by the Committee's Administrative Office by certified mail, return receipt requested. Specific reasons for denial, limitation, condition or restriction will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.

* 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)
Omar Nava	X				
Benjamin L. Hux	X				
Bret Reeves	X				
Donna Lynch	X				
Barbara Thornton	X				
James Montag, Jr.	X				
Beverly Gardner	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners Committee on Physician Assistants (board/commission/ other authority) on 01/08/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, M.D.	X				
Michael John Baron, M.D.	X				
Neal Beckford, M.D.	X				
Deborah Christiansen, M.D.	X				
Clinton A. Musil, Jr., M.D.	X				
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
Melanie Blake, M.D.	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 Board of Medical Examiners (board/commission/ other authority) on 01/26/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/16/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 01/08/16 (mm/dd/yy)

Date: 11/28/16

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

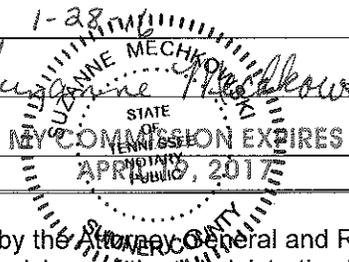
Title of Officer: Deputy General Counsel

Board of Medical Examiners Committee on Physician Assistants
Rules 0880-10-.06
General Rules Governing the Practice of an
Orthopedic Physician Assistant
Fees

Subscribed and sworn to before me on: 1-28

Notary Public Signature: Augustine Mackleowski

My commission expires on: APR 10, 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
3/15/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 MAR 23 PM 3:57
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Athletic Trainers

DIVISION:

SUBJECT: Athletic Trainers - Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-24-106 and 63-24-111

EFFECTIVE DATES: June 21, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule 0150-01-.06: This rule amendment would increase the biennial renewal fee by fifty-dollars (\$50.00). Licensees would be paying a total of two hundred dollars (\$200) to renew their licensure.

Public Hearing Comments

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

Board of Athletic Trainers
Rulemaking Hearing - November 5, 2015
Public Comments

The first comment came from John "Clint Sanders", Communication Chair for Tennessee Athletic Trainers' Society and Secretary Elect for 2016, who asked the following, "unlike the renewal process, the initial licensure process can take from seven to twelve weeks, so will the fee increase help the administrative office speed up the initial licensure process?"

Dr. Alex Diamond responded for the Board and stated that the point is well taken, but while considering the expenses that the Board has to cover, the needs of the professionals regulated should be considered as well. Monroe Abrams, the Board Chair, also addressed Mr. Sanders' comments stating that the Board has to cover expenses incurred, and the money received from the increase will help to cover those expenses.

The second comment came from Chris Snoddy, with Star Physical Therapy who employs approximately forty athletic trainers. Mr. Snoddy acknowledged that the renewal process is efficient. Mr. Snoddy also acknowledged that the fee increase is approximately two (\$2.00) dollars per month. However, he stated that he does not support the fee increase unless the increase will ensure a quicker initial licensure process. He said that schools are going uncovered while waiting for athletic trainers to obtain initial licensure, and the delay is especially apparent during the summer months. He added that, according to the Korey Stringer Institute, the presence of an athletic trainer in a school helps prevent deaths related to athletic participation.

Walter Fitzpatrick responded for the Board and stated that the Board's administrative staff members should explain the initial application process to the Board members, should review the current process to determine if there are areas that need improvement, and if there are opportunities to streamline the initial application process, the administrative staff should implement those procedures.

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 federal, state, and 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 and are as flexible as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety, and welfare of Tennesseans.

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

Compliance requirements contained in these proposed rule amendments 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.

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 Athletic Trainers

Rulemaking hearing date: November 5, 2015

- 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:**

Businesses and practitioners engaging in the practice of athletic training or wishing to offer athletic training services may be subject to these proposed rule amendments. These businesses and practitioners will bear the burden of the increased costs of the licensure renewal fees. These proposed rule amendments would affect approximately 800 licensees.

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

Administrative costs associated with the fee increase should remain the same.

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

Athletic trainers and the businesses that employ them may experience some negative impact due to the increase in renewal fees, but any negative impact should be minimal because the fee will only increase by fifty dollars (\$50.00), which only has to be paid once every two years.

- 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 proposed rule amendments.

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

Federal: none

State: Other health-related boards in Tennessee have renewal fees in the amount of two hundred dollars (\$200.00) or greater.

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

These rule amendments will not provide exemptions for small businesses.

Impact on Local Governments

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

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

18

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

For Department of State Use Only

Sequence Number: 03-15-16
Rule ID(s): 6148
File Date: 3/23/16
Effective Date: 6/21/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Athletic Trainers
Division:	
Contact Person:	Paetria Morgan, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Paetria.Morgan@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
0150-01	General Rules and Regulations Governing the Practice of Athletic Trainers
Rule Number	Rule Title
0150-01-.06	Fees

GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF ATHLETIC TRAINERS

CHAPTER 0150-01

(Rule 0150-01-.05, continued)

- (4) Application review and licensure decisions shall be governed by Rule 0150-01-.07.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-24-102, 63-24-103, 63-24-104, 63-24-105, 63-24-106, and Public Chapter 694 of the Public Acts of 2000, Authority and Public Chapter 872 of the Public Acts of 2006. **Administrative History:** Original rule filed October 9, 1986; effective October 23, 1986. Amendment filed July 6, 1990; effective July 21, 1990. Repeal and new rule filed March 14, 2001; effective May 28, 2001. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed September 5, 2002; effective November 19, 2002. Amendments filed March 14, 2006; effective May 28, 2006. The Secretary of State transferred chapter 0880-04 to 0150-01, effective April 30, 2007.

0150-01-.06 FEES. All fees provided for in this rule are non-refundable.

- | | |
|--|---------------------|
| (1) Licensure application-examination fee to be submitted at the time of application | \$200.00 |
| (2) Biennial renewal fee to be submitted at the time of application | \$150.00 |
| (2) Biennial renewal fee to be submitted at the time of application | \$200.00 |
| (3) Late renewal fee | \$100.00 |
| (4) Licensure restoration fee | \$ 50.00 |
| (5) Duplication of license fee | \$ 5.00 |
| (6) Biennial state regulatory fee to be submitted at the time of application | \$ 10.00 |
| (7) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Athletic Trainers. | |

Formatted: Font color: Red, Strikethrough

Authority: T.C.A. §§ ~~9-4-5117, 4-3-1044~~, 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105, 63-24-106, 63-24-111, Public Chapter 389, Acts of 1989, and Public Chapter 694 of the Public Acts of 2000, Authority and Public Chapter 872 of the Public Acts of 2006. **Administrative History:** Original rule filed January 29, 1990; effective March 15, 1990. Repeal and new rule filed March 14, 2001; effective May 28, 2001. Amendment filed August 16, 2002; effective October 30, 2002. The Secretary of State transferred chapter 0880-04 to 0150-01, effective April 30, 2007. Amendment filed November 26, 2008; effective February 9, 2009. Amendment filed April 29, 2011; effective July 28, 2011.

0150-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Board designee who has reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or

* 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)
Monroe J. Abram	X				
Craig Paul Moorhouse	X				
Walter S. Fitzpatrick, III	X				
Helen Binkley	X				
Alex B. Diamond, MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Athletic Trainers (board/commission/ other authority) on 11/16/2014, 05/07/2015 and 11/05/2015 (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: 08/14/14, 01/06/15, and 06/08/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/14, 05/07/15 and 11/05/15 (mm/dd/yy)

Date: 11/20/2015

Signature: Paetria Morgan

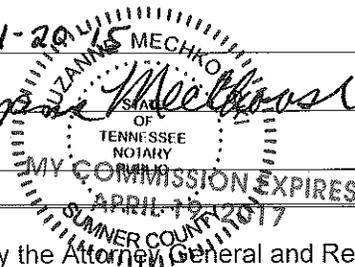
Name of Officer: Paetria Morgan
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: Suzanne McChesney

My commission expires on: _____



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

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

3/15/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

RDA 1693



Tre Hargett
Secretary of State

RECEIVED

2016 MAR 23 PM 3:52

SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Mental Health and Substance Abuse Services

DIVISION: Office of Licensure

SUBJECT: Personal Support Services Agencies

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-3-1601; 33-1-305; 33-2-403; and Public Chapter No. 110 of 2015

EFFECTIVE DATES: June 2, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter No. 110 of 2015 (SB319/HB288) revised portions of Tennessee Code Annotated, Section 33-2-403 to address licensing issues relative to Personal Support Services Agencies (PSSAs). Statutory changes necessitated changes to Tennessee Administrative Rule Chapter 0940-05-38, Minimum Program Requirements for PSSAs. These rules now clarify that an agency can provide PSSA services whether licensed by TDMHSAS or TDIDD. The department from which the agency obtains a license (TDMHSAS or TIDD) is determined by the diagnosis of the majority (over 50%) of its client base, i.e., if over 50% are intellectually disabled, TDIDD will license the agency; if over 50% are aged or have a mental health diagnosis, TDMHSAS will license the agency. The determination of an agency's majority of client base will be determined annually at the time of license application or renewal by cooperative agreement between TDMHSAS and TDIDD. Additionally, changes were made to address housekeeping matters and to ensure compliance with current best practices in these agencies.

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.

TDMHSAS Responses to Comments about
Rules Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies
Facilities made prior to, during, or after the
Rulemaking Hearing Held on October 27, 2015

TENNESSEE ASSOCIATION FOR HOME CARE

The Tennessee Association for Home Care (TAHC) represents personal support service agencies, home health agencies and hospice organizations statewide. I am Gayla Sasser, Executive Director for TAHC and thank you for the opportunity to provide comments on the proposed rule changes affecting personal support service agencies today. The TAHC recommends the following changes:

0940-05-38-.06 Policies & Procedures

(k) Access by department licensure staff to personal support service workers to discuss investigation of any service provided under this chapter.

There is general concern that workers may be asked to interrupt services to another client by department licensure staff to discuss an investigation. We would respectfully ask that licensure staff be mindful of the schedules set by TennCare/MCOs in providing services and be reasonable in such requests. We would request that the word "Reasonable" be inserted before "Access" in this sentence.

0940-05-38-.10 Service Recipient Rights

(d) Service recipients have the rights to be protected by the licensee from neglect, mistreatment, from physical, verbal and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation.

The words 'mistreatment' and 'misappropriation' are added to this statement and unless defined could be grossly misunderstood by agencies or licensure staff. With the emphasis on elder abuse in the last state legislative session, we believe there are sufficient definitions to protect our frail elderly. Therefore, we would respectfully request that these undefined words be removed from this section.

TDMHSAS Response: The Department recognizes TAHC's concern that PSSA staff not interrupt the provision of services by a caregiver during the course of an investigation. The Department is charged by statute (TCA §§ 33-2-413(b) and 33-2-416) with investigating complaints against a licensed agency, which includes complaints against a PSSA agency's staff member. The Department will remind Licensure staff to make their best effort to avoid interfering with the caregiver's provision of services while conducting an investigation. The Department will remove the word mistreatment from the proposed rule but will retain the word misappropriation and/or. The word misappropriation is defined in TCA §68-11-1002(3) (Abuse Registry), as well as in TCA §33-2-402(8). These are the definitions used by the Department for investigative purposes.

SENIOR SOLUTIONS HOME CARE

Ability to use electronic verifications from telephone and tablets (Choices).

I think I speak for the association that we would like Electronic Visit Verification (EVV) reports to be our clients' record of service. If the provider does not have an EVV system, which records call ins and call outs with task performed, then paper time sheets need to be kept.

Now with Amerigroup, United Health Care, and BCBS all using tablets in clients' homes, which requires task to be documented, it would eliminate the duplication of paper time sheets.

On non-choices clients it would be rather the provider has/uses an EVV system that captures the phone number, time in, time out and task performed if paper time sheets are still required.

TDMHSAS Response: The Department will amend Rule 0940-05-38-.01, Definitions, to add a new section which will read as follows: "(11) "Written" means, as applied to licensee's records, a generally accepted format, including electronic or paper, used for retaining business or client records." Adding this subsection will clarify that records may be kept in hard or electronic format.

GRISWOLD HOME CARE NASHVILLE

Per our discussion this morning at the PSSA Rules Hearing, we respectfully request the following changes/additions in bold:

0940-05-38-.04 Application

- (1) To provide **and/or refer** personal support services, an agency needs a license from either the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities.
- (2) An agency licensed by either Department may provide **or refer** personal support services to individuals with physical or other disabilities.
- (6) The agency should submit to the licensing department a list of the counties in which they provide **or refer** services and the address at which the agency maintains its employee/**contractor** and service recipient records.

We appreciate your time and consideration regarding our requests and look forward to the final PSSA Rules publication.

TDMHSAS Response: The Department would refer to the definition of "Personal Support Service Agency" found in 0940-05-38-.01(3), wherein the definition includes all entities that employ or subcontract with individuals who provide personal support services to service recipients." The Department believes that an agency that subcontracts with individuals is the same as an agency that refers individuals for a fee and/or maintains records on service recipients and subcontracted staff. An agency that provides only employment placement or referral is exempt from licensing by this Department. See, TCA § 33-2-403(7).

FIRST TENNESSEE HUMAN RESOURCE AGENCY

I have just received the proposed rule changes for Personal Support Services. I am greatly concerned that some of the rules as written are changing the entire foundation of what I have come to know as "homemaker services". The expansion of qualification, specifically under 0940-05-38-.07(2)(g) Personnel Requirements, leads me to question what is the role of home health agencies and TennCare Choices program. New rules already implemented by the Department of Human Services, under the Social Services Block Grant, have added an intensive burden to expand paperwork, specifically in the area of risk assessments and plan of care.

Where does the Department of Mental Health and Substances Abuse provide agencies with funding? Most agencies that are contracted under the Social Service Block Grant are already having to solicit for local matching funds to maintain the level of funding through SSBG. Our agency solicits from 5 different local United Way organization, all of which have multiple expectations of time investment from the "partner" agency. How would non-profits, specializing in "social services" be financially able to retain the salary or wages of an RN to provide "consultation".

More and more of the type of clients that are being referred to "homemaker" services are requiring greater levels of personal care. Again, are we allowing, even support, Medicare and Medicaid to go unchallenged with what should be their roles. When AARP lobbied so hard for home and community programs, then turned around and entered into an insurance underwriting with United Healthcare, was it already conceived that Medicaid funds who be transferred to the large insurance companies, only to expand denial of services, by making the levels of care requires higher year after year. Take a look at the long-term care population ten years prior to the same group today, look at the pre-admission treatment assessment process for "Choices", the same criteria not only defines the criteria for nursing home, but also translates that same criteria to home and community based services.

Somewhere in the system, there has to be a measure that weights on the side of the individual. An advocate, a Ombudsman, not paid by the State that may have fear for job, and truly standup. AARP isn't interested, "they" essentially got what "they" wanted and if the blinders were removed much more. But, what did the individual receive, less options, less choices, less control! If it were not for the few remaining "social services" organization, living from season to season, budget year to budget year, many folks would fade back into the shadows.

Without funding, the expectation that "social service" agency be pushed into the arena to provide higher levels of personal care is an unreasonable request and adds a financial burden that has no funding source options. What would be next, Adult Protective Workers must now have RN training.

TDMHSAS Response: The Department would refer the author of the question to the definitions of "Personal Support Services", "Personal Support Services Agency", and "Person Support Services Worker". The services envisioned by this rule are not home health services, which are provided by professionally licensed staff working in an agency/facility of the type licensed by the Tennessee Department of Health (see T.C.A. § 68-11-201 et. seq. for more information). Therefore the comments submitted by First Tennessee Human Resource Agency, as they pertain to the licensure of a home health agency, do not apply to these rules. The Department does not provide funding for personal support services agencies. The Department would refer the author to the Choices Program (<http://www.tn.gov/tenncare/topic/choices>) or TennCare (<http://www.tn.gov/tenncare>) for answers to the remaining questions.

ADVANCECARE HEALTH SERVICES, LLC

From my understanding, since our company has a license from Department of Intellectual and Developmental Disabilities, then we do not need a separate PSSA license?

TDMHSAS Response: If the agency has a license from the Department of Intellectual and Developmental Disabilities to provide personal support services and the majority of that agency's clients have a diagnosis of intellectual or developmental disabilities, the agency does not also need a license from the Department of Mental Health and Substance Abuse Services. An agency providing personal support services with a majority of its clients being aged or with a mental health diagnosis should be licensed by the Department of Mental Health and Substance Abuse Services. See Rule 0940-05-38-.04(1)-(4).

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 Departments believe these rules will have a positive impact on small businesses by eliminating the need for duplicate licensing and supporting their use of electronic records, thereby reducing agency expenses. The rules support a small business's hiring practices and provide protection to their clients by clarifying that no one listed on the Tennessee Department of Health's Abuse Registry or the Tennessee Sex Offender Registry can provide personal support services. The rules remove unclear terminology and address the current way small businesses provide personal support services in Tennessee.

Impact on Local Governments

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

These rules do not have a projected impact on local governments.

①

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

For Department of State Use Only

Sequence Number: 03-01-16
 Rule ID(s): 6130
 File Date: 3/4/16
 Effective Date: 6/2/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Office of Licensure
Contact Person:	Kurt Hippel
Address:	5 th Floor, Andrew Jackson Building, 500 Deaderick Street
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@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
0940-05-38	Minimum Program Requirements for Personal Support Services Agencies
Rule Number	Rule Title
0940-05-38-.01	Definitions
0940-05-38-.02	Application of Rules
0940-05-38-.03	Scope of Personal Support Services Agencies
0940-05-38-.04	Application
0940-05-38-.05	Governance Requirements
0940-05-38-.06	Policies and Procedures
0940-05-38-.07	Personnel Requirements
0940-05-38-.08	Standardized Training and Continuing Education Requirements
0940-05-38-.09	Service Recipient Record Requirements
0940-05-38-.10	Service Recipient Rights

0940-05-38-.01 DEFINITIONS.

- (1) "Personal Support Services" means one (1) or more of the following services provided to a service recipient, as defined in 0940-05-38-.01(2), in the individual's permanent or temporary residence.
 - (a) Self-care assistance with tasks such as eating, dressing, toileting, bathing, mobility, transfer assistance and other services and supports to maintain health and wellness;
 - (b) Household assistance with tasks such as housekeeping, laundry, meal planning, meal preparation, shopping, bill paying, and use of telecommunication devices;
 - (c) Personal assistance to service recipients to access community activities such as transportation, social, recreational or other personal activities; and/or
 - (d) Education services.
- (2) "Service Recipient" means an individual who:
 - (a) Has substantial limitations in two (2) or more major life activities because of a chronic condition, acute episode of illness or injury, age, physical or other disability;
 - (b) Receives services in either a permanent or temporary residence; and
 - (c) Depends on personal support services to perform major life activities, but does not require nursing level services to be provided in connection with an acute episode of illness or injury.
- (3) "Personal Support Services "Agency" or "Agency" means a sole proprietorship (someone who owns an unincorporated business by himself or herself), partnership, corporation, limited liability company or limited liability partnership providing personal support services. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (4) "Personal Support Services Worker" (or "Wworker") means a person licensed as a personal support services agency, or an employee or an individual subcontracted by a personal support services agency who is providing personal support services under an arrangement between a service recipient and a personal support services agency.
- (5) "Chronic Condition" means a mental and /or physical impairment that is expected to last indefinitely.
- (6) "Education Services" means consultation provided by a registered nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (7) "Hold Out to the Public" means asserting expertise and availability through advertising, public notice, self-promotion, etc.
- (8) "Major Life Activities" means:
 - (a) Self-care;
 - (b) Receptive and expressive language;
 - (c) Learning;
 - (d) Mobility;

- (e) Self-direction;
 - (f) Capacity for independent living; or
 - (g) Economic self-sufficiency.
- (9) "Medication Assistance" means providing medication reminders and opening medication packaging, but does not mean giving the service recipient injections or any form of medication or medication administration that would only be appropriate and acceptable for persons who are authorized to do so by Title 63, Chapter 7. Medication assistance includes, but is not limited to, any of the following:
- (a) Loosening the cap on a pill bottle for oral medication;
 - (b) Opening pill reminder box if the box is filled by the service recipient or authorized representative or licensed medical personnel practicing within the scope of their license;
 - (c) Placing medication within reach of the service recipient;
 - (d) Holding a service recipient's hand steady to help them with drinking liquid medication;
 - (e) Guiding the service recipient's hand when the individual is applying eye/ear/nose drops and wiping the excess liquid;
 - (f) Helping with a nasal cannula or mask for oxygen, plugging the machine in and turning it on;
 - (g) Applying non-prescription cream and lotions purchased over-the-counter to external parts of the body.
- (10) "Self-administration of Medication" means the ability of a service recipient to take prescribed or over-the-counter medications without assistance from another person.
- (11) "Written" means, as applied to licensee's records, any generally accepted format, including electronic or paper, used for retaining business or client records.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.02 APPLICATION OF RULES.

- (1) The licensee providing personal support services shall comply with and provide services that comply with the following rules:
- (a) Chapter 0940-05-02 Licensure Administration and Procedures;
 - (b) Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies; and
 - (c) Chapter 0940-05-06-03(1)-(6) Minimum Program Requirements for All Facilities-Financial Management of All Facilities.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.03 Scope of Personal Support Services Agencies.

- (1) These rules apply to all agencies or personal support services workers who ~~(a) provide~~ provide personal support services in the permanent or temporary residence of service recipients who meet the criteria specified in Rule 0940-05-38-.01(2).

- (2) The following are exempt from licensure under this chapter:
- (a) A person who provides personal support services to only one (1) service recipient and who is not in a business arrangement to provide personal support services to any other service recipient. This exception shall not apply to an individual who holds themselves out to the public as being in the business of personal support services for compensation;
 - (b) A person who provides personal support services only to members of the individual's own family;
 - (c) A person who provides only housekeeping services to a service recipient and no other assistance with major life activities;
 - (d) A person who provides only transportation services and no other assistance with major life activities;
 - (e) A person who provides services in homeless shelters;
 - (f) A person who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and
 - (g) Home care organizations licensed under T.C.A., Title 68, Chapter 11, Part 2 as a home care organization.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.04 APPLICATION FEES

~~The applicant shall submit a fee or fees with the application to the Department's Office of Licensure and Review. Each initial and renewal application for licensure shall be submitted with the appropriate fee or fees as set forth in Rule 0940-05-02.05 Licensure Administration and Procedure Fees. All fees submitted are non-refundable.~~

- (1) To provide personal support services, an agency needs a license from either the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities.
- (2) An agency licensed by either Department may provide personal support services to individuals with physical or other disabilities.
- (3) An agency seeking an initial license as a personal support service agency must submit a written attestation at the time of application acknowledging the categorization of the majority of its client population base, as described in (a) and (b) below. The written attestation shall be on a form developed by the department to whom application for a license is made.
 - (a) An agency with 50% or more of its client base being aged and/or having a diagnosis of mental illness and/or substance abuse should obtain a license from the Department of Mental Health and Substance Abuse Services.
 - (b) An agency with 50% or more of its client base having a diagnosis of developmental disability or intellectual disability should obtain a license from the Department of Intellectual and Developmental Disabilities.
- (4) After July 1, 2016, any agency seeking renewal of a personal support services license need only make application with the department that licenses 50% or more of its client base, as described in sections (3)(a) and (b) above. The renewing agency shall submit with the renewal application a written attestation acknowledging the categorization of the majority of its client population base.
- (5) No license shall be issued until the appropriate fee or fees are submitted by the agency seeking

an initial or renewal license, as set forth in Rule 0940-05-02-.05. All fees submitted are non-refundable.

- (6) The agency should submit to the licensing department a list of the counties in which they provide services and the address at which the agency maintains its employee and service recipient records.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.05 GOVERNANCE REQUIREMENTS.

- (1) The licensee shall comply with all federal, state, and local laws, ordinances, rules and regulations.
- (2) The licensee shall ensure that the agency is administered and operated in accordance with written policies and procedures including, but not limited to, those specified in Rule 0940-05-38-.06.
- (3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of service recipients.
- (4) The licensee shall designate an individual responsible for the operation of the agency.
- (5) The licensee shall ensure that the licensed agency serves only service recipients who will not cause the agency to violate its licensed status based on the distinct licensure category.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.06 POLICIES AND PROCEDURES.

- (1) The licensee shall maintain written policies and procedures that include the following:
 - (a) A description of services provided by the licensee. The description shall include enrollment and termination criteria;
 - (b) An organizational chart which clearly shows or describes the lines of authority;
 - (c) A policy and procedure which outlines the plan of action to be followed when the personal support worker is absent including, but not limited to, notice to the service recipient, the action that shall be taken, and the timeframes for action;
 - (d) A schedule of fees when applicable;
 - (e) A statement of service recipient rights as listed in 0940-05-38-.10 and the grievance procedures to be followed when a suspected violation of rights has been reported;
 - (f) A policy which ensures the confidentiality of service recipients' information and which includes the following provisions:
 1. The licensee's personal support services workers shall comply with applicable confidentiality laws and regulations;
 2. The service recipient shall not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services; and
 3. Identifiable photographs of service recipients shall not be used without the written and signed consent of the individual or the individual's legal guardian and/or conservator.

- (g) The plans and procedures to be followed in the event of an emergency including, but not limited to, fire evacuation and natural disaster emergencies;
- (h) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse or neglect of a service recipient, or other critical incidents. The procedures shall include provisions for corrective action, if any, to be taken as a result of such reporting and investigation, and reporting to the Tennessee Department of Mental Health and Developmental Disabilities' Office of Licensure and Review department's Office of Licensure and to any authority as required by law;
- (i) Requirement that personal support services workers comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
- (j) Receipt and disbursement of money on behalf of service recipients;
- (k) Access by department licensure staff to personal support services workers to discuss investigation of any service provided under this chapter;
- (l) Procedures to be followed if a worker will be providing medication assistance if the licensee provides that service. Written policy shall minimally include the following elements:
1. Medication assistance shall be provided only after written authorization has been obtained from the service recipient or the service recipient's authorized representative.
 2. Medication assistance training shall be provided to personal support services workers prior to providing assistance and training shall be documented in the personal support service worker's record.
 3. Personal support workers shall have procedures for collecting information about medications taken by service recipients.
- (m) Policies to ensure that licensees or personal support services workers providing transportation to service recipients meet the following requirements:
1. All vehicles shall be maintained and operated in a safe manner;
 2. All licensees or personal support services workers providing transportation shall possess an appropriate driver's license from the Tennessee Department of Safety and documentation of such license shall be maintained in the licensee's records; and
 3. All vehicles used for service recipient transportation and owned by the licensee or personal support services worker shall be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle, and documentation of such insurance shall be maintained in the facility's records.
- (n) Policies to address use of devices such as a hoist lift or gait belt, after training, to assist the service recipient in getting out of or into bed, a chair, toilet or shower but not as part of a therapeutic regimen.
- (o) Policies to address categorization of the majority (over fifty-percent (50%)) of the agency's client population base.
- (p) Policy that the agency will cooperate with the department when investigating any case of alleged abuse, neglect, mistreatment, misappropriation or exploitation of a service recipient.

- (q) Policy that an alternate plan for staffing will be prepared in case of absence or the assigned personal support services worker.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.07 PERSONNEL REQUIREMENTS.

- (1) The licensee shall maintain a personnel file for each personal support services worker with the following information:
 - (a) A written, signed and dated job description including the employment requirements and job responsibilities for each staff position held;
 - (b) Verification that the worker meets the respective employment requirements for each position held;
 - (c) Evidence of a criminal background check, as required by T.C.A. § 33-2-1202.
 - (d) ~~Status on the Tennessee registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health.~~
Evidence that the worker's status on the Tennessee registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health, has been checked pursuant to T.C.A. §68-11-1004(b). No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provide services;
 - (e) Evidence of the worker's status on the state's sexual offender registry. No individual or volunteer who is listed on the state's sexual offender registry may be hired or otherwise permitted to provide services.
 - (f) The worker's date of birth;
 - (g) Annual performance evaluation reports evaluating, at a minimum, the ability of personal support services workers to provide daily supports to service recipients; and
 - (h) A worker notice that outlines the general relationship between an agency and the personal support services worker that includes the following:
 - 1. The status of the personal support services agency as an employer or contractor of services;
 - 2. The responsibility of the personal support services agency for the payment of the personal support services worker's wages, taxes, social security, workers compensation and unemployment compensation payments, and overtime pay for hours worked in excess of forty (40) hours in a week; and
 - 3. Duties, responsibilities, obligations and legal liabilities of the agency and the service recipient including, but not limited to, insurance and personnel management.
 - (i) The personal support service worker's work history containing a continuous description of activities over the past five (5) years; and
 - (j) Personal references from at least three (3) individuals, one of whom shall have known the personal support service worker/applicant for at least five (5) years.

- (2) The licensee shall have written personnel policies. The personnel policies shall, at a minimum address the following:
- (a) That all All-Ppersonal support services workers shall be eighteen (18) years of age or older;
 - (b) That all All-Ppersonal support services workers shall practice infection control procedures and standard precautions that will protect the service recipient from infectious diseases;
 - (c) That all All-Ppersonal support services workers shall submit to a criminal background check every two (2) years or within ten (10) days of employment or within ten (10) days of a change of responsibilities that includes direct contact with or direct responsibility for service recipients, as required by T.C.A. § 33-2-1202;
 - (d) That evidence of the Sstatus of every personal support services worker on the Tennessee registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health shall be checked annually and prior to direct contact with service recipients. No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provider services;
 - (e) That evidence of the status of every Ppersonal support services worker on the Tennessee Sexual Offender Registry shall be checked annually and prior to direct contact with service recipients;
 - (f) That the P personal support services worker shall demonstrate the following prior to providing personal support services:
 1. Language skills sufficient to read and understand instructions; prepare and maintain written reports and records;
 2. Language skills sufficient to communicate with the service recipient; and
 3. Documented training specific to meeting individual service recipient needs in the area of self-care, household management and community living, and methodologies for service delivery.
 - (g) That Ppersonal support services workers shall have access to consultation for any of the services provided under this chapter. Consultation may include providing the personal support service worker access to or consultation with a registered nurse, other agency staff or the primary family caregiver to assist the staff in providing personal support services, and
 - (h) That the personal support service worker shall neither borrow, receive nor take funds or other personal property from the service recipient.
- (3) The licensee shall have proof of liability insurance coverage for the agency, workers and others who provide personal support services.
- (4) The licensee shall maintain a current roster of all personal support workers at all times including workers kept on an on-call or back-up basis.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.08. STANDARDIZED TRAINING AND CONTINUING EDUCATION REQUIREMENTS.

- (1) The licensee shall ensure and document that:
- (a) Individuals who provide personal support services demonstrate basic

competency in the following skill/knowledge areas within the first 30 days of employment/contract prior to beginning work with service recipients:

1. Observing, reporting and documenting changes in service recipient's daily living skills;
 2. Abuse, neglect, exploitation, detection, reporting and prevention;
 3. Service recipient rights;
 4. Universal health precautions, including infection control;
 5. How to assist service recipients with personal hygiene;
 6. Service recipient safety; and
 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events;
- (b) Individuals who provide medication assistance receive documented training in medication assistance performed by, or under the general supervision of, a registered nurse and consistent with T.C.A. § 63-7-102;
- (c) Individuals who provide personal support services receive training on job related topics at least annually; and
- (d) Documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.09 SERVICE RECIPIENT RECORD REQUIREMENTS.

- (1) The licensee shall ensure that each service recipient's record includes at least the following information:
- (a) Name, address, telephone number, gender, and date of birth;
 - (b) Date of service enrollment;
 - (c) Name, address, and telephone number of an emergency contact person;
 - (d) Written fee agreement when applicable. If the licensee charges fees for personal support services, a written agreement dated and signed by the service recipient or the service recipient's legal representative (conservator, parent, guardian or legal custodian) or person paying for services prior to the provision of services. The written agreement shall include at least the following information:
 1. The fee or fees to be paid by the service recipient;
 2. The services covered by such fees; and
 3. Any additional charges for services not covered by the basic service fee.
 - (e) Written acknowledgement that the service recipient or service recipient's legal representative (conservator, parent, guardian or legal custodian) has been informed of the service recipient's rights and responsibilities and the agency's general rules affecting

the service recipients;

- (f) A written service plan based on a needs assessment which indicates type, frequency, duration, and amount of personal support services to be provided to assist the service recipient in performing major life duties.
- (g) Consent for services by the service recipient or service recipient's legal representative (conservator, parent, guardian, or legal custodian), surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care, when applicable;
- (h) If applicable, address, phone number or e-mail address to reach the service recipient's legal representative (conservator, parent, guardian or legal custodian) or surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care;
- (i) Documentation of party responsible for payment of services;
- (j) A record of services actually delivered with dates and times documented;
- (k) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services;
- (l) Documentation of all funds received and disbursed on behalf of the service recipient;
- (m) An alternate plan for staffing in case of absence of the personal support services worker;
- (n) Written authorization by the service recipient or the service recipient's authorized representative if the agency is providing medication assistance;
- (o) Written documentation that the service recipient has evaluated the quality of personal support services provided at least semi-annually. Each agency shall develop an evaluation form for the service recipient, or legal representative of the service recipient, to fill out and sign to acknowledge this requirement has occurred;
- (p) A written consumer notice outlining general service responsibilities as well as general notification of the agency's responsibilities as an employer or contractor provided to service recipients before beginning service, which shall include, at a minimum the duties, responsibilities, obligations and legal liabilities of the personal support services agency; the personal support services worker; and the service recipient. The description shall clearly set forth the service recipient's responsibility, if any, for the following:
 - 1. Day to day supervision of the personal support services worker;
 - 2. Assigning duties to the personal support services worker;
 - 3. Hiring, firing and discipline of the personal support services worker;
 - 4. Provision of equipment or materials for use by the personal support services worker;
 - 5. Performing a criminal background check on the personal support services worker;
 - 6. Checking the personal support services worker's references; and
 - 7. Ensuring credentials and appropriate licensure/certification of a personal support services worker; and

- (q) Copy of legal document granting another individual or corporation authority to act as the service recipient's legal representative/conservator/power of attorney/durable power of attorney for health care/mental health care.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.10 SERVICE RECIPIENT RIGHTS.

- (1) The following rights shall be afforded to all individuals receiving personal support services from the licensee:
 - (a) Service recipients have the right to be fully informed before the initiation of services about their rights and responsibilities and about any limitation on these rights imposed by the rules of the licensee. The licensee shall ensure that the service recipient is given oral and/or written rights information that includes at least the following:
 - 1. A statement of the specific rights guaranteed the service recipient by these rules and applicable state laws;
 - 2. A description of the licensee's grievance procedures;
 - 3. A listing of available advocacy services; and
 - 4. A copy of all agency rules and regulations pertinent to the service recipient. The information shall be presented in a manner that promoted understanding by the service recipient of his or her rights, and the individual shall be given an opportunity to ask questions about the information. If the service recipient is unable to understand the information at the time of admission to service but later becomes able to do so, the information shall be presented to the service recipient at that time. If the service recipient is likely to continue indefinitely to be unable to understand the information, the licensee shall promptly attempt to provide the required information to a guardian or other appropriate person or an agency responsible for protecting the service recipients' rights.
 - (b) Service recipients have the right to voice grievances to the licensee and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination, or reprisal;
 - (c) Service recipients have the right to be treated with consideration, respect and full recognition of their dignity, and individuality;
 - (d) Service recipients have the right to be protected by the licensee from neglect, from physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation; and
 - (e) Service recipient have the right to be assisted by the licensee in the exercise of their civil rights.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

Repeals

Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305 and 309; §§ 33-2-301 and 302; and §§ 33-2-403, 404, 407, and 409.

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

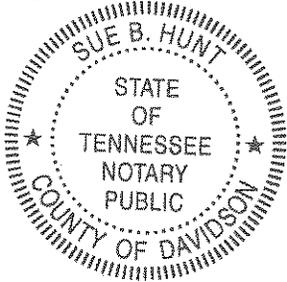
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services (board/commission/ other authority) on 12/10/2015 (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: 08/28/15

Rulemaking Hearing(s) Conducted on: (add more dates) 10/27/15



Date: 12/10/15

Signature: [Handwritten Signature]

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/10/15

Notary Public Signature: [Handwritten Signature]

My commission expires on: May 8, 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.

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter
2/19/2016
Date

Department of State Use Only

RECEIVED

2016 MAR -4 PM 1:52

SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 3/4/16

Effective on: 6/2/16

[Handwritten Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Long-Term Care Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: June 20, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of this rule is anticipated to produce a minimal decrease in state expenditures.

STAFF RULE ABSTRACT: The promulgation of this rule eliminates the administration of oral, topical and inhaled medications as the only health care tasks of a CHOICES member that may be self-directed. Promulgation of this rule permits the member with his/her licensed health care provider to determine which health care tasks may be performed under the member's supervision by an unlicensed person in the member's home.

Public Hearing Comments

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

There were no public comments on this rule.

Regulatory Flexibility Addendum

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

The rule is not anticipated to have an effect on small businesses.

Impact on Local Governments

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

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

8

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

For Department of State Use Only

Sequence Number: 03-10-16
Rule ID(s): 6137
File Date: 3/22/16
Effective Date: 6/20/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@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
1200-13-01	TennCare Long-Term Care Program
Rule Number	Rule Title
1200-13-01-.05	TennCare CHOICES Program

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE
AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-01
TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.05 TENNCARE CHOICES PROGRAM.

(9) Consumer-Direction (CD).

(j) Self-Direction of Health Care Tasks.

1. A Competent Adult, as defined in this Chapter, with a functional disability living in his own home, enrolled in CHOICES Group 2 or CHOICES Group 3, and participating in CD, or his Representative for CD, may choose to direct and supervise a Consumer-Directed Worker in the performance of a Health Care Task as defined in this Chapter.
2. For purposes of this rule, home does not include a NF or ACLF.
3. A Member shall not receive additional amounts of any service as a result of his decision to self-direct health care tasks. Rather, the Health Care Tasks shall be performed by the Worker in the course of delivering Eligible CHOICES HCBS already determined to be needed, as specified in the POC.
- ~~4. Health Care Tasks that may be self-directed for the purposes of this Subparagraph are limited to administration of oral, topical and inhaled medications.~~
54. The Member or Representative who chooses to self-direct a health care task is responsible for initiating self-direction by informing the health care professional who has ordered the treatment which involves the Health Care Task of the individual or caregiver's intent to perform that task through self-direction. The provider shall not be required to prescribe self-direction of the health care task.
65. When a licensed health care provider orders treatment involving a Health Care Task to be performed through self-directed care, the responsibility to ascertain that the Member or caregiver understands the treatment and will be able to follow through on the Self-Directed Health Care Task is the same as it would be for a Member or caregiver who performs the Health Care Task for himself, and the licensed health care provider incurs no additional liability when ordering a Health Care Task which is to be performed through self-directed care.
76. The Member or his Representative for CD will identify one or more Consumer-Directed Workers who will perform the task in the course of delivery of Eligible CHOICES HCBS. If a Worker agrees to perform the Health Care Tasks, the tasks to be performed must be specified in the Service Agreement. The Member or his Representative for CD is solely responsible for identifying a Worker who is willing to perform Health Care Tasks, and for instructing the paid personal aide on the task(s) to be performed.

87. The Member or his Representative for CD must also identify in his Back-up Plan for CD who will perform the Health Care Task if the Worker is unavailable, or stops performing the task for any reason.

98. Ongoing monitoring of the Worker performing self-directed Health Care Tasks is the responsibility of the Member or his Representative. Members are encouraged to use a home medication log as a tool to document medication administration. Medications should be kept in original containers, with labels intact and legible.

(k) Withdrawal from Participation in Consumer Direction (CD).

GW10215328

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 12/18/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/11/15

Rulemaking Hearing(s) Conducted on: (add more dates). 02/03/16

Date: 2/18/2016

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon

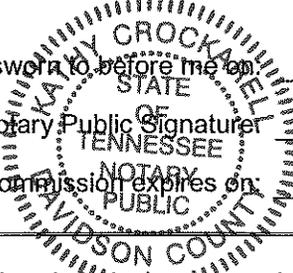
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 2/18/2016

Notary Public Signature: [Handwritten Signature: Kathy Crockarell]

My commission expires on: 1/31/2019



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

[Handwritten Signature: Herbert H. Slatery III]
Herbert H. Slatery III
Attorney General and Reporter

3/18/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/22/16

Effective on: 6/20/16

[Handwritten Signature: Tre Hargett]
Tre Hargett
Secretary of State

RECEIVED
2016 MAR 22 PM 2:32
SECRETARY OF STATE
PUBLICATIONS