

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: Appeals of Certain Eligibility Determinations and TennCare Delay Hearings

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-5-112; 42 U.S.C. Sections 1396a(a)(3), (5), and (8); 42 C.F.R. 431 Subpart E; and 42 C.F.R. Section 435.912

EFFECTIVE DATES: November 7, 2014 through May 6, 2015

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule chapter provides rules necessary for the Bureau of TennCare to provide hearings for determining eligibility of applicants for TennCare, CoverKids and Medicare Savings 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.in.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

These rules are not anticipated to have an impact on local governments.

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 Rule ID(s): 5831
 File Date (effective date): 11-07-14
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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

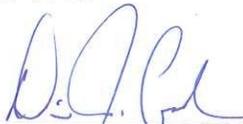
Statement of Necessity:

On September 2, 2014, a Preliminary Injunction Order was entered in the United States District Court for the Middle District of Tennessee Nashville Division in the matter of Melissa Wilson, et al. v. Darin Gordon, et al. by United States District Judge Todd J. Campbell, ordering the Defendants, which include the Bureau of TennCare, to provide an opportunity for a fair hearing to all individuals who have applied for TennCare on or after October 1, 2013, who have not received a final eligibility determination in 45 days, or 90 days in the case of disability applicants, and who have not been given an opportunity for a fair hearing by TennCare.

In order to provide the fair hearings on delayed adjudications as ordered by the District Court, the Bureau of TennCare is required to promulgate rules for conduct of the hearings. In furtherance of TennCare's resolution of the pending applications, these rules also enable the Bureau to conduct fair hearings relating to eligibility determinations.

T.C.A. § 4-5-208(a)(3) permits an agency to adopt an emergency rule when it is required by court order.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



 Darin J. Gordon
 Director, Bureau of TennCare
 Tennessee Department of Finance and
 Administration

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
1200-13-19	Appeals of Certain Eligibility Determinations and TennCare Delay Hearings
Rule Number	Rule Title
1200-13-19-.01	Scope and Authority
1200-13-19-.02	Definitions
1200-13-19-.03	Accessibility
1200-13-19-.04	Notice of Eligibility Determination
1200-13-19-.05	Appeal Rights, Notices and Procedures
1200-13-19-.06	Time
1200-13-19-.07	Dismissal of Appeal or Request for Hearing
1200-13-19-.08	Filing and Service of Pleadings and Other Materials
1200-13-19-.09	Telephonic and Alternate Electronic Methods for Conducting Prehearing Conferences and Hearings
1200-13-19-.10	Commencement of Contested Case Proceedings
1200-13-19-.11	Representation by Counsel
1200-13-19-.12	Pre-Hearing Motions
1200-13-19-.13	Continuances
1200-13-19-.14	Discovery
1200-13-19-.15	Order of Proceedings
1200-13-19-.16	Default and Uncontested Proceedings
1200-13-19-.17	Evidence
1200-13-19-.18	Initial and Final Orders
1200-13-19-.19	Appeal of Initial Orders
1200-13-19-.20	Reconsideration
1200-13-19-.21	Stay
1200-13-19-.22	Judicial Review
1200-13-19-.23	Clerical Mistakes
1200-13-19-.24	Agency Record
1200-13-19-.25	Code of Judicial Conduct, Disqualification and Separation of Functions

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

Rules of the Bureau of TennCare/Medicaid, 1200-13, are amended by adding a New Chapter 19 titled Appeals of Certain Eligibility Determinations and TennCare Delay Hearings, as follows:

New Rule

**Chapter 1200-13-19
Appeals of Certain Eligibility Determinations and TennCare Delay Hearings**

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1200-13-19-.01 Scope and Authority. This chapter governs all administrative hearings conducted for the purpose of reviewing eligibility determinations for the following categories which use the MAGI income methodology: Children Under 19, Pregnant Women, Caretaker Relatives, CHIP – Children and Pregnancy (CoverKids/HealthyTNBabies). Eligibility determination appeals for any other eligibility category will not be governed by this chapter. This chapter will govern all delay hearings for all eligibility categories. These rules preempt any other TennCare Rules to the extent that they are in conflict with this chapter.

- (1) The Tennessee Medical Assistance Act of 1968 and Executive Order Number 23, dated October 19, 1999, designate the Tennessee Department of Finance and Administration as the single state agency for purposes of administering Title XIX of the Social Security Act (Medicaid).
- (2) The CoverKids Act of 2006 authorizes the Tennessee Department of Finance and Administration to establish and administer a program to provide health care coverage to uninsured children under Title XXI of the Social Security Act (State Children's Health Insurance Program).
- (3) Titles XIX and XXI of the Social Security Act, TennCare II Medicaid Section 1115 Demonstration Waiver, and 42 CFR Subpart E require the designated state agency to provide for appeals and fair hearings concerning eligibility determinations for applicants and recipients of assistance and services provided through the programs.
- (4) The Commissioner of the Department of Finance and Administration has placed responsibility for eligibility determination appeal hearings in the Division of Health Care Finance and Administration (HCFA), except as specifically delegated to the Department of Human Services. HCFA employs Administrative Judges vested with full authority to conduct the hearing process, including authority to schedule and conduct a hearing; administer oaths; issue subpoenas; rule upon offers of proof; regulate the course of the hearing; set the time and place for continued hearings; enter an Initial Order; rule on petitions for reconsideration; and perform duties or actions that are necessary for the fair and timely management of the administrative hearing process.
- (5) Tennessee Code Annotated § 71-5-112 requires any hearing concerning matters of eligibility for medical assistance to be conducted under the Tennessee Uniform Administrative Procedures Act.
- (6) Any procedural matter not specifically addressed by these rules is to be resolved by consulting the following authorities in the order listed: the Tennessee Uniform Administrative Procedures Act (UAPA), the Uniform Rules of Procedure For Hearing Contested Cases Before State Administrative Agencies (UAPA Rules), and the Tennessee Rules of Civil Procedure (TRCP).

1200-13-19-.02 Definitions.

- (1) Administrative Judge. An impartial employee of the Agency who has no direct involvement in the action under consideration prior to the filing of the appeal; is licensed to practice law; is authorized to conduct administrative hearings; and, will hear contested cases and will enter Initial Orders as set out in T.C.A. §§ 4-5-301(a)(2) and 314(b).
- (2) Agency. The TennCare Bureau or CoverKids, as applicable.

- (3) Agency Record. The Agency record will consist solely of: notice of all proceedings; any pre-hearing order; any motions, pleadings, briefs, petitions, requests and intermediate rulings; evidence received or considered; a statement of matters officially noticed; proffers of proof and objections and rulings thereon; proposed findings, requested orders, and exceptions; the tape recording, stenographic notes or symbols, or transcript of the hearing; any Final Order, Initial Order, or order on reconsideration; staff memoranda or data submitted to the Agency unless prepared and submitted by personal assistants and not inconsistent with T.C.A. § 4-5-304(b); and matters placed on the record after an ex parte communication. The Record must be maintained for a period of time not less than three (3) years as required by T.C.A. § 4-5-319(a). This will be the official record for the purposes of T.C.A. § 4-5-322.
- (4) Appeal. The process of obtaining an administrative hearing as a result of an Agency action or inaction regarding matters affecting eligibility for TennCare or CoverKids, or the process of obtaining review of an Initial Order by the Commissioner's Designee or judicial review of a Final Order.
- (5) Appeal Request. Request for a hearing.
- (6) Appellant. An applicant or enrollee whose appeal of an action or inaction of the Agency has been determined to present a valid factual dispute. The Appellant bears the burden of proof in any hearing conducted under this chapter. Also referred to as the Petitioner.
- (7) Applicant. An individual who submits an application for TennCare or CoverKids health coverage, or the Medicare Savings Program, or the person who acts as an authorized representative for the applicant.
- (8) Burden of Proof. The minimum evidentiary standard required in order to prevail in an administrative hearing is a preponderance of the evidence. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The Appellant bears the burden of proof in any hearing conducted under this chapter.
- (9) Children's Health Insurance Program (CHIP). A program established and administered by a State, jointly funded with the Centers for Medicare and Medicaid Services (CMS), to provide health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program.
- (10) Clerk's Office. The Agency Appeals Clerk's Office which may be contacted at: Tennessee Health Connection, P.O. Box 305240, Nashville, TN 37230-5242; fax number 1-855-315-0669; telephone number 1-844-202-5618; or appeals.clerk.tenncare@tn.gov.
- (11) Commissioner. The chief administrative officer of the Tennessee department where the Bureau of TennCare is administratively located.
- (12) Commissioner's Designee. A person authorized by the Commissioner to review appeals of Initial Orders and to enter Final Orders under T.C.A. § 4-5-315, or to review Petitions for Stay or Reconsideration of Final Orders. Petitions for Reconsideration of an Initial Order will be disposed of by the same person who rendered the Initial Order, if available.
- (13) Contested Case Proceeding. See "Hearing".
- (14) CoverKids. The Children's Health Insurance Program in Tennessee.
- (15) Delay Appeal. An appeal of an application that has been pending for longer than 45 days, or 90 days for CHOICES applications, with the sole purpose of determining whether the delay in processing is unreasonable.
- (16) Ex Parte Communication. An exchange of information regarding an issue of fact in a contested case proceeding between one party and the Administrative Judge without including the opposing party. Communication may take place orally or in writing, by telephone, face-to-face, or electronically. Communications between Agency members or their attorneys are not considered to be ex parte. An Administrative Judge, hearing officer, or Agency member may communicate with the Agency regarding any

matter pending before the Agency if such persons do not receive ex parte communications of a type that the Administrative Judge, hearing officer, or Agency members would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record. Matters of scheduling, dismissal, withdrawal or other administrative issues are not ex parte communications

- (17) Fair Hearing. See "Hearing".
- (18) Findings of Fact. The factual findings following the administrative hearing, enumerated in the Initial and Final Order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (19) Final Order. The Initial Order becomes a Final Order in fifteen (15) days without further notice if not appealed. If the Initial Order is reviewed under T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a Final Order. The Final Order is binding upon all parties unless it is stayed, reversed or set aside according to applicable rules. A statement of the procedures and time limits for seeking reconsideration or judicial review must be included.
- (20) Good Cause. A legally sufficient reason. In reference to an omission or an untimely action, a reason based on circumstances outside the party's control and despite the party's reasonable efforts.
- (21) Hearing. A contested case proceeding where evidence is heard by an Administrative Judge to render a decision regarding an applicant's or enrollee's delayed adjudication or eligibility appeal, conducted under this Chapter. Also referred to as a Fair Hearing or a Contested Case Proceeding.
- (22) Initial Order. The decision of the Administrative Judge following an administrative hearing. The Initial Order must contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It must include a statement of any circumstances under which the Initial Order may, without further notice, become a Final Order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review will be included.
- (23) Modified Adjusted Gross Income (MAGI). Has the same meaning as is found in 42 C.F.R. § 435.603.
- (24) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit by the Agency upon receipt of an appeal. It must contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel or another authorized person of his choice; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307(b).
- (25) Party. Each person or Agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (26) Petitioner. See Appellant.
- (27) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (28) Request for a Hearing. A clear expression by the applicant or beneficiary, or his authorized representative, that he wants the opportunity to present his case to a reviewing authority.
- (29) Representative. An individual or organization, including legal counsel, a relative, a friend, or another spokesperson, authorized by an appellant to represent him during an appeal.
- (30) Respondent. The party who is responding to the action brought by the petitioner, usually the Agency.
- (31) Single State Agency. The Tennessee Department of Finance and Administration, designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration

waiver granted to the State of Tennessee to administer TennCare.

- (32) TennCare. The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (33) Valid Factual Dispute. A dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal.

1200-13-19-.03 Accessibility. Information concerning the availability of language assistance must be provided to applicants and enrollees, including individuals with disabilities or who have limited English proficiency, in plain language and in a manner that is accessible and timely as required by the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

1200-13-19-.04 Notice of Eligibility Determination.

- (1) The Agency must send each applicant a written notice of the Agency's decision on his application, and if eligibility is denied, the reasons for the action, the specific regulation supporting the action, and an explanation of his right to request a hearing.
- (2) Before an application is denied for lack of documentation or conflicting information, the Agency will notify the applicant of the type of documentary proof he must submit in order to meet the eligibility requirements set out in 42 C.F.R. Part 435.

1200-13-19-.05 Appeal Rights, Notices and Procedures.

- (1) The Agency must grant an opportunity for a hearing to the following:
 - (a) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness.
 - (b) Any beneficiary who requests it because he believes the Agency has taken an action erroneously.
 - (c) Any enrollee who is entitled to a hearing under 42 C.F.R. 438 subpart B.
- (2) The Agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all beneficiaries.
- (3) When the Agency receives an appeal from an appellant, the Agency will dismiss this appeal unless the appellant has established a valid factual dispute relating to the appeal. The Agency will screen all appeals submitted by appellants to determine if each appellant has presented a valid factual dispute. If the Agency determines that an appellant failed to present a valid factual dispute, the Agency will immediately provide the appellant with a notice informing him that he must provide additional information as identified in the notice. If the appellant does not provide this information within ten (10) days of the date of the notice, the appeal will be dismissed without the opportunity for a fair hearing. If the appellant adequately responds to this notice, the Agency will inform the appellant that the appeal will proceed to a hearing. If the appellant responds but fails to provide adequate information, the Agency will provide a notice to the appellant, informing him that the appeal is dismissed without the opportunity for a fair hearing. If the appellant does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the appellant.
- (4) The Agency must provide notice of his right to a hearing; of the method by which he may obtain a hearing; and that he may represent himself or use a representative at the time:
 - (a) The individual applies for CoverKids or TennCare; and
 - (b) Of any action affecting his eligibility.
- (5) The notice of appeal rights and procedures must contain:
 - (a) A statement of what action the Agency intends to take;

- (b) The reasons for the intended action;
- (c) The specific rules that support, or the change in Federal or State law that requires, the action;
- (d) An explanation of:
 - 1. The individual's right to request a hearing; or
 - 2. In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
 - 3. The circumstances under which Medicaid is continued if a hearing is requested.

1200-13-19-.06 Time.

- (1) In computing any period of time prescribed or allowed by statute, rule or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the time period is to be included unless it is a Saturday, a Sunday or a legal holiday, which extends the period until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation. The Notice of Hearing shall provide notice of this provision or inform the applicant or recipient of the specific calendar dates by which certain actions must be taken.
- (2) Except in regard to petitions for appeal, reconsideration or review under T.C.A. §§ 4-5-315, 4-5-317 and 4-5-322, or where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the Agency or Administrative Judge may, at any time:
 - (a) With or without motion or notice, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order; or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section is to be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.
- (3) An appeal or request for a hearing must be received by the Agency within forty (40) calendar days (inclusive of mail time) of the date of the Agency notice to the individual regarding the intended action or prior to the date of action specified in the notice, whichever is later, unless good cause can be shown as to why the appeal or request for a hearing could not be filed within the required time limit.
- (4) Any communication submitted electronically must be received by midnight of the designated date.

1200-13-19-.07 Dismissal of Appeal or Request for Hearing.

- (1) The Agency may close a request for a delay appeal upon making an eligibility determination.
- (2) The Agency may dismiss a request for hearing if the appeal request has been withdrawn by the appellant in writing or through electronic or oral notification.
- (3) The Agency may dismiss a previously accepted appeal upon evidence presented at a good cause hearing, pre-hearing conference, or in the pleadings that the appeal was not timely filed and that good cause for the untimely filing did not exist.
- (4) Upon appropriate proof, the Agency may dismiss an appeal at any point in the hearing process for any of the reasons that the appeal might be denied by the Agency by rule or law, if such facts had been known by the Agency before the appeal was accepted for hearing.
- (5) The Agency must dismiss an appeal or request for hearing if the appeal does not present a valid factual dispute and the appellant does not provide additional information or clarification to establish a valid factual

dispute within fifteen (15) (inclusive of mail time) days of an Agency request. The Agency decision that an appeal does not raise a valid factual dispute is not appealable.

- (6) When the Agency dismisses an appeal it must provide a timely notice of dismissal to the appellant, stating:
 - (a) The reason for dismissal;
 - (b) An explanation of the dismissal's effect on the appellant's eligibility; and
 - (c) An explanation of how the appellant may show good cause why the dismissal should be vacated.

1200-13-19-.08 Filing and Service of Pleadings and Other Materials.

- (1) After an appeal is filed, all pleadings and any other materials that are required to be filed by a time certain must be received by the Clerk's Office by the specified time. The materials may be filed by delivering them to the Agency in person, electronically, by mail or by private carrier.
- (2) Upon initiation of a contested case, all pleadings and other materials required to be filed or submitted prior to the hearing must be filed with the Clerk's Office, where they will be stamped with the date of receipt.
- (3) A petition for appeal of an Initial Order or for reconsideration or stay of an Initial or Final Order must be filed with the Agency.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided in this Chapter.
- (5) Copies of all materials filed with the Agency in a contested case shall also be served upon all parties, or upon their counsel, and contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier, by hand delivery, or in electronic format.

1200-13-19-.09 Telephonic and Alternate Electronic Methods for Conducting Prehearing Conferences and Hearings. In the discretion of the Administrative Judge, and with the concurrence of the parties, any pre-hearing conference or hearing may be conducted by telephone or other electronic means, if each participant in the conference or hearing has an opportunity to fully participate in the entire proceeding while it is taking place.

1200-13-19-.10 Commencement of Contested Case Proceedings.

- (1) The appellant or his representative may request an appeal or a hearing by any clear expression, oral, written, or through other commonly available electronic means.
- (2) Upon determination that an appeal or a request for a hearing contains a valid factual dispute, the Agency will issue a notice of hearing as defined in this chapter. The notice of hearing must:
 - (a) Contain a statement of the date, time, place, and nature of the hearing;
 - (b) Inform the appellant of the right to be represented by counsel or another authorized person of his choice;
 - (c) Contain a statement of the legal authority and jurisdiction under which the hearing will be held, including references to the specific statutes and rules involved;
 - (d) Contain instructions to the appellant to notify the Agency if he requires a change in the schedule;
 - (e) Provide a short and plain statement of the matters asserted and define the issues and refer to detailed statements of the matters involved, if available;
 - (f) Provide information about hearing procedures, including the right to present written evidence and testimony and to bring witnesses and members of his family to the hearing.

- (g) Inform the appellant of his right to inspect the Agency file regarding the matter under appeal and to copy from the file.
- (3) Service of Notice of Hearing.
- (a) The Agency will provide the appellant or his representative with a copy of the notice of hearing by delivering it to the party electronically; by U.S. Mail; by certified mail; FedEx, UPS, or equivalent carrier; or by personal service. The notice will be sent a minimum of ten (10) days in advance of the date of the hearing. Delivery is presumed within five (5) days if sent by regular mail; the day following for expedited or overnighted delivery; the same day for electronic delivery and personal service.
 - (b) Service of the notice of hearing will be made at the address required to be kept current by the applicant or recipient with the Agency by T.C.A. §§ 71-5-106(l) and 110(c)(1), and at the address provided with the request for hearing, if different from the address on file with the Agency. The Agency must use the best address known to it, whether provided directly by the applicant or recipient or obtained indirectly.
 - (c) If there is a motion for default and there is no indication of actual service on a party, in determining whether to grant the default the Administrative Judge must consider the following:
 - 1. Whether any other attempts at actual service were made;
 - 2. Whether and to what extent actual service is feasible in any given case;
 - 3. What attempts were made to make contact with the party electronically, by telephone, by regular mail, or otherwise; and
 - 4. Whether the Agency has actual knowledge or reason to know that the party may be located at an address other than the address to which the notice was mailed.
- (4) Supplemented Notice. In the event it is impractical or impossible to include every element required for notice in the notice of hearing, elements such as the time and place of the hearing may be supplemented in a later written notice.
- (5) Filing of Documents. When a contested case is commenced in which an Administrative Judge will be conducting the proceedings, the Agency will provide all the papers that make up the notice of hearing and all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the Agency. Legible copies may be filed in lieu of originals.
- (6) Answer. The party may respond to the issues set out in the notice or other original pleading by filing a written answer with the Agency in which the party may:
- (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency may proceed;
 - (b) Object on the basis of lack of jurisdiction over the subject matter;
 - (c) Object on the basis of lack of jurisdiction over the person;
 - (d) Object on the basis of insufficiency of the notice;
 - (e) Object on the basis of insufficiency of service of the notice;
 - (f) Object on the basis of failure to join an indispensable party;
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge as to each and every allegation, both of which shall be deemed a general denial of all charges;
 - (h) Admit in part or deny in part allegations in the notice and elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues; and

- (i) Assert any available defense.
- (7) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless it is shown that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the parties or by leave of the Administrative Judge, and leave shall be freely given when justice so requires. No amendment to the notice may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice. The Administrative Judge shall not grant a continuance to amend the notice or original pleading if it would prejudice the right to a hearing and Initial Order within any mandatory time frames.
- (8) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to amend for this reason does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the Administrative Judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The Administrative Judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the individual is not represented by counsel, the burden is on the Administrative Judge to rule on whether to allow additional evidence and the need for continuances to enable the party additional time to address the new grounds.
- (9) Pre-hearing Conference.
 - (a) In any action set for hearing the Administrative Judge, upon his own motion or upon motion of a party or qualified representative, may direct the parties to appear before him for a conference to consider:
 - 1. The simplification of issues;
 - 2. The necessity or desirability of amendments to the pleadings;
 - 3. The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
 - 4. The limitation of the number of expert witnesses; or
 - 5. Other matters that may aid in the disposition of the action.
 - (b) The Administrative Judge will enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties to the matters considered, and limiting the issues for hearing to those not disposed of by the admissions or agreements of the parties. When entered such order controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.
 - (c) If a pre-hearing conference is not held, the Administrative Judge may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

1200-13-19-.11 Representation by Counsel.

- (1) Any party to a contested case hearing may be advised and represented, at his own expense, by an attorney in good standing and possessing a current license to practice law in the state of Tennessee.
- (2) Any party to a contested case hearing may represent himself or be represented by a non-attorney of his choice, such as a relative, friend or another spokesperson. If the party is represented by a non-attorney, he must provide valid written or oral attestation on the record authorizing representation.
- (3) The Agency will notify all parties in a contested case hearing of the right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (4) Entry of an appearance by counsel will be made by the filing of pleadings, or of a formal or informal notice

of appearance, or appearance as counsel at a pre-hearing conference or a hearing.

- (5) After appearance of counsel has been made, all pleadings, motions, and other documents must be served upon counsel. If appearance is by a non-attorney representative, all documents must be served on both the party and the representative.
- (6) Counsel wishing to withdraw must give written notice to the Agency and the Administrative Judge.
- (7) Out-of-state attorneys shall comply with T.C.A. § 23-3-103(a) and Tenn. Sup. Ct. R. 19, except that the affidavit referred to in Rule 19 and a motion requesting pro hac vice admission shall be filed with the Clerk's Office, and served upon the Board of Professional Responsibility according to Rule 19 not later than the first occasion in which the out-of-state attorney files any pleading or paper with the Clerk's Office or otherwise personally appears.

1200-13-19-.12 Pre-Hearing Motions.

- (1) Motions. Parties to a contested case are encouraged to resolve matters on an informal basis prior to a contested case hearing. If efforts at informal resolution fail, any party may request relief in the form of a motion by serving a copy on all parties and by filing the motion with the Administrative Judge. The motion must contain a request for the relief sought and the grounds which entitle the moving party to relief. A motion is considered submitted for disposition seven (7) days after it was filed, unless oral argument is requested and granted, or unless a longer or shorter time is set by the Administrative Judge.
- (2) Time Limits; Oral Argument. Each opposing party may file a written response to a motion within seven (7) days of the date the motion was filed. If oral argument is requested, the motion may be argued by conference telephone call. A brief memorandum of law submitted with the motion is preferable to oral argument.
- (3) Affidavits; Briefs and Supporting Statements.
 - (a) Motions and responses to motions must be accompanied by supporting affidavits and briefs or supporting statements. Motions and responses to motions must be supported by affidavits for facts relied upon which are not of record or the subject of official notice. Supporting affidavits must contain only facts admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in the affidavits may be attached.
 - (b) In the discretion of the Administrative Judge, a schedule may be established for submitting briefs or supporting statements.
- (4) Disposition of Motions; Drafting the Order. The Administrative Judge must render a decision on a motion by issuing an order or by instructing the prevailing party to prepare and submit an order within seven (7) days of the ruling on the motion, or as otherwise ordered by the Administrative Judge. After signing an order, the Administrative Judge will cause the order to be served upon the parties.

1200-13-19-.13 Continuances.

- (1) Continuances may be granted for good cause in any stage of the proceeding. The need for a continuance must be brought to the attention of the Administrative Judge as soon as practicable by the appellant, by the Agency, or by mutual consent of the parties.
- (2) If an appellant requests a continuance, any mandatory time limits or deadlines for conducting hearings and issuing Initial Orders by an Administrative Judge may be extended by a like period of time. The applicable time frame will be extended only by the number of days that the appellant delays the proceedings, either by his acts or omissions.

1200-13-19-.14 Discovery.

- (1) Any party to a contested case proceeding has the right to examine Agency manuals, the Agency case file regarding the matter being contested, and all documents and records used as evidence, at the Agency office

during normal State office hours, except that records, the confidentiality of which is protected by law may not be inspected consistent with T.C.A. § 4-5-311. A party or his representative may copy entries or documents to be introduced at the hearing as supporting evidence.

- (2) Any party to a contested case proceeding has the right to reasonable discovery under T.C.A. § 4-5-311.
- (3) The Administrative Judge will issue subpoenas to require the attendance of witnesses and the production of books, records, papers, or other tangible things necessary and proper for the hearing proceeding, when requested by a party involved in the case. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the TRCP.
- (4) The Administrative Judge may at or before the time specified in the subpoena for compliance:
 - (a) Void or modify a subpoena if it is unreasonable and oppressive, or
 - (b) Tax the party making the request with reasonable costs in the production of books, papers, documents, or other tangible things.
- (5) The parties should attempt to achieve discovery informally. Only if such attempts have failed or if the complexity of the case makes informal discovery impracticable shall discovery be sought and conducted under the TRCP.
- (6) Upon motion of a party or upon the Administrative Judge's own motion, the Administrative Judge may order that discovery be completed by a certain date.
- (7) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion must:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a detailed statement certifying that the moving party or his counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved; such efforts must be set out with particularity in the statement.
- (8) The Administrative Judge will decide any motion relating to discovery according to the UAPA, the UAPA Rules, or the TRCP.
- (9) Other than as provided in paragraph (7) above, discovery materials need not be filed with the Clerk's Office.

1200-13-19-.15 Order of Proceedings.

- (1) Hearings of contested cases, including reconsideration hearings, will be conducted as follows:
 - (a) The Administrative Judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) The hearing is called to order by the Administrative Judge.
 - (c) The Administrative Judge introduces himself and gives a very brief statement of the nature of the proceedings, including a statement of his role in making factual and legal rulings.
 - (d) The Administrative Judge then calls on the petitioner to ask if the petitioner is represented by counsel, and if so, counsel is introduced. The Administrative Judge then introduces the respondent's counsel and any other officials who may be present at the hearing.

- (e) The Administrative Judge states what documents the record contains.
- (f) The Administrative Judge swears the witnesses.
- (g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and asked to leave the hearing room. Individual parties are permitted to stay in the hearing room, and the State may have one appropriate individual, who may also be a witness, act as its party representative.
- (h) Any preliminary motions, stipulations, or agreed orders are heard by the Administrative Judge.
- (i) Opening statements are allowed by both parties.
- (j) The petitioner, as the moving party, has the burden of proof, calls the first witness and questioning proceeds as follows:
 - 1. Moving party questions.
 - 2. State cross-examines.
 - 3. Moving party redirects.
 - 4. State re-cross-examines.
 - 5. Administrative Judge may ask questions.
 - 6. Further questions by parties as long as necessary to provide all pertinent testimony.
- (k) State calls witnesses and questioning proceeds as follows:
 - 1. State questions.
 - 2. Moving party cross-examines.
 - 3. State redirects.
 - 4. Moving party re-cross-examines.
 - 5. Administrative Judge may ask questions.
 - 6. Further questions by parties as long as necessary to provide all pertinent testimony.
- (l) The moving party and the other party are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (m) Closing arguments are allowed to be presented by both parties.
- (n) The Administrative Judge announces the decision or takes the case under advisement.
- (2) The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
- (3) Paragraphs (1) and (2) of this rule are intended to be a general outline for the conduct of a contested case proceeding. A departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, is not a violation of this rule.

1200-13-19-.16 Default and Uncontested Proceedings.

- (1) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of

contested case proceedings after appropriate notice of those actions is cause for holding that party in default under T.C.A. § 4-5-309. Failure to comply with any lawful order of the Administrative Judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and is cause for a holding of default.

- (2) If a party fails to attend or participate as provided in paragraph (1) above, the Administrative Judge will enter into the record evidence of service of notice to that party and determine whether the service of notice is sufficient as a matter of law, according to this chapter. If the notice is held to be sufficient, the Administrative Judge may do either of the following:
 - (a) Hold the party failing to attend or to participate in default and, after determining that the party in default has the burden of proof, adjourn the proceedings and enter an order of default stating the grounds for the default that will become a Final Order without further notice as provided in this chapter, unless a petition for reconsideration is timely filed; or
 - (b) Hold the party failing to attend or to participate in default and, after determining that the party not in default has the burden of proof, conduct the proceedings without the participation of the defaulting party and include in the Initial Order a written notice of default stating the grounds for the default. The Initial Order will become a Final Order without further notice as provided in this chapter, unless a petition for reconsideration is timely filed.
- (3) The Administrative Judge will serve the written notice of entry of default for failure to appear as provided in paragraph (2) above on all parties. The defaulting party, no later than fifteen (15) days after receipt of a notice of default, may file a petition for reconsideration as provided in this chapter and T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The Administrative Judge may rule on the petition or take no action for twenty (20) days after which the petition is deemed denied. T.C.A. § 4-5-317.

1200-13-19-17 Evidence. The Administrative Judge will consider the information used to determine the applicant's eligibility as well as additional relevant information presented as evidence during the course of the appeal. The standard for admissibility of evidence is set out at T.C.A. § 4-5-313.

- (1) The testimony of witnesses will be taken in open hearings, except that witnesses may be excluded from the hearing prior to their testimony.
- (2) The Administrative Judge will admit and give probative effect to evidence admissible in a court. When necessary to establish facts not reasonably susceptible to proof under the rules of court, evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Administrative Judge will give effect to the rules of privilege recognized by law and to state or federal statutes or regulations protecting the confidentiality of certain records and will exclude evidence which in his judgment is irrelevant, immaterial or unduly repetitious.
- (3) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Agency. Upon request, parties will be given an opportunity to compare the copy with the original, if reasonably available.
- (4) Official notice may be taken of:
 - (a) Any fact that could be judicially noticed in the courts of Tennessee;
 - (b) The record of other proceedings before the Agency;
 - (c) Technical or scientific matters within the Administrative Judge's specialized knowledge; and
 - (d) Codes or standards that have been adopted by an agency of the United States, of Tennessee or of another state, or by a nationally recognized organization or association. Parties will be notified before or during the hearing, or before the issuance of any Initial or Final Order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source, including any staff memoranda and data, and be given an opportunity to contest and rebut the facts or material so noticed.

- (5) Every party has the right to present evidence, to make arguments, and to confront and cross-examine witnesses.
- (6) Any party intending to introduce an affidavit into evidence must deliver a copy of the affidavit along with the notice described below to the opposing party at least ten (10) days prior to a hearing or a continued hearing. The opposing party has seven (7) days after delivery of the affidavit to deliver to the proponent a request to cross-examine the affiant or the right to cross-examination is waived and the affidavit, if introduced in evidence, will be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not provided after a proper request is made, the affidavit will not be admitted into evidence. Delivery means actual receipt, for purposes of this paragraph. The Administrative Judge may admit affidavits not submitted in compliance with this paragraph where necessary to prevent injustice.
- (7) The notice required to accompany an affidavit must contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

1200-13-19-.18 Initial and Final Orders.

- (1) At the conclusion of the hearing, the Administrative Judge may allow the parties a designated amount of time to submit proposed findings of fact and conclusions of law.
- (2) The Administrative Judge will issue an Initial Order which automatically becomes the Final Order fifteen (15) days after it is issued unless the Agency receives a timely filed petition for appeal, petition for reconsideration, or petition for a stay of effectiveness. The effective date of an Initial Order that becomes final by operation of law is its original date of entry. The Final Order is binding upon all parties unless it is stayed, reversed or set aside according to applicable rules.
- (3) If the Administrative Judge becomes unavailable for any reason before issuing an Initial Order or Final Order, a substitute will be appointed as provided in T.C.A. § 4-5-302. The substitute must use the existing record and may conduct further proceedings as appropriate in the interest of justice.
- (4) Contents of the Order.
 - (a) An Initial Order or a Final Order will include findings of fact, conclusions of law, the policy reasons for the decision, the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. The Agency member's experience, technical competence, and specialized knowledge may be utilized to evaluate the evidence.
 - (b) Findings of fact are concise and explicit statements of the underlying facts of record that support the order and must be based exclusively upon the evidence of record from the hearing and on matters officially noticed in that proceeding.
 - (c) The Initial Order must include a statement that it will automatically become a Final Order without further notice unless a petition for reconsideration or petition for appeal is filed.
 - (d) The Initial Order or Final Order must include a statement of the procedures and time limits to request an appeal, reconsideration or stay of the Initial or Final Order and the time limits for seeking judicial review of the Final Order.
- (5) The Administrative Judge must cause copies of the Initial Order to be sent to each party at the time the order is entered. If an Initial Order becomes final by operation of law, no further notice shall be provided.

- (6) If a Final Order is issued, the Agency must cause copies of the Final Order to be sent to each party at the time the order is entered.

1200-13-19-.19 Appeal of Initial Orders.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order sent to the parties.
- (2) If an Initial Order is subject to both a timely petition for reconsideration and a petition for appeal, the petition for reconsideration will be disposed of first and a new fifteen (15) day period will start to run.
- (3) A petition for appeal from an Initial Order must be addressed to the Commissioner's Designee and filed with the Clerk's Office within fifteen (15) days after entry of an Initial Order and comply with T.C.A. § 4-5-315.
- (4) A petition for appeal must state its basis.
- (5) The Commissioner's Designee, on his own motion, may review an Initial Order after giving written notice to the parties within fifteen (15) days after entry of an Initial Order.
- (6) On appeal the parties will be permitted an opportunity to file briefs. The Agency may provide the parties an opportunity to present oral argument.
- (7) The Commissioner's Designee may enter a Final Order disposing of the proceeding or may remand the matter for further proceedings with instructions to the Administrative Judge who entered the Initial Order. When remanding a matter, the Commissioner's Designee may order temporary relief if authorized and appropriate.
- (8) A Final Order or an order remanding the matter for further proceedings will be entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown. The order will identify any differences from the Initial Order and include or incorporate by express reference to the Initial Order, all information required by paragraph .18(4).

1200-13-19-.20 Reconsideration.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order sent to the parties.
- (2) If a separate Final Order is entered following the entry of an Initial Order, written notice of the right to petition for reconsideration of the Final Order will accompany the Final Order sent to the parties.
- (3) A petition for reconsideration stating in detail the reasons for the request and the relief requested may be addressed to the Administrative Judge and filed with the Clerk's Office by any party within fifteen (15) days after entry of an Initial Order or Final Order.
- (4) If an Initial Order is subject to both a timely petition for reconsideration and a petition for appeal, the petition for reconsideration will be disposed of first and a new fifteen (15) day period will start to run.
- (5) Filing a petition for reconsideration of the Final Order does not supersede or delay the effective date of the Final Order. The Final Order takes effect on the date entered by the Agency and continues in effect until the petition for reconsideration is granted or until the Final Order is stayed, superseded, modified, or set aside in a manner provided by law. If a change affecting benefits or services occurs while reconsideration is pending, action to implement that change is not delayed pending the decision concerning reconsideration of the Final Order.
- (6) Within twenty (20) days of receiving a petition for reconsideration of the Initial or Final Order, the Administrative Judge who entered the Initial or Final Order will enter a written order as set out at T.C.A. § 4-5-317:

- (a) Denying the petition;
 - (b) Granting the petition and setting the matter for further proceedings; or
 - (c) Granting the petition and issuing a new Initial or Final Order.
 - (d) If no action is taken on the petition for reconsideration within twenty (20) days, the petition is deemed to be denied.
- (7) An order granting a petition for reconsideration and setting the matter for further proceedings will contain:
- (a) A statement of the extent and scope of the proceedings;
 - (b) A statement limiting the proceedings to argument upon the existing record; and
 - (c) State that no new evidence will be introduced, unless the party proposing new evidence shows good cause for his failure to introduce the evidence in the original proceeding.

1200-13-19-.21 Stay.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order or Final Order sent to the parties.
- (2) A petition for stay of effectiveness of an Initial Order or Final Order may be submitted to the Agency within seven (7) days after entry of the order. The Agency may take action on the petition for stay before or after the effective date of the Initial or Final Order.

1200-13-19-.22 Judicial Review.

- (1) Written notice of the right to seek judicial review of the Final Order and the time within which to file a petition for judicial review of the Final Order must be included with the Initial and Final Order sent to the parties.
- (2) Judicial review is initiated by filing a petition for review in a Chancery Court of Tennessee having jurisdiction within sixty (60) days after the Final Order is entered. T.C.A. § 4-5-322 sets out the judicial review information.

1200-13-19-.23 Clerical Mistakes. Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors of oversight or omission may be corrected by the Administrative Judge or the Commissioner's Designee at any time on his own initiative or on motion of any party and after such notice, if any, as the Administrative Judge or Commissioner's Designee may require. The entry of a corrected order does not affect the dates of the original appeal time period.

1200-13-19-.24 Agency Record.

- (1) The agency record as defined in this chapter will remain on file in the Bureau of TennCare for not less than three (3) years and be available to the appellant or his representative at any reasonable time during business hours.
- (2) Public access to Final Orders. Hearing decisions will be accessible to the public for inspection and copying, subject to the requirements of safeguarding information which is confidential under any provision of law or rule. Those portions of any record that contain confidential information may be deleted prior to providing access to the Final Order.

1200-13-19-.25 Code of Judicial Conduct, Disqualification and Separation of Functions. Administrative Judges must comply with the code of judicial conduct requirements set out in the UAPA Rules and the requirements of T.C.A. §§ 4-5-302 and 4-5-303 concerning disqualification of Administrative Judges and separation of functions. Complaints regarding an individual Administrative Judge's conduct are to be made to the supervising

Administrative Judge and complaints regarding the supervising Administrative Judge are to be made to the commissioner.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-112; 42 U.S.C. §§ 1396a(a)(3), (5), (8); 42 C.F.R. 431 Subpart E and 42 C.F.R. § 435.912.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 11/17/2014

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 10/17/2014

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10/18/2016



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

[Handwritten Signature]
Attorney General and Reporter

11/7/2014
Date

Department of State Use Only

Filed with the Department of State on: 11-07-14

Effective for: 180 *days

Effective through: 05-06-15

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

[Handwritten Signature]
Tre Hargett
Secretary of State



G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Environment and Conservation
<u>DIVISION:</u>	Solid Waste Management
<u>SUBJECT:</u>	Regulatory Language, Clarifications and Updates
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 68-212-101 et seq.
<u>EFFECTIVE DATES:</u>	February 10, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>This rulemaking is designed to address conflicts that have resulted from prior rulemakings:</p> <ul style="list-style-type: none">- Several years ago the regulations were amended to be more stringent than the requirements of the Environmental Protection Agency (EPA) and surrounding states by requiring some records to be maintained for five years instead of three years as required by the EPA. Conflicts were discovered in the rules regarding the three-year requirement and the five-year requirement. To resolve the conflict the recordkeeping requirement is being restored to three years throughout the regulations, making Tennessee's program to reflect the requirements of the EPA and surrounding states.- Prior versions of the regulations combined the petitioning process for a rulemaking change with variance requests. These two different types of petitions were separated to bring clarity and structure to the petitioning process.- In anticipation of the EPA deleting some hazardous waste reduction language from its regulations, the language was deleted from the state rules. The EPA failed to delete the language, and the state regulations are not consistent with the federal regulations. Also, the deletion of the language created a conflict with the statute that required hazardous waste reduction planning. Therefore, the language is being restored to the state rules to resolve these inconsistencies.

This rulemaking updates regulatory language to reflect recent changes in state statutes or in EPA language referenced by the state regulations:

- The Petroleum Underground Storage Tank Board and the Solid Waste Disposal Control Board were combined into one board and given a new name.
- The EPA's list of publications referenced by the regulations had been updated and these are amended to be consistent.

This rulemaking clarifies ambiguous language to bring clarity to the regulated community:

- The regulations in several places referenced a public notice procedure that was incorrect. In all places, the public notice procedures were amended to correct this issue.
- The regulations provide an opportunity for generators to demonstrate to the satisfaction of the Director that a waste containing exclusively trivalent chromium should not be managed as hazardous waste. The regulations are being amended to bring clarity to this evaluation process.
- Owners or operators of transfer facilities were required to keep a log of hazardous waste shipments on a form provided by the Commissioner. A form for this purpose has not been developed nor approved by the forms committee. To address this issue the regulations are being amended to allow the owner or operator of the transfer facility to utilize their own form provided it contains, at a minimum, the required information.
- An amendment is being made to the generator regulations to clarify when a generator is exempt from hazardous waste reduction planning.
- An amendment is being made to clarify to the owners or operators of hazardous waste management facilities applying for permits when the various notices and public meeting are required.
- An amendment is being made to make the language in the fee rule regarding generators of acute hazardous waste coincide with the language in other parts of the regulations.
- Corrects typographical errors and updates additional rule renumbering changes.

Public Hearing Comments

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

Comment: A commenter pointed out that the word "days" was inadvertently missing following "thirty (30)" in the amendments to Rules 0400-12-01-.01(3)(b)8(ii), 0400-12-01-.01(4)(f)2, and 0400-12-01-.01(5)(e)2, and the open quote symbol needs to be added to the amendment to Rule 0400-12-01-.10(1)g)2(iv).

Response: The Board agrees that these words and symbol were missing and has added them in the appropriate places.

Issues Raised by the Underground Storage Tanks and Solid Waste Disposal Control Board

Prior to adopting these amendments the Underground Storage Tanks and Solid Waste Disposal Control Board requested that the Division give further consideration to how subparagraphs (3)(f) of Rules 0400-12-01-.05 and 0400-12-01-.06 are to be amended to include the documentation required of an owner, operator or generator to successfully demonstrate that the required minimum aisle space was not needed and to better address how to effectively implement the amendment. The Division recommends removing the amendments to subparagraphs (3)(f) of Rules 0400-12-01-.05 and 0400-12-01-.06 from this rulemaking. If after further discussion with interested parties, it is determined that subparagraphs (3)(f) of Rules 0400-12-01-.05 and 0400-12-01-.06 requires amendment, the proposed new regulatory language will be included in a public notice soliciting additional comments from all interested parties.

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.

There are hundreds of small businesses that generate hazardous waste and, therefore, subject to the hazardous waste management regulations and scores of hazardous waste transporters and treatment, storage or disposal facilities that will benefit from these amendments to the regulations. These amendments intend to bring clarity to rules and, in some cases, restore the requirements to the federal minimum.

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

There will be no additional reporting, recordkeeping or other administrative costs associated with these amendments, but a small cost savings.

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

The additional clarity to regulations making them easier to use and understand, and the restoring of some requirements to the federal minimum, resulting in more state requirements being no more stringent than EPA and surrounding states' requirements, results in a positive impact on 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.

These amendments are intended to less intrusive and loss costly to small businesses.

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

These amendments bring Tennessee's hazardous waste management rules more in line with the federal rules and the rules of surrounding 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 amendments benefit small businesses making exemptions unnecessary.

Impact on Local Governments

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

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

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For Department of State Use Only

Sequence Number: 11-13-14
Rule ID(s): 5832
File Date: 11/12/14
Effective Date: 2/10/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Jackie Okoreeh-Baah
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste
0400-12-01-.03	Notification Requirements and Standards Applicable to Generators of Hazardous Wastes
0400-12-01-.04	Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste
0400-12-01-.05	Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.07	Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.08	Fee System for Transporters, Stors, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters
0400-12-01-.10	Land Disposal Restrictions
0400-12-01-.12	Standards for Universal Waste Management

(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 0400-12-01 Hazardous Waste Management

Paragraph (1) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting subparagraph (c) in its entirety and substituting instead the following:

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

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

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definition "Board" and substituting instead the following:

"Board" means the Tennessee Underground Storage Tanks and Solid Waste Disposal Control Board as established by T.C.A. § 68-211-111.

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

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definition "Underground source of drinking water (USDW)" and substituting instead the following:

"Underground source of drinking water (USDW)" means an aquifer or its portion:

1. (i) Which supplies any public water system; or
- (ii) Which contains a sufficient quantity of ground water to supply a public water system; and
 - (I) Currently supplies drinking water for human consumption; or
 - (II) Contains fewer than 10,000 ~~mg/l~~ mg/l total dissolved solids; and
2. Which is not an exempted aquifer.

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

Subparagraph (b) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (b) References [40 CFR 260.11 and 40 CFR 270.6]
1. Publications/materials and where they may be obtained or referred to in these rules are set forth by EPA in 40 CFR 260.11 and 40 CFR 270.6.
 2. These materials are listed as they exist on the effective date of these regulations.

(Note: 40 CFR 260.11 provides that:

- (a) When used in parts 260 through 268 and 278 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.
- (b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.
- (1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for §261.21.
 - (2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§264.1033, 265.1033.
 - (3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for §264.1063.
 - (4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§264.1033, 265.1033.
 - (5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for §265.1084.
 - (6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for §261.21(a).
 - (7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for §264.1063.
 - (8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for §264.1063.
 - (9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for §264.1063.

- (10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.
- (c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.
- (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§264.1035 and 265.1035.
- (2) Method 1664, ~~Revision A~~, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (~~SGT-HEM; Non-polar Material~~) by Extraction and Gravimetry, ~~PB99-121949, IBR approved for part 261, appendix IX.~~
- (i) Revision A, EPA-821-R-98-002, February 1999, IBR approved for Part 261, Appendix IX.
- (ii) Revision B, EPA-821-R-10-001, February 2010, IBR approved for Part 261, Appendix IX.
- (3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).
- (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§261.24, 268.7, 268.40.
- (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.
- (vii) Method 1312 dated September 1994 and in Update ~~II~~ III, IBR approved for part 261, appendix IX and § 278.3(b)(1).
- (viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.

- (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.104.
- (x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for §261.22 and part 261, appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§264.1034, 264.1063, 265.1034, 265.1063.

- (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.
- (d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
- (1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§264.198, 265.198, 367.202(b).
- (2) [Reserved]
- (e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.
- (1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for §265.1084.
- (2) [Reserved]
- (f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.
- (1) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.
- (2) [Reserved]
- (g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.
- (1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.
- (2) [Reserved]

(Note: 40 CFR 270.6 provides that:

(a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§270.24 and 270.25.

(2) [Reserved]

~~2. These materials are listed as they exist on the effective date of these regulations.~~

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

Paragraph (3) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(3) Petitions for Exclusions or Variances

(a) General Requirements for Regulatory Exclusions

1. General

~~4.(i)~~ Any person may petition the Commissioner for an a regulatory exclusion ~~or other variance~~ from any provision in ~~these rules~~ Rules 0400-12-01-.01 through 0400-12-01-.06, 0400-12-01-.09, 0400-12-01-.10 and 0400-12-01-.12. This ~~subparagraph part~~ sets forth general requirements which apply to all such petitions. ~~Part 2 sets forth additional requirements for petitions to add a testing or analytical method to Rule 0400-12-01-.02, 0400-12-01-.05 or 0400-12-01-.06. Part 3 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from subparagraph (1)(c) of Rule 0400-12-01-.02 or the lists of hazardous wastes in paragraph (4) of Rule 0400-12-01-.02. Part 4 sets forth additional requirements for petitions to amend Rule 0400-12-01-.12 to include additional hazardous wastes or categories of hazardous waste as universal waste.~~

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

~~(i)(I)~~ The petitioner's name and address;

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

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

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

~~3.(iii)~~ Except for petitions submitted in accordance with parts 2 and 3 of this subparagraph, The the Commissioner will make a tentative decision to grant or deny a petition and ~~will issue a public notice shall notify the petitioner~~ of such tentative decision ~~for written public comment.~~ If the Commissioner's tentative decision is to grant the petition, the Commissioner, with the concurrence of the board, shall initiate a rulemaking in accordance with T.C.A. § 4-5-201 et seq.

- ~~4.(iv) Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be given by the petitioner as required by the Commissioner. Petitions submitted in accordance with parts 2 and 3 of this subparagraph shall be forwarded to EPA by the Commissioner for a determination.~~
- ~~5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will issue a public notice of such decision. The petitioner shall give this public notice as required by the Commissioner.~~
- ~~6.(v) A determination made by the Environmental Protection Agency (EPA) pursuant to 40 CFR 260.21 Petitions for Equivalent Testing or Analytical Methods or 40 CFR 260.22 Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility shall be effective in Tennessee on the effective date of the EPA decision.~~
- ~~7. Any exclusion or other variance granted pursuant to this paragraph shall be rescinded if it is discovered or later determined that the exclusion or other variance has resulted or may result in a significant hazard to public health or the environment.~~
- ~~8. Any exclusion or other variance granted pursuant to this paragraph shall remain valid only so long as the stipulations under which it was granted are not violated.~~
- ~~(b)2. (Reserved) Petitions for Equivalent Testing or Analytical Methods [40 CFR 260.21]~~
- ~~Petitions received by the Commissioner regarding Equivalent Testing or Analytical Methods shall be forwarded to EPA for a determination.~~
- ~~(Note: The authority for implementing this subparagraph part remains with the U.S. Environmental Protection Agency.)~~
- ~~(c)3. (Reserved) Petitions to Exclude a Waste Produced at a Particular Facility as Nonhazardous [40 CFR 260.22]~~
- ~~Petitions received by the Commissioner regarding Excluding a Waste Produced at a Particular Facility as Nonhazardous shall be forwarded to EPA for a determination.~~
- ~~(Note: The authority for implementing this subparagraph part remains with the U.S. Environmental Protection Agency.)~~
- ~~(d)4. Petitions to Amend Rule 0400-12-01-.12 to Include Additional Hazardous Wastes [40 CFR 260.23]~~
- ~~1.(i) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule 0400-12-01-.12 may petition for a regulatory amendment under this subparagraph part, part 1 of this subparagraph (a) of this paragraph, and Rule 0400-12-01-.12(7).~~
- ~~2.(ii) To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by part (a)2 of this paragraph subpart 1(ii) of this subparagraph. The petition should also address as many of the factors listed in~~

Rule 0400-12-01-.12(7)(b) as are appropriate for the waste or category of waste addressed in the petition.

~~3.~~(iii) The Commissioner ~~will grant or deny a petition using~~ shall consider the factors listed in Rule 0400-12-01-.12(7)(b).

~~4.~~(iv) The Commissioner may request additional information needed to evaluate the merits of the petition.

~~(v)~~ The Commissioner shall make a tentative decision. The tentative decision will be based on the weight of evidence showing that regulation under Rule 0400-12-01-.12 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

~~(vi)~~ The Commissioner shall comply with the requirements of subpart 1(iii) of this subparagraph regarding the tentative decision.

(b) Requirements for Variances

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

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

(i) The petitioner's name and address;

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

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

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

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

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

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

6. Any ~~exclusion or other~~ variance granted pursuant to this ~~paragraph shall~~ subparagraph may be rescinded if it is discovered ~~or later~~ and determined ~~by the Commissioner~~ that:

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

- (ii) The factual basis for which the variance was granted has significantly changed;
- (iii) The regulations, as amended, no longer support the variance;
- (iv) The conditions issued by the Commissioner for the variance's approval have been violated; or
- (v) The variance threatens program authorization with EPA.

7. Any ~~exclusion or other~~ variance granted pursuant to this ~~paragraph subparagraph~~ shall remain valid ~~only so long as the stipulations for its approval are not violated until rescinded in accordance with part 6 of this subparagraph.~~

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

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

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

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

Part 2 of subparagraph (c) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

2. The Commissioner will evaluate the application and ~~issue a draft notice tentatively granting or denying~~ make a tentative decision to grant or deny the application ~~and shall notify the petitioner of this tentative decision.~~ Notification of this tentative decision will be ~~If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be~~ provided by the applicant, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, ~~except for denials,~~ in a newspaper advertisement and radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as set forth above in this part required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

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

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

~~(d) Temporary Variance for Hazardous Wastes Previously Excluded as being Beneficially Used or Reused or Legitimately Recycled or Reclaimed~~

~~Materials for which, as of the effective date of this paragraph, a tentative or final exclusion has been granted by the Commissioner pursuant to the petition process established by former Department Rule 0400-12-01-.01(3)(d) (entitled "Petitions to Exclude a Waste Which Is Beneficially Used or Reused or Legitimately Recycled or Reclaimed", but subsequently deleted) shall be deemed to be temporarily granted a variance pursuant to this paragraph until a final~~

~~variance determination is made in accordance with this paragraph, provided that the person to which the exclusion was granted files a variance application pursuant to part (c)1 of this paragraph within 90 days after the effective date of this paragraph. Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:~~

- ~~1. The variance has resulted or may result in a significant hazard to public health or the environment;~~
- ~~2. The factual basis for which the variance was granted has significantly changed;~~
- ~~3. The regulations, as amended, no longer support the variance;~~
- ~~4. The conditions issued by the Commissioner for the variance's approval have been violated; or~~
- ~~5. The variance threatens program authorization with EPA.~~

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

Paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding two new subparagraphs and designating them as subparagraphs (e) and (f) to read as follows:

- (e) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (d) of this paragraph.
- (f) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:
 1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
 2. Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

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

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

- (b) Procedures [40 CFR 260.33]

The Commissioner will use the following procedures in evaluating ~~applications for variances from classification as a solid waste or~~ applications to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the Commissioner for the variance, and the application must address the relevant criteria contained in subparagraph (a) of this paragraph.
2. The Commissioner will evaluate the application and ~~issue a draft notice tentatively granting or denying~~ make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. ~~Notification of this tentative decision will be~~ If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such a tentative decision for written comment. The public notice shall be provided by the applicant, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, ~~except for denials,~~ in a newspaper advertisement and radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the

Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

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

Paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding three new subparagraphs and designating them as subparagraphs (c), (d) and (e) to read as follows:

- (c) Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:
1. The variance has resulted or may result in a significant hazard to public health or the environment;
 2. The factual basis for which the variance was granted has significantly changed;
 3. The regulations, as amended, no longer support the variance;
 4. The conditions issued by the Commissioner for the variance's approval have been violated; or
 5. The variance threatens program authorization with EPA.
- (d) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (c) of this paragraph.
- (e) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:
1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
 2. Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

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

Subparagraph (b) of paragraph (6) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (b) Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities [40 CFR 260.41]

The Commissioner will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Rule 0400-12-01-.02(1)(f)1(ii)(III) under the provisions of Rule 0400-12-01-.02(1)(f)2 and 3, rather than under the provisions of Rule 0400-12-01-.09(6).

1. If a generator is accumulating the waste, the Commissioner will issue a notice, published by the owner or operator, as prepared and required by the Commissioner, setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of paragraphs (1), (4), (5), and (6) of Rule 0400-12-01-.03. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Commissioner will

hold a public hearing. The Commissioner will provide notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, of the hearing to the public and allow public participation at the hearing. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. The Commissioner will issue a final order after the hearing stating whether or not compliance with Rule 0400-12-01-.03 is required. The order becomes effective 30 days after service of the decision unless the Commissioner specifies a later date or unless review by the Board is requested. The order may be appealed to the Board by any person who participated in the public hearing. The Board may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.

2. If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Rule 0400-12-01-.07. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Commissioner's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the determination. The question of whether the Commissioner's decision was proper will remain open for consideration during the public comment period discussed under Rule 0400-12-01-.07(7)(e) and in any subsequent hearing.

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

Item (IV) of subpart (xix) of part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting subitem III in its entirety and substituting instead the following:

- III. Before making a determination under this subpart, the Commissioner must provide public notice and the opportunity for comment to all persons potentially interested in the determination. This ~~can shall~~ be accomplished by the owner or operator placing a notice, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, of this action in local newspapers, or broadcasting notice over local radio stations. The owner or operator shall provide proof of the completion of all notice requirements to the ~~Commissioner~~ Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures.

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

Part 2 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting subpart (v) in its entirety and substituting instead the following:

- (v) (I) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in paragraph (4) of this rule due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if a waste generator demonstrates to the satisfaction of the Director, by submitting an exclusion evaluation request and supporting documentation, that:
 - I. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

- II. The waste generated from an industrial process is trivalent chromium exclusively (or nearly exclusively) and the process does not contain more than minimal amounts of hexavalent chromium¹; and
 - III. The waste is managed by the waste generator in non-oxidizing environments.
- (II) The waste generator shall also submit to the Department a Chromium Exclusion Evaluation Review Fee identified in Rule 0400-12-01-.08(11) prior to the Director's review of the submitted documentation.
- (III) ~~Such exclusion~~ This exemption shall be effective only after approval in writing by the Director. ~~Persons~~ Waste generators who obtain ~~an exclusion~~ this exemption shall:
- I. ~~Annually recertify the accuracy of the information on a form provided by in a letter to~~ the Director that there has been no change in the waste stream or the process generating the waste since the ~~original exclusion was granted~~ Director determined that waste satisfies the conditions for the exemption; and
 - II. ~~It shall be the responsibility of the generator (applicant) to submit~~ Submit all recertifications as required by ~~item (I) subitem I of this item~~ by March 1 of each succeeding year following the ~~granting of Director's determination that the exclusion waste satisfies the conditions of the exemption;~~ and
 - III. ~~If~~ Submit a new evaluation and review fee to the Director within 30 days, if a change in the waste stream or the process generating the waste has occurred since the ~~original exclusion was granted, the generator (applicant) shall submit a new exclusion request and review fee to the~~ Director's determination.

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

Subpart (iv) of part 2 of subparagraph (b) of paragraph (4) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than ~~five (5)~~ three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Commissioner.

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

Part 6 of subparagraph (d) of paragraph (3) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) Retain at the generator's site a copy of each manifest for at least ~~five (5)~~ three

¹ Hexavalent chromium concentrations below 5 mg/l currently are considered minimal.

years from the date of delivery.

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

Subparagraph (a) of paragraph (6) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting part 1 in its entirety and substituting instead the following:

1. ~~All generators of hazardous waste, except those~~ Except for generators who are conditionally exempt small quantity generators, as determined by subparagraph (1)(e) of Rule 0400-12-01-.02, and who maintain the exemption for all twelve months of the calendar year, all generators shall complete a hazardous waste reduction plan in accordance with the requirements of subparagraph (b) of this paragraph. After completion of a plan, the generator shall maintain a current copy of the plan at the generating facility. The plan and the annual progress reports under subparagraph (c) of this paragraph shall be made available, upon request, to a representative of the department at any reasonable time. The department may make use of the information as it deems necessary to carry out its duties under this rule.

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

Subparagraph (e) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting part 3 in its entirety and substituting instead the following:

3. An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for ~~five (5)~~ three years from the date of the notification.

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

Part 1 of subparagraph (n) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of ~~five (5)~~ three years from the date the clean-out ends; and

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

Subparagraph (c) of paragraph (1) of Rule 0400-12-01-.04 Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste is amended by deleting part 2 in its entirety and substituting instead the following:

2. (i) The operator of a hazardous waste transfer facility shall maintain a log of all shipments of hazardous waste entering and leaving the facility ~~and other information specified by the Commissioner. Required information shall be tracked on forms provided by the Commissioner on the Division website or an equivalent tracking system.~~
- (ii) The log required by subpart (i) of this part shall be developed by the owner or operator of the transfer facility and shall contain, at a minimum, the following information for each shipment:
 - (I) The date the shipment arrived;
 - (II) The generator's name and EPA identification number;

(III) The manifest document number associated with the shipment;

(IV) The date the hazardous waste was shipped out of the transfer facility;
and

(V) If the transporter mixes hazardous wastes by placing them into a single
container at the transfer facility:

I. The item number(s) and letter(s) from the manifest document
number(s) for all separately containerized wastes that are
combined in the container; and

II. If the hazardous wastes mixed in the container have different
U.S. DOT shipping descriptions, the new manifest number as
required by part (a)4 of this paragraph.

(iii) The log information required by subpart (ii) of this part shall be retained for a
period of ~~five (5)~~ three years and made available for review by the
Commissioner's ~~representative~~.

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

Part 3 of subparagraph (c) of paragraph (2) of Rule 0400-12-01-.04 Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste is amended by deleting subpart (ii) in its entirety and substituting instead the following:

(ii) The Commissioner, after notifying the transporter and providing him with the opportunity to be heard on the matter, may by order terminate the permit of any transporter upon his violation of one or more of the applicable requirements of this Chapter or Chapter ~~4200-04-13~~ 0400-15-01.

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

Part 2 of subparagraph (b) of paragraph (1) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ix) in its entirety and substituting instead the following:

(ix) A person disposing of hazardous waste by means of underground injection subject to permits issued under Chapter ~~4200-04-06~~ 0400-45-06 of the rules of the State of Tennessee and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.);

(Comment: This rule does apply to the aboveground treatment or storage of hazardous waste before it is injected underground.)

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

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 2 in its entirety and substituting instead the following:

2. The following information must be recorded, as it becomes available, and maintained in the operating record for ~~five (5)~~ three years unless noted below:

(i) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I of paragraph (53) of this rule. This information must be maintained in the operating record until closure of the facility;

- (ii) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

(Comment: See subparagraphs (7)(j), (13)(j), and (14)(j) of this rule for related requirements.)

- (iii) Records and results of waste analysis, waste determinations, and trial tests performed as specified in subparagraphs (2)(d), (10)(k), (11)(g), (12)(c), (13)(d), (14)(o), (15)(b), (16)(f), (17)(c), (27)(e), (28)(n), and (29)(e) of this rule and in subparagraphs (1)(d) and (g) of Rule 0400-12-01-.10;
- (iv) Summary reports and details of all incidents that require implementing the contingency plan as specified in part (4)(g)9 of this rule;
- (v) Records and results of inspections as required by part (2)(f)4 of this rule (except these data need be kept only ~~five~~ three years);
- (vi) Monitoring, testing, or analytical data and corrective action where required by paragraph (6) of this rule and by subparagraphs (2)(j), (6)(e), (10)(b), (10)(d), (10)(e), (11)(e), (11)(h), (12)(f), (12)(k), (13)(g), and (13)(i), subpart (13)(k)4(i), subparagraphs (14)(c), (14)(e), (15)(h), and (16)(h), parts (27)(e)3 through (27)(e)6, subparagraph (27)(f), parts (28)(n)4 through (28)(n)9, subparagraphs (28)(o), and (29)(d) through (29)(k) of this rule. Maintain in the operating record for ~~five~~ three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility;

(Comment: As required by subparagraph (6)(e) of this rule, monitoring data at disposal facilities must be kept throughout the post-closure period.)

- (vii) All closure cost estimates under subparagraph (8)(c) of this rule and, for disposal facilities, all post-closure cost estimates under subparagraph (8)(e) of this rule must be maintained in the operating record until closure of the facility;
- (viii) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Rule 0400-12-01-.10(1)(e), monitoring data required pursuant to a petition under Rule 0400-12-01-.10(1)(f), or a certification under Rule 0400-12-01-.10(1)(h), and the applicable notice required by a generator under Rule 0400-12-01-.10(1)(g)1. All this information must be maintained in the operating record until closure of the facility;
- (ix) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (x) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (xi) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h);

- (xii) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h);
- (xiii) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h); and
- (xiv) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h).
- (xv) Monitoring, testing, or analytical data, and corrective action where required by subparagraph (6)(a), subpart (6)(d)4(ii), and subpart (6)(d)4(v) of this rule and the certification as required by part (10)(g)6 of this rule must be maintained in the operating record until closure of the facility.

(Note: The authority for implementing 40 CFR 268.5 Procedures for Case-by-Case Extensions to an Effective Date and the authority for implementing 40 CFR 268.6 Petitions to Allow Land Disposal of a Prohibited Waste remains with the U.S. Environmental Protection Agency.)

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

Subparagraph (f) of paragraph (5) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting parts 7 and 8 in their entirety and substituting instead the following:

- 7. Reserved For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- 8. Reserved For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

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

Part 4 of subparagraph (c) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The Commissioner will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. The Commissioner will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and shall give public notice of the hearing,~~ as prepared and required by the Commissioner, ~~will give public notice of the hearing~~ at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Commissioner will

approve, modify, or disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan [four (4) copies] for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved closure plan. The Commissioner must assure that the approved plan is consistent with subparagraphs (b) through (f) of this paragraph and the applicable requirements of paragraph (6) and subparagraphs (10)(h), (11)(i), (12)(i), (13)(k), (14)(k), (15)(l), (16)(l), (17)(e), and (30)(c) of this rule. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

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

Subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 6 in its entirety and substituting instead the following:

6. The Commissioner will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The owner or operator ~~will shall~~ give public notice, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. The Commissioner will approve, modify, or disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan (four (4) copies) for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved post-closure plan. The Commissioner must ensure that the approved post-closure plan is consistent with subparagraphs (h) through (k) of this paragraph. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

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

Subpart (i) of part 7 of subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) These petitions will be considered by the Commissioner only when they present new and relevant information not previously considered by the Commissioner. Whenever the Commissioner is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, the opportunity to submit written comments within 30 days of the date of the notice. The Commissioner will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The owner or

operator ~~will shall~~ give the public notice, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures. After considering the comments, the Commissioner will issue a final determination, based upon the criteria set forth in subpart (i) of this part.

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

Subpart (ii) of part 7 of subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) The Commissioner will provide the owner or operator and the affected public, through a newspaper notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in item (i)(II) of this part. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following the conclusion of the public notice procedures. After considering the comments, he will issue a final determination.

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

Part 2 of subparagraph (I) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (i) in its entirety and substituting instead the following:

- (i) The Commissioner, in issuing enforceable documents under this subparagraph in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice, published by the owner or operator, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, and opportunity for public comment (the owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures):
 - (I) When the Department becomes involved in a remediation at the facility as a regulatory or enforcement matter;
 - (II) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and
 - (III) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Commissioner may consider that the facility has met the requirements of Rule 0400-12-01-.07(1)(b)9, unless the facility qualifies for a modification to these public involvement procedures under subpart (ii) or (iii) of this part.

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

Subparagraph (b) of paragraph (8) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 7 in its entirety and substituting instead the following:

7. The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with Tennessee Rule ~~1200-04-06-.09(10)~~ 0400-45-06-.09(10) or 40 CFR 144.62(a), (b), and (c) (as this federal regulation exists on the effective date of this rulemaking), whichever is greater.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

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

Part 7 of subparagraph (g) of paragraph (8) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ii) in its entirety and substituting instead the following:

- (ii) The phrase "current closure and post-closure cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (Rule 0400-12-01-.06(8)(p)6). The phrase "current plugging and abandonment cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (See 40 CFR 144.70(f), as that Federal regulation exists on the effective date of this rulemaking, or equivalent State requirement under Chapter ~~1200-04-06~~ 0400-45-06).

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

Part 8 of subparagraph (d) of paragraph (10) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The Commissioner will inform the public, through a newspaper notice, of the

availability of the demonstration for a variance. The owner or operator shall place the notice, ~~as provided for in Rule 0400-12-01-.07(7)(e) and~~ as prepared and required by the Commissioner, in a daily or weekly local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Commissioner also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given by the owner or operator, as prepared and required by the Commissioner, at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten ~~(10)~~ days following conclusion of the public notice procedures.

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

Subparagraph (b) of paragraph (1) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

3. The requirements of this rule apply to a person disposing of hazardous waste by means of underground injection subject to permits issued under the Tennessee Water Quality Control Act (T.C.A. §§69-3-101 et seq.), through Chapter ~~1200-04-06~~ 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.) only to the extent they are included in a permit-by-rule granted to such a person under Rule 0400-12-01-.07(1)(c).

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

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 2 in its entirety and substituting instead the following:

2. The following information must be recorded, as it becomes available, and maintained in the operating record for ~~five (5)~~ three years unless noted as follows:
 - (i) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I in paragraph (57) of this rule. This information must be maintained in the operating record until closure of the facility;
 - (ii) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

(Comment: See subparagraph (7)(j) of this rule for related requirements.)
 - (iii) Records and results of waste analyses and waste determinations performed as specified in subparagraphs (2)(d), (2)(h), (14)(o), (15)(b), (30)(e), (31)(n), (32)(d) of this rule, and part (1)(d)1 and subparagraph (1)(g) of Rule 0400-12-01-.10;
 - (iv) Summary reports and details of all incidents that require implementing the contingency plan as specified in part (4)(g)9 of this rule;

- (v) Records and results of inspections as required by part (2)(f)4 of this rule (except these data need be kept only ~~five~~ three years);
- (vi) Monitoring, testing or analytical data, and corrective action where required by paragraph (6), subparagraphs (2)(j), (10)(b), (10)(d), (10)(f), (11)(c), (11)(d), (11)(g), (12)(c) through (12)(e), (13)(g), (13)(i), (13)(k), (14)(c) through (14)(e), (14)(j), (27)(c), parts (30)(e)3 through (30)(e)6, subparagraph (30)(f), parts (31)(n)4 through (31)(n)9, subparagraph (31)(o), and subparagraphs (32)(c) through (32)(k) of this rule. Maintain in the operating record for ~~five~~ three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility;
- (vii) For off-site facilities, notices to generators as specified in part (2)(c)2 of this rule;
- (viii) All closure cost estimates under subparagraph (8)(c) of this rule, and, for disposal facilities, all post-closure cost estimates under subparagraph ~~(8)(e)~~ (8)(e) of this rule. This information must be maintained in the operating record until closure of the facility;
- (ix) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;
- (x) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Rule 0400-12-01-.10(1)(e), a petition pursuant to Rule 0400-12-01-.10(1)(f), or a certification under Rule 0400-12-01-.10(1)(h), and the applicable notice required by a generator under Rule 0400-12-01-.10(1)(g)1. This information must be maintained in the operating record until closure of the facility;
- (xi) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (xii) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (xiii) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h), whichever is applicable;
- (xiv) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g), except for the manifest number, and the certification and demonstration if applicable, required under Rule 0400-12-01-.10(1)(h), whichever is applicable;
- (xv) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h); and

- (xvi) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h).
- (xvii) Any records required under subpart (1)(b)9(xiii) of this rule.
- (xviii) Monitoring, testing or analytical data where required by subparagraph (15)(h) of this rule must be maintained in the operating record for five years, or as required by a permit issued after the effective date of this rulemaking, but no less than five (5) years.
- (xix) Certifications as required by part (10)(g)6 of this rule must be maintained in the operating record until closure of the facility;

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

Subparagraph (f) of paragraph (5) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting parts 8 and 9 in their entirety and substituting instead the following:

- 8. Reserved For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- 9. Reserved For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

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

Subparagraph (d) of paragraph (6) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

- 3. In making any determination under part 2 of this subparagraph about the use of ground water in the area around the facility, the Commissioner will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.8 or Tennessee Chapter ~~1200-04-06~~ 0400-45-06.

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

Subparagraph (e) of paragraph (6) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

- 3. In making any determination under part 2 of this subparagraph about the use of ground water in the area around the facility the Commissioner will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.8 or Tennessee Chapter ~~1200-04-06~~ 0400-45-06.

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

Subparagraph (b) of paragraph (8) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 7 in its entirety and substituting instead the following:

- 7. The following terms are used in the specifications for the financial tests for financial assurance for closure, post-closure care, and liability coverage. The definitions are

intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with Tennessee Rule ~~1200-04-06-.09(10)~~ 0400-45-06-.09(10) or 40 CFR 144.62(a), (b), and (c) (as this Federal regulation exists on the effective date of this rulemaking), whichever is greater.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

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

Part 8 of subparagraph (g) of paragraph (8) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ii) in its entirety and substituting instead the following:

- (ii) The phrase "current closure and post-closure cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (part (p)6 of this paragraph). The phrase "current plugging and abandonment cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (See 40 CFR 144.70(f), as that Federal regulation exists on the effective date of this rulemaking, or equivalent State requirement under Chapter ~~1200-04-06~~ 0400-45-06).

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

Part 3 of subparagraph (b) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (i) in its entirety and substituting instead the following:

- (i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with permits issued under the Tennessee Water Quality Control Act (T.C.A.

§§69-3-101 et seq.), through Chapter ~~1200-04-06~~ 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.), will be deemed to have a permit under the Act for the injection well itself if they comply with the requirements of subpart (c)1(ii) and part (c)2 of this paragraph (permit by rule for injection wells).

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

Subpart (ii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) Has permits for underground injection issued under the Tennessee Water Quality Control Act (T.C.A. §§69-3-101 et seq.), through Chapter ~~1200-04-06~~ 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.).

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

Subpart (iii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) Meets all appropriate standards of Tennessee Chapters ~~1200-04-01~~ 0400-40-01 through ~~1200-04-05~~ 0400-40-05 that are in effect on the effective date of this rulemaking;

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

Paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraph (m) in its entirety and substituting instead the following:

- (m) Pre-application public meeting and notice for an existing hazardous waste management facility, a new hazardous waste treatment, storage or disposal facility permit or a permit renewal.
 - 1. The requirements of this subparagraph shall apply to an owner or operator of an existing hazardous waste management facility required by subparagraph (2)(b) of this rule to submit a Part B permit application, and all permit applicants seeking a new hazardous waste facility permit, including new commercial hazardous waste management facilities subject to Chapter 0400-12-02, or applicants seeking a hazardous waste facility permit renewal under subparagraph (9)(a) of this rule.
 - 2. Prior to submission of a Part B permit application for a facility, or, for a new commercial hazardous waste management facility, prior to submitting a Part B permit application in accordance with subparagraph (2)(a) of Rule 0400-12-02-.02, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses. At the pre-application community meeting the applicant must provide a community impact statement which shall also be maintained in the facility file. The community impact statement shall include the following:
 - (i) A description of the facility (including a scale drawing or photograph of the facility) and the proposed hazardous waste management activities;
 - (ii) A description of security procedures at the facility;

- (iii) Information on hazard prevention and preparedness, including a summary of the contingency plan and arrangements with local emergency authorities;
 - (iv) A description of procedures, structures or equipment used to prevent employee exposure, hazards during unloading, runoff from handling areas and contamination of water supplies;
 - (v) A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and
 - (vi) A description of the facility location information relative to compliance with flood plain requirements and with respect to any commercial applicant, seismic requirements.
3. The applicant shall submit documentation of the public notices, a summary of the meeting, along with the list of attendees and their addresses developed under part 2 of this subparagraph, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with part (5)(a)1 of this rule.
4. The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting.

(i) The applicant shall provide public notice in all of the following forms:

(I) A newspaper advertisement.

The applicant shall publish a notice, fulfilling the requirements in subpart (ii) of this part, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(II) A visible and accessible sign.

The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subpart (ii) of this part. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(III) A broadcast media announcement.

The applicant shall broadcast a notice, fulfilling the requirements in subpart (ii) of this part, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Commissioner.

(IV) A notice to the permitting agency.

The applicant shall send a copy of the newspaper notice to the permitting agency and to ~~the appropriate units of State and local government, in accordance with item (7)(e)3(i)(III) and (IV) of this rule~~ any unit of local government having jurisdiction over the area where the facility is or is proposed to be located, and to each state agency having authority under state law with respect to the construction or operation of such facility.

- (ii) The notices required under subpart (i) of this part must include:
 - (I) The date, time, and location of the meeting;
 - (II) A brief description of the purpose of the meeting;
 - (III) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;
 - (IV) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and
 - (V) The name, address, and telephone number of a contact person for the applicant.

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

Paragraph (2) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraphs (b) and (c) in their entirety and substituting instead the following:

- (b) Existing Facilities [40 CFR 270.10(e)]
 1. Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a permit must submit Part A of their permit application no later than whichever of the following dates first occurs:
 - (i) Ninety days after the effective date of regulations which first require them to comply with the standards set forth in Rules 0400-12-01-.05 or 0400-12-01-.09; or
 - (ii) Thirty days after the date they first became subject to the standards set forth in Rules 0400-12-01-.05 or 0400-12-01-.09; or
 - (iii) For generators generating greater than 100 kilograms but less than 1000 kilograms in a calendar month and treating, storing, or disposing of these wastes in an on-site facility for which he is required to apply for and obtain a permit under this rule, by March 24, 1987.
 2. Owners and operators of existing facilities who submitted Part A application (or their equivalent) to the Commissioner under emergency rules promulgated earlier under the Act shall not be required to resubmit their Part A application unless required to do so under subparagraph (d) of this paragraph.
 3. The Commissioner may by issuance of a public notice extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that
 - (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and
 - (ii) such confusion is attributable to ambiguities in Rules 0400-12-01-.01, 0400-12-01-.02, or 0400-12-01-.05.
 4. The Commissioner may by compliance order issued under T.C.A. §68-212-111 extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of their permit application.

5. The owner or operator of an existing facility must submit Part B of their permit application as required by the Commissioner or Board. The Commissioner or Board may require such submission at any time after the due date of the Part A application for the facility, except that any owner or operator of an existing facility shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing facility may voluntarily submit Part B of the application at any time.
6. Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.
7. The Commissioner shall assign an Installation Identification Number to the owner or operator of an existing facility upon receipt of the Part A application.
- ~~8. All existing facilities shall follow the procedure requirements of subparagraph (1)(m) of this rule as part of the Part B application process.~~

(Note: Owners or operators of an existing hazardous waste management facility required by this subparagraph to submit a Part B permit application are required to comply with subparagraph (1)(m) of this rule.)

(c) New Facilities [40 CFR 270.10(f), 124.31]

1. Except as provided in part 4 of this subparagraph, no person shall begin physical construction of a new hazardous waste management facility without having submitted Part A and Part B of the permit application and having received an effective permit.
2. An application for a permit for a new facility (including both Part A and Part B) may be filed with the Commissioner at any time after promulgation of those standards in Rule 0400-12-01-.06, ~~paragraph (9) et seq.~~ applicable to such facility. Except as provided in part 4 of this subparagraph, all applications must be submitted at least 180 days before physical construction is expected to commence.
3. The owner or operator of a hazardous waste treatment or disposal facility which he anticipates will receive hazardous wastes generated off-site must submit his Part A permit application, completed to the best of his ability, to the Commissioner at least 120 days prior to submission of his Part B permit application. Failure to do so will result in the Commissioner delaying the processing of the Part B application for an equivalent amount of time.
4. Notwithstanding part 1 of this subparagraph, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the EPA under section (6)(e) of the federal Toxic Substance Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a permit to incinerate hazardous waste pursuant to this rule.

(Note: Owners or operators of a new hazardous waste management facility, including a new commercial hazardous waste management facility, are required to comply with subparagraph (1)(m) of this rule prior to submitting a Part B permit application.)

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

Subpart (i) of part 3 of subparagraph (e) of Paragraph (7) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (IV) in its entirety and substituting instead the following:

- (IV) Each State agency having **any** authority under State law with respect to the construction or operation of such facility; and

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

Subpart (iv) of part 4 of subparagraph (e) of Paragraph (7) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

(I) Applicability

The requirements of this subpart shall apply to all Part B applications seeking initial permits for hazardous waste management units ~~over which the Department has permit issuance authority~~. The requirements of this subpart shall also apply to Part B applications seeking renewal of permits for such units under subparagraph (9)(a) of this rule. The requirements of this subpart do not apply to permit modifications under part (9)(c)5 of this rule or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

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

Part 10 of subparagraph (a) of paragraph (8) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ii) in its entirety and substituting instead the following:

- (ii) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by Rule 0400-12-01-.06(5)(d)2(ix), and records of all data used to complete the application for this permit, for a period of at least ~~five (5)~~ three years from the date of the sample, measurement, report, certification, or application. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and, for disposal facilities, for the post-closure care period as well. This period may be extended by request of the Commissioner at any time.

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

Item (II) of subpart (i) of part 2 of subparagraph (a) of paragraph (5) of Rule 0400-12-01-.08 Fee System for Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters is amended by deleting it in its entirety and substituting instead the following:

- (II) Any generator who generates over 1 kilogram ~~or more~~ of acute hazardous waste, or over 100 kilograms ~~or more~~ of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of an acute hazardous waste, in any calendar month of the previous calendar year; or

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

Rule 0400-12-01-.08 Fee System for Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters is amended by deleting paragraph (11) in its entirety and substituting instead the following:

(11) Chromium ~~Exclusion~~ Evaluation Review Fee

2,500 dollars for each chromium waste stream applicable to the ~~exclusion~~ evaluation in Rule 0400-12-01-.02(1)(d)2(v).

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

Subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting part 2 in its entirety and substituting instead the following:

2. Except as specifically provided otherwise in this rule or Rule 0400-12-01-.02, the requirements of this rule apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

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

Subpart (iii) of part 3 of subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) Are disposed into a nonhazardous or hazardous injection well as defined in Tennessee's Underground Injection Control Program, Chapter ~~4200-04-06~~ 0400-45-06 [40 CFR 146.6(a)]; and

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

Subpart (iv) of part 3 of subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting item (III) in its entirety and substituting instead the following:

- (III) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in part (2)(h)1 of this rule; ~~or~~ and

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

Part 2 of subparagraph (g) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. A certification is also necessary for contaminated soil and it must state:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that it has been maintained and operated properly so as to comply with the treatment standards specified in Rule 0400-12-01-.10(3)(a) without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

A certification is also necessary for contaminated soil and it must state:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in Rule 0400-12-01-.10(3)(j) without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (I) A copy of the certification must be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.

(II) Debris excluded from the definition of hazardous waste under Rule 0400-12-01-.02(1)(c)6 (i.e., debris treated by an extraction or destruction technology provided by Table 1, subparagraph (3)(f) of this rule, and debris that the Commissioner has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of part 4 of this subparagraph rather than the certification requirements of this subpart.

(III) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in part (3)(a)4 of this rule, the certification, signed by an authorized representative, must state the following:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in Rule 0400-12-01-.10(3)(c), Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(IV) For characteristic wastes that are subject to the treatment standards in subparagraph (3)(a) of this rule (other than those expressed as a method of treatment) or subparagraph (3)(j) of this rule and that contain underlying hazardous constituents as defined in part (b)10 of this paragraph; if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of Rule 0400-12-01-.10(3)(a) or Rule 0400-12-01-.10(3)(j) to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(V) For characteristic wastes that contain underlying hazardous constituents as defined in part (b)10 of this paragraph that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in subparagraph (3)(i) of this rule Universal Treatment Standards, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of Rule 0400-12-01-.10(3)(a) to remove the hazardous characteristic, and that underlying hazardous constituents, as defined in Rule 0400-12-01-.10(1)(b)10, have been treated on-site to meet the Rule 0400-12-01-.10(3)(i) Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

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

Subparagraph (i) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting part 4 in its entirety and substituting instead the following:

4. Wastes that exhibit a characteristic are also subject to the requirements of subparagraph (g) of this paragraph ~~requirements~~, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the nonhazardous solid waste landfill (Subtitle D) facility receiving the waste changes.
 - (i) The notification must include the following information:
 - (I) Name and address of the nonhazardous solid waste landfill (Subtitle D) facility receiving the waste shipment; and
 - (II) A description of the waste as initially generated, including the applicable Hazardous Waste Code(s), treatability group(s), and underlying hazardous constituents (as defined in part (b)10 of this paragraph), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.
 - (ii) The certification must be signed by an authorized representative and must state the language found in subpart (g)2(iv) of this paragraph.
 - (I) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in item (g)2(iv)(IV) of this paragraph applies.
 - (II) (RESERVED)

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

Subparagraph (a) of paragraph (7) of Rule 0400-12-01-.12 Standards Standards for Universal Waste Management is amended by deleting it in its entirety and substituting instead the following:

- (a) General [40 CFR 273.80]
 1. Any person seeking to add a hazardous waste or a category of hazardous waste to this rule may petition for a regulatory amendment under this paragraph and Rules 0400-12-01-.01(3)(a)~~1~~ and ~~(4)~~ 4.
 2. To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by Rule 0400-12-01-.01~~(3)(a)2~~ (3)(a)1(ii). The petition should also address as many of the factors listed in subparagraph (b) of this paragraph as are appropriate for the waste or waste category addressed in the petition.
 3. The Commissioner will evaluate petitions using the factors listed in subparagraph (b) of this paragraph. The Commissioner will grant or deny a petition using the factors listed in subparagraph (b) of this paragraph. The decision will be based on the weight of evidence showing that regulation under this rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

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

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 06/19/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/16/13

Rulemaking Hearing(s) Conducted on: (add more dates). 02/11/14

Date: June 19, 2014

Signature: *Marty Calloway*

Name of Officer: Marty Calloway

Title of Officer: Chairman



Subscribed and sworn to before me on: June 19, 2014

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
11/7/2014
 Date

Department of State Use Only

Filed with the Department of State on: 11/12/14

Effective on: 2/10/15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED

2014 NOV 12 PM 12:28

OFFICE OF
SECRETARY OF STATE



G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Occupational Safety and Health

SUBJECT: Occupational Safety and Health Standards Record-Keeping and Reporting

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-3-1411, and 50-3-201

EFFECTIVE DATES: February 24, 2015 through June 30, 2015

FISCAL IMPACT: There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

STAFF RULE ABSTRACT: Rules 0800-01-03-.02 and 0800-01-03-.05 are amended in order to adopt and reference the latest occupational record-keeping and reporting standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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 does not have a projected impact on local governments.

**Department of State
Division of Publications**

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Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 11-27-14
Rule ID(s): 5840
File Date: 11/26/14
Effective Date: 2/24/15

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@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
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	Rule Title
0800-01-03-.02	Scope

Chapter Number	Chapter Title
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	Rule Title
0800-01-03-.05	Reporting Fatality, Injury and Illness Information

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (3)(a)(1) of Rule 0800-01-03-.02 Scope is amended as follows:

Existing Rule:

1. If your business establishment is classified in a specific ~~low hazard retail, service, finance, insurance or real estate industry listed in Appendix A~~ of Rule 0800-1-3-.02(4), you do not need to keep TOSHA injury and illness records unless the government asks you to keep the records under Rule 0800-1-3-.05(3) or Rule 0800-1-3-.05(4). However, all employers must report to TOSHA any workplace incident ~~that results in a fatality or the hospitalization of three or more employees~~ [see Rule 0800-1-3-.05(1)].

Proposed Amended Rule:

1. If your business establishment is classified in a specific industry group listed in Appendix A of Rule 0800-01-03-.02(4), you do not need to keep TOSHA injury and illness records unless the government asks you to keep the records under Rule 0800-01-03-.05(3) or Rule 0800-01-03-.05(4). However, all employers must report to TOSHA any workplace incident that results in an employee's fatality, in-patient hospitalization, amputation, or loss of an eye [see Rule 0800-01-03-.05(1)].

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (3)(b)(1) of Rule 0800-01-03-.02 Scope is amended as follows:

Existing Rule:

1. ~~Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)? Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.~~

Proposed Amended Rule:

1. Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company? The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be partially exempt.

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (3)(b)(2) of Rule 0800-01-03-.02 Scope is amended as follows:

Existing Rule:

2. ~~Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company? The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.~~

Proposed Amended Rule:

2. How do I determine the correct NAICS code for my company or for individual establishments? You determine your NAICS code by using one of three methods:
 - (i) You can use the search feature at the U.S. Census Bureau NAICS main webpage: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity, or refine your search to obtain other choices.
 - (ii) Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main webpage: <http://www.census.gov/eos/www/naics/>. Then click on the two-digit Sector code to see all the NAICS codes under that Sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.
 - (iii) If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main webpage: <http://www.census.gov/eos/www/naics/>. You may also contact your nearest TOSHA office for help in determining your NAICS Code.

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (3)(b)(3) of Rule 0800-01-03-.02 Scope is amended as follows:

Existing Rule:

~~3. How do I determine the Standard Industrial Classification code for my company or for individual establishments? You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. You may contact your nearest TOSHA office for help in determining your SIC.~~

Proposed Amended Rule:

DELETED

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (3)(b)(4) of Rule 0800-01-03-.02 Scope is amended as follows:

Existing Rule:

4. Keeping records for more than one agency. If you create records to comply with another government agency's injury and illness recordkeeping requirements, TOSHA will consider those records as meeting TOSHA's recordkeeping requirements if the other agency's records contain the same information as this rule requires you to record. You may contact your nearest TOSHA office for help in determining whether your records meet TOSHA's requirements.

~~Non-Mandatory Appendix A – Partially Exempt Industries. Employers are not required to keep TOSHA injury and illness records for any establishment classified in the following Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by TOSHA or the Bureau of Labor Statistics (BLS). All employers, including those partially exempted by reason of company size or industry classification, must report to TOSHA any workplace incident that results in a fatality or the hospitalization of three or more employees [see Rule 0800-1-3-.05(1)].~~

SIC Code	Industry Description	SIC Code	Industry Description
525	Hardware Stores	725	Shoe Repair and Shoeshine Parlors
542	Meat and Fish Markets	726	Funeral Service and Crematories
544	Candy, Nut, and Confectionery Stores	729	Miscellaneous Personal Services
545	Dairy Products Stores	731	Advertising Services
546	Retail Bakeries	732	Credit Reporting and Collection Services
549	Miscellaneous Food Stores	733	Mailing, Reproduction, & Stenographic Services
551	New and Used Car Dealers	737	Computer and Data Processing

			Services
552	Used-Car-Dealers	738	Miscellaneous-Business-Services
554	Gasoline-Service-Station	764	Reupholstery-and-Furniture-Repair
557	Motorcycle-Dealers	78	Motion-Picture
56	Apparel-and-Accessory-Stores	791	Dance-Studios,-Schools,-and-Halls
573	Radio,-Television,-&-Computer-Stores	792	Producers,-Orchestras,-Entertainers
58	Eating-and-Drinking-Places	793	Bowling-Centers
591	Drug-Stores-and-Proprietary-Stores	801	Offices-&-Clinics-Of-Medical-Doctors
592	Liquor-Stores	802	Offices-and-Clinics-Of-Dentists
594	Miscellaneous-Shopping-Goods-Stores	803	Offices-Of-Osteopathic-Physicians
599	Retail-Stores,-Not-Elsewhere-Classified	804	Offices-Of-Other-Health-Practitioners
60	Depository-Institutions-(banks-&-savings-institutions)	807	Medical-and-Dental-Laboratories
61	Nondepository-Institutions-(credit-institutions)	809	Health-and-Allied-Services,-Not-Elsewhere-Classified
62	Security-and-Commodity-Brokers	81	Legal-Services
63	Insurance-Carriers	82	Educational-Services-(schools,-colleges,-universities-and-libraries)
64	Insurance-Agents,-Brokers,-&-Services	832	Individual-and-Family-Services
653	Real-Estate-Agents-and-Managers	835	Child-Day-Care-Services
654	Title-Abstract-Offices	839	Social-Services,-Not-Elsewhere-Classified
67	Holding-and-Other-Investment-Offices	841	Museums-and-Art-Galleries
722	Photographic-Studios,-Portrait	86	Membership-Organizations
723	Beauty-Shops	87	Engineering,-Accounting,-Research,-Management,-and-Related-Services
724	Barber-Shops	899	Services,-not-elsewhere-classified

Proposed Amended Rule:

- Keeping records for more than one agency. If you create records to comply with another government agency's injury and illness recordkeeping requirements, TOSHA will consider those records as meeting TOSHA's recordkeeping requirements if the other agency's records contain the same information as this rule requires you to record. You may contact your nearest TOSHA office for help in determining whether your records meet TOSHA's requirements.

Non-Mandatory Appendix A - Partially Exempt Industries. Employers are not required to keep TOSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by TOSHA or the Bureau of Labor Statistics (BLS). All employers, including those partially exempted by reason of company size or industry classification, must report to TOSHA any employee's fatality, in-patient hospitalization, amputation, or loss of an eye [see Rule 0800-01-03-.05(1)].

NAICS Code	Industry
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4412	Other Motor Vehicle Dealers
4431	Electronics and Appliance Stores
4461	Health and Personal Care Stores
4471	Gasoline Stations
4481	Clothing Stores
4482	Shoe Stores
4483	Jewelry, Luggage, and Leather Goods Stores
4511	Sporting Goods, Hobby, and Musical Instrument Stores
4512	Book, Periodical, and Music Stores
4531	Florists
4532	Office Supplies, Stationery, and Gift Stores
4812	Nonscheduled Air Transportation
4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas
4869	Other Pipeline Transportation
4879	Scenic and Sightseeing Transportation, Other
4885	Freight Transportation Arrangement
5111	Newspaper, Periodical, Book, and Directory Publishers
5112	Software Publishers
5121	Motion Picture and Video Industries
5122	Sound Recording Industries
5151	Radio and Television Broadcasting
5172	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
5179	Other Telecommunications
5181	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
5191	Other Information Services
5211	Monetary Authorities - Central Bank
5221	Depository Credit Intermediation
5222	Nondepository Credit Intermediation
5223	Activities Related to Credit Intermediation
5231	Securities and Commodity Contracts Intermediation and Brokerage
5232	Securities and Commodity Exchanges
5239	Other Financial Investment Activities
5241	Insurance Carriers
5242	Agencies, Brokerages, and Other Insurance Related Activities
5251	Insurance and Employee Benefit Funds
5259	Other Investment Pools and Funds
5312	Offices of Real Estate Agents and Brokers
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
5411	Legal Services
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413	Architectural, Engineering, and Related Services

5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instruction
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

Chapter 0800-01-03

Rule 0800-01-03-.02 Amended

Paragraph (1) of Rule 0800-01-03-.05 Reporting Fatality, Injury and Illness Information is amended as follows:

Existing Rule:

~~(1) Reporting fatalities and multiple hospitalization incidents to TOSHA.~~

~~(a) Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of TOSHA, Tennessee Department of Labor and Workforce Development, that is nearest to the site of the incident. You may also use the TOSHA toll-free central telephone number, 1-800-249-8510.~~

~~(b) Implementation.~~

~~1. If the Area Office is closed, may I report the incident by leaving a message on TOSHA's answering machine, faxing the Area Office, or sending an e-mail? No, if you can't talk to a person at the Area Office, you must report the fatality or multiple hospitalization incident using the 800 number.~~

~~2. What information do I need to give to TOSHA about the incident? You must give TOSHA the following information for each fatality or multiple hospitalization incident:~~

~~(i) The establishment name;~~

~~(ii) The location of the incident;~~

~~(iii) The time of the incident;~~

~~(iv) The number of fatalities or hospitalized employees;~~

~~(v) The names of any injured employees;~~

~~(vi) Your contact person and his or her phone number; and~~

~~(vii) A brief description of the incident.~~

~~3. Do I have to report every fatality or multiple hospitalization incident resulting from a motor vehicle accident? No, you do not have to report all of these incidents. If the motor vehicle accident occurs on a public street or highway, and does not occur in a construction work zone, you do not have to report the incident to TOSHA. However, these injuries must be recorded on your TOSHA injury and illness records, if you are required to keep such records.~~

~~4. Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No, you do not have to call TOSHA to report a fatality or multiple hospitalization incident~~

~~if it involves a commercial airplane, train, subway or bus accident. However, these injuries must be recorded on your TOSHA injury and illness records, if you are required to keep such records.~~

- ~~5. Do I have to report a fatality caused by a heart attack at work? Yes, your local TOSHA Area Office supervisor will decide whether to investigate the incident, depending on the circumstances of the heart attack.~~
- ~~6. Do I have to report a fatality or hospitalization that occurs long after the incident? No, you must only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.~~
- ~~7. What if I don't learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under subparagraphs (a) and (b) of paragraph (1) of this rule, you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agent(s) or employee(s).~~

Proposed Amended Rule:

(1) Reporting fatalities and multiple hospitalization incidents to TOSHA.

(a) Basic requirement.

1. Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the TOSHA Division of the Tennessee Department of Labor and Workforce Development.
2. Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to TOSHA.
3. You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:
 - (i) By telephone or in person to the TOSHA Area Office that is nearest to the site of the incident.
 - (ii) By telephone to the TOSHA toll-free central telephone number, 1-800-249-8510.
 - (iii) By electronic submission using the reporting application located on OSHA's public website at www.osha.gov.

(b) Implementation.

1. If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on TOSHA's answering machine, faxing the Area Office, or sending an e-mail? No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public website at www.osha.gov.

2. What information do I need to give to TOSHA about the in-patient hospitalization, amputation, or loss of an eye? You must give TOSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:
 - (i) The establishment name;
 - (ii) The location of the work-related incident;
 - (iii) The time of the work-related incident;
 - (iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);
 - (v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
 - (vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
 - (vii) Your contact person and his or her phone number; and
 - (viii) A brief description of the work-related incident.
3. Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway? If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to TOSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.
4. Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system? No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to TOSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.
5. Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack? Yes, your local TOSHA Area Office supervisor will decide whether to investigate the event, depending on the circumstances of the heart attack.
6. What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident? You must only report a fatality to TOSHA if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to TOSHA

if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

7. What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away? If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to TOSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.
8. What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident? If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to TOSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.
9. How does TOSHA define "in-patient hospitalization"? TOSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.
10. Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing? No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to TOSHA each in-patient hospitalization that involves care or treatment.
11. How does TOSHA define "amputation"? An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10/27/14 (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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10/27/14

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: 10/27/2014

Notary Public Signature: Sheryl Messenger

My commission expires on: 1/9/2016

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. Slattery III
 Herbert H. Slattery III.
 Attorney General and Reporter
November 24, 2014
 Date

Department of State Use Only

Filed with the Department of State on: 11/26/14

Effective on: 2/24/15

Tre Hargett

Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Commerce and Insurance
<u>DIVISION:</u>	Regulatory Boards – Board of Examiners for Land Surveyors
<u>SUBJECT:</u>	Rules of Professional Conduct
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 62-18-105(d), 62-18-106(c), and 62-18-119(d)
<u>EFFECTIVE DATES:</u>	February 15, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>Rule 0820-04-.02 Proper Conduct of Practice is amended to make reporting violations of any provision of the land surveying licensing authority that become known to the registrant mandatory rather than elective. The rule is also amended to require registrants to claim all correspondence from the Board and respond to it within fifteen days, and forbids any registrant from assisting an unqualified individual in the application for a license.</p> <p>Rule 0820-04-.03 Service in Areas of Competence is amended to include a requirement that a registrant only accept projects for which the registrant is qualified through education or experience, and to notify an employer, client, or other in authority over the project of any circumstances surrounding the project that endanger the life, health, property or welfare of the public.</p> <p>Rule 0820-04-.04 Public Statements is amended to clarify that a registrant, when serving as an expert witness, may only express opinions based on the registrant's experience and competence in the subject matter.</p> <p>Rule 0820-04-.05 Conflicts of Interest is amended by adding prohibitions against a registrant revealing any of the client's information obtained in a professional capacity without prior consent of the client, or receiving any gratuities from any third parties in connection with the project.</p>

Rule 0820-04-.07 Misconduct is amended by removing the provision that only the conviction of a felony may be considered for discipline of a registrant's license and instead allows consideration of conviction of any offense that reflects unfavorably on a registrant's honesty and integrity.

Rule 0820-04-.08 Seals is amended to clarify that a registrant must affix the registrant's seal to all land surveying documents that are to be used as proof that the project is prepared by a licensed registrant, and all professional documentation not requiring a professional stamp that is classified as "preliminary" and "not for construction, recording or implementation" shall be clearly marked as such.

Documentation requiring a seal shall be stamped as to allow the reproduction of the seal when the documents are copied. When a project involves two registrants, the seal of both shall appear on the produced documentation. The rule is amended to clarify the application of seals to documents in order to properly indicate the registrant in responsible charge of the project as defined by rule, and all revisions to the documents must be described and dated, and bear the seal of the registrant making the revisions if not the original registrant. The rule also is amended to accommodate the application of electronic seals as defined in the National Conference of Examiners for Engineers and Surveyors (NCEES) as provided in the Model Rules.

Rule 0820-04-.09 Responsible Charge of Service is amended to further define the meaning of "responsible charge" for a land surveying firm doing business in Tennessee by expanding the terms to include the requirement that the firm maintain a full-time (30 hours per week) registrant on location of any such business.

Proposed rule 0820-04-.10 Practice - Disclosure is added to require that any corporation, partnership or firm offering land surveying services in this state shall have at least one principle registered as a professional land surveyor by the Board and shall register the business with the Board on a form prescribed by the Board listing the names and addresses of all principles and officers of the business, as well as all registrants in responsible charge of the services provided by the business. All registered businesses shall advise the Board in writing within sixty days of any change in their business status. This proposed rule closely mirrors the provisions in Chapter 0120-06 [Corporations, Partnerships and Firms] for the Board of Architectural and Engineering Examiners; it is common for professionals registered with both agencies to become employed by a single firm offering both services.

Public Hearing Comments

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

Please see attached documentation for copies of letters that the Board sent in response to public comments.

Rule 0820-04-.07 Misconduct

Subsection (a): Jimmy Cleveland, President of the Tennessee Association of Professional Surveyors (TAPS), submits written comments on behalf of the Association regarding this rule's subsections (a), stating that construing a conviction of any offense that "has a directly unfavorable reflection" on the registrant's professional ability as misconduct is far too general and has the potential to be abused (by the Board) in the future. The Association suggests that the language be altered to substitute the proposed amendment to subsection (a) with "or other crime of moral turpitude that reflects unfavorably on the registrant's ability to practice land surveying." In response, the Board explains that the expansion of the rule to include conviction of offenses other than felonies is intended to capture criminal conduct that shows disrespect for the law and a lack of good judgment that do not necessarily rise to the level of a felony and that the Board has no intention of applying this rule to issues that fall outside this category, such as traffic violations. The Board voted to retain the original, proposed language without changes.

Subsection (b): In the same written comments, the TAPS proposes that the proposed amended language to subsection (b) is likewise too general, asserting that recent economic difficulties have resulted in several registrants holding a license in other states, who have surrendered those licenses. A suggested alternative revision would replace "disciplinary voluntary surrender" with "voluntary surrender (as a punitive action by a licensing board)." Mr. Cleveland, acting as himself, made an oral comment in reflection of this as well. The Board explained that the intention of the revision was to incorporate the surrender of a license to avoid discipline, or if a Board issues an order that a license is surrendered as if revoked, as grounds for reciprocal discipline in Tennessee.

Bart Crattie, a registrant, asked for further clarification as to the distinction between a standard voluntary surrender, an act taken by a registrant that is not a result of any disciplinary action, and a surrender associated with professional discipline. The Board provided clarification based on the previous discussion, and voted to retain the original, proposed language without changes.

Rule 0820-04-.08 Seals

Mr. Crattie asked if this rule amendment requires a professional seal to appear on all documents produced by a registrant. The Board explained that a registrant's seal is to appear on all work product documentation that is intended for distribution for bidding purposes and is to be reproduced must be sealed.

Stephen Ward, a registrant, made a comment in support of the rule amendments.

Allen Crawford, a registrant, asked for clarification on the security for electronic seals, and the Board explained that this subject was explained in a previous rulemaking hearing and that the proper use of electronic seals is addressed in the rule based on industry standards around the country.

Mr. Ward and Mr. Cleveland asked for clarification on subsection (5)'s requirement that all plat sheets be stamped. The Board confirmed that this was the intention.

Mr. Leonard Tusar, a registrant, asked if computer-generated professional seals must also conform to the rule's requirement that all seals must be two inches in diameter. The Board responded that the rule would be leniently applied in situations where reproduction of electronic plats would possibly render the seal a smaller size.

Rule 0820-04-.09 Responsible Charge of Service

Mr. Crawford expressed concern about the requirement that a registrant must "be in responsible charge for thirty hours per week" in order to comply with the new rule. The Board did not alter its position on this point.

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)

1. Types of small businesses directly affected:

These amendments would require small businesses offering land surveying services to the public to register with the Board.

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

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

3. Probable effect on small businesses:

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

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

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

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules.

Impact on Local Governments

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

The Board of Examiners for Land Surveyors licenses only individuals and foresees no financial impact on any local governments.

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For Department of State Use Only

Sequence Number: 11-16-14
Rule ID(s): 5834
File Date: 11/17/14
Effective Date: 2/15/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee Board of Examiners for Land Surveyors
Division: Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person: Robert Herndon, Assistant General Counsel
Address: 500 James Robertson Parkway
Nashville, Tennessee
Zip: 37243-1167
Phone: 615-741-3072
Email: Robert.Herndon@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0820-04	Rules of Professional Conduct
Rule Number	Rule Title
0820-04-.02	Proper Conduct of Practice
0820-04-.03	Service in Areas of Competence
0820-04-.04	Public Statements
0820-04-.05	Conflicts of Interest
0820-04-.07	Misconduct
0820-04-.08	Seals
0820-04-.09	Responsible Charge of Service
0820-04-.10	Practice – Disclosure

Substance of Proposed Rules

Chapter 0820-04
Rules of Professional Conduct

Repeal/Amendments/New Rule

Chapter 0820-04 Rules of Professional Conduct Table of Contents is amended by adding 0820-04-.10 Practice – Disclosure so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0820-04-.01 Applicability	0820-04-.06 Acceptance of Work
0820-04-.02 Proper Conduct of Practice	0820-04-.07 Misconduct
0820-04-.03 Service in Areas of Competence	0820-04-.08 Seals
0820-04-.04 Public Statements	0820-04-.09 Responsible Charge of Service
0820-04-.05 Conflicts of Interest	<u>0820-04-.10 Practice – Disclosure</u>

Authority: T.C.A. § 62-18-105(d).

Rule 0820-04-.02 Proper Conduct of Practice is amended by substituting the words “shall” for “should” in paragraph (2). The rule is further amended to add paragraphs (3) and (4) so that, as amended, the rule in its entirety shall read:

0820-04-.02 Proper Conduct of Practice

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health, and welfare of the public in the performance of the registrant's professional duties.
- (2) A registrant possessing knowledge of a violation of T.C.A. Title 62, Chapter 18, or any rules promulgated thereunder ~~should~~ shall report such knowledge to the Board in writing and ~~should~~ shall cooperate with the Board in furnishing such further information or assistance as it may require.
- (3) The registrant shall respond to all inquiries and correspondence from the Board within fifteen days from the day of receipt and shall timely claim undelivered correspondence from the U.S. Postal Service, or other delivery service, upon notice thereof.
- (4) The registrant shall not assist in any way in the application for licensure of a person known by the registrant to be unqualified in respect to education, training, or experience.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.03 Service in Areas of Competence is amended by deleting paragraph (1) in its entirety, and amending paragraphs (2) and (3) to remove “his” or “her” and substituting “the registrant”, so that the new rule in its entirety shall read:

0820-04-.03 Service in Areas of Competence

- (1) The registrant shall perform his services only in areas of his competence undertake to perform land surveying assignments only when qualified by education or experience in the specific technical field of professional land surveying involved.
- (2) The registrant may accept an assignment requiring education or experience outside of his the registrant's own field of competence, but only to the extent that the registrant's services are restricted to those phases of the project in which ~~he~~ the registrant is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
- (3) The registrant shall not affix his or her signature ~~and/or~~ seal to any ~~plan or~~ document dealing with subject matter in which ~~he~~ the registrant lacks competence acquired through education or

experience, nor to any ~~plan~~ or document not prepared by the registrant or under his the registrant's supervision.

- (4) In providing services, the registrant shall take into account all applicable laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.
- (5) Incompetence. The following acts or omissions, among others, may be deemed to be "incompetence" for the purposes of T.C.A. §§62-18-116(a)(1)(B), and to be cause for denial, suspension or revocation of a certificate of registration to practice land surveying.
 - (a) Malpractice. Incompetence includes, but is not limited to recklessness, or excessive errors or omissions in the registrant's record of professional practice.
 - (b) Disability. Incompetence includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in providing professional services.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.04 Public Statements is amended by deleting the word "he" in paragraph (1) and substituting instead the words "the registrant." The rule is further amended by adding paragraph (3) so that the rule in its entirety shall read:

0820-04-.04 Public Statements

- (1) The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. ~~He~~ The registrant shall include all relevant and pertinent information in such reports, statements, or testimony.
- (2) The registrant, when serving as an expert or ~~technical~~ witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of ~~technical~~ experience and competence in the subject matter, and upon honest conviction of the accuracy and propriety of his The registrant's testimony.
- (3) The registrant shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.05 Conflicts of Interest is repealed in its entirety and the following language is substituted so that the new rule shall read:

0820-04-.05 Conflicts of Interest

- (1) The registrant shall conscientiously strive to avoid conflicts of interest with his the registrant's employer or client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to his or her employer or client.
- (2) The registrant shall avoid all known or potential conflicts of interest with his or her employer or client, and shall promptly inform his or her employer or client of any; business association, interests, or circumstances which could influence his the registrant's judgment or the quality of his or her services.
- (3) The registrant shall not accept compensation (financial or otherwise) from more than one party for services on or pertaining to the same project rendered in the same time frame, unless the circumstances are fully disclosed to, and agreed to in writing, by all interested parties.

- (4) When engaged in public service on a project as a member, advisor, or employee of a governmental body or department, the registrant and his the registrant's organization shall not perform services for any other client regarding or connected to the project.
- (5) The registrant shall not reveal facts, data, or information obtained in a professional capacity without the prior consent of the client, employer, or public body on which the registrant serves except as authorized or required by law. The registrant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.07 Misconduct is repealed in its entirety and the following language is substituted so that the new rule shall read:

0820-04-.07 Misconduct

- (1) ~~The registrant shall not knowingly associate with, or permit the use of his name or firm name in, a business venture by partner, practice, or offer to practice with any person or firm which he that the registrant knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.~~
- (2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
 - (a) Federal, state, and local surveying and planning laws and regulations, or
 - (b) Registration requirements of T.C.A., Title 62, Chapter 18.
- (3) ~~Misconduct.~~ The following acts, among others, may be deemed to be "misconduct" for the purposes of T.C.A. §§62-18-116(a)(1)(B), and to be cause for denial, suspension, or revocation of a certificate of registration to practice land surveying:
 - (a) Conviction in a court of competent jurisdiction of a felony or any offense that has a directly unfavorable reflection on the registrant's ability to practice land surveying.
 - (b) Revocation, suspension, or disciplinary voluntary surrender of a license or certificate of registration to practice land surveying in another jurisdiction.

Nothing in this paragraph should be construed as precluding the Board from deeming other acts and conduct to be "misconduct."

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.08 Seals is repealed in its entirety and the following language is substituted so that the new rule shall read:

0820-4-.08 Seals

- (1) The design of the registrant's seal required by T.C.A. §§62-18-119, shall be as follows:



- (2) The registrant shall stamp this seal, all maps, plats, surveys and other documents issued in the course of his land surveying practice.

The seal and signature of the registrant and the date of signing shall be placed on all land surveys, reports, plats, drawings, plans, and calculations whenever presented to a client or any public agency to certify that the work thereon was done by the registrant or under the responsible charge of the registrant. Working drawings or preliminary documents are not required to have a seal and signature if the working drawing or preliminary document contains a statement in large bold letters to the effect "PRELIMINARY, NOT FOR CONSTRUCTION, RECORDING PURPOSES, OR IMPLEMENTATION." The size of the seal shall be two inches in diameter in all cases and on all documentation requiring the registrant's seal, regardless of the size of the document.

- (3) The registrant shall superimpose his or her signature (not a rubber stamp) and date of signature across the face and beyond the circumference of or adjacent to the seal on documents to which his the registrant's seal is affixed.

- (4) ~~No registrant shall affix his seal or signature to maps, plats, surveys or other documents developed by others not under his personal supervision and not subject to the authority of that registrant in critical professional judgments. The seal and signature shall be placed on all original copies, tracings, or other reproducible documents so that the seal and signature will be reproduced when copies are made.~~

- (5) ~~Personal Supervision. Maps, plats, surveys or other documents will be deemed to have been prepared under the personal supervision of a registrant only when:~~

~~(a) — The client requesting preparation of such plans, specifications drawings, reports or other documents makes the request directly to the registrant's employee so long as the employee works in the registrant's place of business and not at a separate location;~~

~~(b) — The registrant supervises the preparation of the maps, plats, surveys or other documents and has input into their preparation prior to their completion;~~

~~(c) — The registrant reviews the final maps, plats, surveys or other documents; and~~

~~(d) — The registrant has the authority to, and does, make any necessary and appropriate changes to the final maps, plats, surveys or other documents.~~

When the document contains more than one sheet, the first or title page shall be sealed and signed by the registrant who was in responsible charge. In addition, each sheet shall be sealed and signed by the registrant or registrants responsible for that sheet. Two or more registrants may affix their signatures and seals, provided that the registrants designate by note under the seals the specific subject matter for which each is responsible. When a firm performs the work, each sheet shall be sealed and signed by the registrant or registrants who were in responsible charge of that sheet as required by T.C.A. § 62-18-122(b).

- (6) The seal and signature shall be placed on work only when it was under the registrant's responsible charge. The registrant shall sign and seal only work within the registrant's area(s) of competence.

- (7) Maps, plats, surveys, or other documents will be deemed to have been prepared under the responsible charge of a registrant only when all the following conditions have been met and documented:

- a. The client requesting preparation of such maps, plats, surveys, or other documents makes the request directly to the registrant, or a member or employee of the registrant's firm;

- b. The registrant supervises the preparation of the maps, plats, surveys, or other documents and has input into their preparation prior to their completion;
 - c. The registrant reviews the final maps, plats, surveys, or other documents; and
 - d. The registrant has the authority to, and does, make any necessary and appropriate changes to the final maps, plats, surveys, or other documents. The registrant is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally.
- (8) Any revision to a document containing the seal and signature of a registrant shall be described and dated in a manner that conforms to current industry standards. If the revisions are not done by the original registrant, the revisions must also be signed and sealed by the registrant in responsible charge of those revisions and otherwise identified in the same manner.
- (9) In circumstances where a registrant in responsible charge of the work is unavailable to complete the work, a successor registrant may take responsible charge by performing all professional services to include developing maps, plats, surveys or other documents and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor registrant but must clearly and accurately reflect the successor registrant's work. The burden is on the successor registrant to show such compliance. The successor registrant shall have control of and responsibility for the work product and the signed and sealed originals of all documents.
- (10) Computer-generated seals not signed with a digital signature may be used on final original drawings provided a handwritten signature is placed across the seal and the date is hand-written below the seal. Maps, plats, surveys or other documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:
- a. Unique to the individual using it;
 - b. Capable of verification;
 - c. Under the sole control of the individual using it; and,
 - d. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections 10 a-d above. Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and shall be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

Authority: T.C.A. §§62-18-105(d), 62-18-106(c), and 62-18-119(d).

Rule 0820-04-.09 Responsible Charge of Service is repealed in its entirety and the following language is substituted so that the new rule shall read:

0820-04-.09 Responsible Charge of Service

~~Corporations, partnerships and firms maintaining any place of business in the state of Tennessee for the purpose of providing or offering to provide land surveying to the public, shall have in responsible charge of such service at any and each location a registered land surveyor who shall be employed full-time at such location.~~

- (1) Only officers and principals who are employed full-time for a minimum of thirty (30) hours per week and who hold active Tennessee registration can be in responsible charge of a firm's

practice. A registrant who renders occasional, part-time, or consulting services to or for a firm may not be designated as an officer or principal in responsible charge.

- (2) The officer or principal in responsible charge must be registered in the profession in which services are being offered.
- (3) An officer or principal may be in responsible charge of more than one firm only if the firms are at the same physical location.
- (4) Corporations, partnerships and firms maintaining any place of business in this state for the purpose of providing or offering to provide land surveying services to the public shall have, in responsible charge of such service at any and each place of business, a resident registered land surveyor.
- (5) In the event of a change in the officer or principal in responsible charge, a firm cannot provide or offer services to the public until such time as a new officer or principal in responsible charge is identified.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.10 Practice – Disclosure is created and added to Chapter 0820-04 Rules of Professional Conduct and shall read as follows:

0820-04-.10 Practice – Disclosure

- (a) A corporation, partnership, or firm offering service to the public may engage in the practice of surveying in this state, provided that at least one (1) of the principals or officers of the corporation, partnership, or firm is in responsible charge of the practice and is registered as required in this chapter or is otherwise authorized to practice under this chapter. The same exemptions shall apply to corporations, partnerships, and firms as apply to individuals under this chapter.
- (b) Corporations, partnerships, or firms offering surveying service to the public shall file with the board, on a form prescribed by the board, a listing of names and addresses of all principals and officers, as well as the principals or officers duly registered to practice surveying in this state who are in responsible charge of the practice in this state. The corporations, partnerships, or firms shall advise the board in writing within sixty (60) days of any change of status.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Timothy Lingerfelt, Chairman	X				
Galyon Northcutt, Vice-Chairman	X				
Jay Caughman, RLS Board Member	X				
Sue Braly, Public Member	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners for Land Surveyors on 10/24/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/06/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 10/24/2013

Date: 10/24/2013

Signature: [Handwritten Signature]

Name of Officer: Robert E. Herndon

Title of Officer: Assistant General Counsel



My Commission Expires SEPT. 11, 2017

Subscribed and sworn to before me on: October 24, 2013

Notary Public Signature: [Handwritten Signature]

My commission expires on: 9-11-2017

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.

[Handwritten Signature]
 Herbert H. Slatery III
 Attorney General and Reporter
11/7/14 Date

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Filed with the Department of State on: 11/17/14

Effective on: 2/15/15

[Handwritten Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

BOARD: Commerce and Insurance

DIVISION: Regulatory Boards -- Board of Examiners for Land Surveyors

SUBJECT: Continuing Education Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-18-105(d) and 62-18-106(d)

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

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: According to the Department of Commerce and Insurance, the following will occur pursuant to these proposed rule changes:

Rule 0820-05-.02 Definitions is amended to add definitions for "retired" status and to describe the expected duration and content of continuing education courses.

Rule 0820-05-.03 Basic Requirements is amended to delete outdated requirements for registrants renewing in past years and to list some acceptable course content and activities for continuing education; this rule also further develops the two-year renewal cycle.

Rule 0820-05-.04 Conversion Table is amended to update the previous table, which contains discontinued conversion values and adds equivalent values for some non-linear activities, such as obtaining a patent.

Rule 0820-05-.05 Types of Acceptable Continuing Education is amended by deleting some activities that the Board has determined are no longer worthy to be considered for continuing education credit.

Rule 0820-05-.06 Inactive and Retired Registrants is amended to add provisions to accommodate retired land surveyors.

Rule 0820-05-.07 Reinstatement to Active Registration is amended to provide a method for retired registrants to become reactivated and also changes "annual" to "biennial" to reflect the Board's renewal cycle.

Rule 0820-05-.08 Noncompliance is amended to provide that retired registrants may not be renewed if they fail to meet reactivation requirements.

Rule 0820-05-.09 Hardships and Exemptions is amended to add an exemption to continuing education requirements for registrants who have reached the age of 65 and have been actively practicing for at least 25 years.

Rule 0820-05-.10 Reports and Records is amended by deleting the requirement to report continuing education hours at renewal to allow for reporting continuing education hours obtained during the non-renewal year of the biennial cycle.

Rule 0820-05-.12 Approval of Programs is amended to require continuing education providers to obtain approval from the Board prior to offering services to registrants.

Rule 0820-05-.14 Comity is amended by requiring that registrants who are located in another jurisdiction and maintain a Tennessee license must satisfy the Board's continuing education credit to obtain renewal rather than the registrant's home jurisdiction; this is due to some states having a lower number of hours necessary for renewal.

Public Hearing Comments

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

Please see attached documentation for copies of letters that the Board sent in response to public comments.

Rule 0820-05-.03 Basic Requirements

Steve Ward made a comment about the acceptability of belonging to a professional society for continuing education credit. The Board clarified that the proposed rules are to provide that only active, not passive, participation in a professional society will be acceptable for a minimum of two professional development hours (PDH's).

Rule 0820-05-.04 Conversion Table

Leonard Tusar, a registrant and professional society officer, asked if online and correspondence PDHs would be accepted in the future. The Board confirmed that they would not, due to the inconsistencies in quality and price of such courses.

Allen Crawford, a registrant, discussed the same issue. The Board discussed inserting "webinar" in order to accept continuing education credit for courses that are online but the registrant can participate in the class as if he or she were physically present. The Board approved this addition to the proposed rules.

Rule 0820-05-.10 Reports and Records

Jimmy Cleveland, President of the Tennessee Association of Professional Surveyors (TAPS), submits written comments on behalf of the Association regarding the amendments to rule regarding reporting continuing education hours and the keeping of the records thereof. In making this comment, TAPS suggests that the Board should instead be more focused on an auditing process and provides an alternative writing of the rule. TAPS also suggests communication with adjoining states for the purpose of aligning the Board's rule with those jurisdictions. In response, the Board determines that an audit of a small percentage of its registrants would diminish its ability to review continuing education; at the present time, all registrants are required to provide a continuing education report to the Board.

Rule 0820-05-.12 Approval of Programs

The TAPS written comments suggest the complete removal of the pre-approval system currently in place or, in the alternative a suggestion to replace the current Rule 0820-05-.12 with a rule that concerns auditing of continuing education hours, which is based on the language contained in the rules of some of the adjoining states. The Board respectfully maintained its proposed amendments as written.

Mark Crattie, a registrant and member of the Advisory Committee that the Board maintains to review continuing education courses for pre-approval, expressed that the pre-approval system is not working perfectly and favors an audit system instead. The Board discussed a possible fee implemented for vendors who submit continuing education courses and indicated this would involve legislation.

Steve Ward, a registrant, noted that there was concern at the local level about the time it currently takes to obtain pre-approval for continuing education courses and the uncertainty it creates for registrants taking those courses. The Board clarified the procedures involved.

Allen Crawford, a registrant, suggested that peer registrants would be suitable to provide continuing education rather than corporate vendors. The Board expressed a willingness to consider this option.

Leonard Tusar asked about the transfer of continuing education credits from other jurisdictions. The Board responded that this was acceptable, as long as sufficient hours were submitted and the content of the course met

the Board's expectations.

Jimmy Cleveland expressed support in accepting out-of-state continuing education credits due to a number of registrants holding licenses in one or more states other than Tennessee.

The Board discussed and clarified the amendment of the rules to require thirty (30) continuing education hours every two years.

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)

1. Types of small businesses directly affected:

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

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

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

3. Probable effect on small businesses:

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

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

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

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules.

Impact on Local Governments

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

(Insert statement here)

The Board of Examiners for Land Surveyors licenses only individuals and foresees no financial impact on any local governments.

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Sequence Number: 11-17-14
 Rule ID(s): 5035
 File Date: 11/17/14
 Effective Date: 2/15/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee State Board of Examiners for Land Surveyors
Division: Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person: Robert Herndon, Assistant General Counsel
Address: 500 James Robertson Parkway
 Nashville, Tennessee
Zip: 37243-1168
Phone: 615-741-9461
Email: Robert.Herndon@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0820-05	Continuing Education
Rule Number	Rule Title
0820-05-.02	Definitions
0820-05-.03	Basic Requirements
0820-05-.04	Conversion Table
0820-05-.05	Types of Acceptable Continuing Education
0820-05-.06	Inactive and Retired Registrants
0820-05-.07	Reinstatement to Active Registration
0820-05-.08	Noncompliance
0820-05-.09	Hardships and Exemptions
0820-05-.10	Reports and Records
0820-05-.12	Approval of Programs
0820-05-.13	Comity

Chapter 0820-05
Continuing Education

Amendments

Chapter 0820-05 Continuing Education Table of Contents is amended by deleting the title to Rule 0820-05-.06 and replacing it with "Inactive and Retired Registrants" and the title to Rule 0820-05-.09 and replacing it with "Hardships and Exemptions" so that, as amended, the Rule title shall read as follows:

TABLE OF CONTENTS

0820-05-.01 Purpose	0820-05-.09 <u>Hardships and Exemptions</u>
0820-05-.02 Definitions	0820-05-.10 Reports and Records
0820-05-.03 Basic Requirements	0820-05-.11 Sponsors
0820-05-.04 Conversion Table	0820-05-.12 Approval of Programs
0820-05-.05 Types of Acceptable Continuing Education	0820-05-.13 Audits
0820-05-.06 <u>Inactive and Retired Registrants</u>	0820-05-.14 Comity
0820-05-.07 Reinstatement to Active Registration	0820-05-.15 Advisory Committee
0820-05-.08 Noncompliance	

Authority: T.C.A. § 62-18-105(d).

Rule 0820-05-.02 Definitions is amended by adding Paragraphs (5) – (8), so that, as amended, rule 0820-05-.02 shall read:

Rule 0820-05-.02 Definitions

- (1) "Active" means a registered land surveyor who has complied with the continuing education requirements prescribed herein.
- (2) "Board" means the Tennessee State Board of Examiners for Land Surveyors.
- (3) "Inactive" means a registered land surveyor who has obtained inactive status from the Board pursuant to Rule 0820-05-.06 and is not required to comply with the continuing education requirements prescribed herein. An inactive registrant may not engage in the practice of land surveying in the State of Tennessee.
- (4) "Professional Development Hour (PDH)" means an hour of continuing education found acceptable by the Board.
- (5) "Retired" means a registered land surveyor who has obtained retired status from the Board pursuant to TCA § 62-18-128 and is not required to comply with the continuing education requirements prescribed herein. A retired registrant may not engage in the practice of land surveying in the State of Tennessee.
- (6) Ethics/Business-Related Course or Activity-A qualifying course or activity with content areas related to: (1) the awareness of ethical concerns and conflicts; (2) an enhanced familiarity with the codes of conduct; (3) an understanding of standards of practice or care; (4) project management and risk-assessment management; or (5) other similar topics aimed at maintaining, improving, or expanding the skills set and knowledge to the licensee's field and methods of practice.
- (7) Continuing Education Unit (CEU)-Unit of credit customarily used for continuing education courses. One (1) continuing education unit equals ten (10) hours of class in an approved continuing education course.
- (8) College/Unit Semester/Quarter Hour-Credit for course in ABET-approved programs or other related college course approved in accordance with subsection E of this section.

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.03 Basic requirements is repealed in its entirety and replaced with the following language so that, as amended, the new rule shall read:

Rule 0820-05-.03 Basic Requirements

- ~~(1) A registrant seeking annual renewal of active registration for the year 1995 must, as a prerequisite to renewal, submit evidence to the Board of having obtained four (4) PDH's during the year 1994.~~
- (1) Every licensee is required to obtain the equivalent of thirty (30) PDH's per biennial renewal period. These PDH's may be obtained any time during the applicable renewal period. A minimum of two (2) PDH's shall be earned by successfully completing a course or activity that has content areas focused on surveying ethics and standards of practice. If a licensee exceeds the biennial requirement in any renewal period, a maximum of fifteen (15) PDH's may be carried forward to the subsequent renewal period. PDH's may be earned as follows:
- a. Successful completion of college courses;
 - b. Successful completion of continuing education courses;
 - c. Presenting or attending qualifying seminars, webinars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences;
 - d. Teaching or instructing in 1 through 3 above;
 - e. Authoring published papers, articles, books, or accepted licensing examination items;
 - f. Active participation in professional or technical societies (limited to two (2) PDH's per organization and requires that the registrant serve as an officer and/or actively participate on a committee of that organization);
 - g. Receiving a patent; or,
 - h. Active participation in educational outreach activities pertaining to professional licensure or the surveying profession which involve grades K-12 or higher education students.
- ~~(2) A registrant seeking annual renewal of active registration for the year 1996 must, as a prerequisite to renewal, submit satisfactory evidence to the Board of having obtained eight (8) PDH's during the year 1995 (carryover hours, not exceeding eight (8) hours, from the year 1994 may be included.)~~
- ~~(3)(2) A registrant seeking annual biennial renewal of active registration for the year 1997 and each year thereafter must, as a prerequisite to renewal, submit satisfactory evidence to the Board of having obtained fifteen (15) thirty (30) PDH's during the one two-year period immediately preceding application for renewal (carryover hours, not exceeding fifteen (15) hours, from the next preceding renewal cycle may be included.~~
- ~~(4)(3) A new registrant is not required to satisfy the continuing education requirements prescribed in this chapter as a prerequisite for the initial annual renewal one (1) year period of active registration; however, a new registrant is required to obtain continuing education requirements for application toward the second year of the initial licensing period, if initial licensure includes two (2) years.~~

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.04 Conversion table is repealed in its entirety and replaced with the following language so that, as amended, the new rule shall read:

Rule 0820-05-.04 Conversion Table

- ~~(1) Conversions from other units of continuing education to PDH's is as follows:~~

- (a) 1 hour of acceptable professional activity..... 1 PDH
 - (b) 1 semester hour of acceptable university credit..... 15 PDH
 - (c) 1 quarter hour of acceptable university credit..... 10 PDH
 - (d) 1 CEU (continuing education unite)..... 10 PDH
- (1) Conversion of other units of credit to PDH's is as follows:
- (a) 1 college or unit semester hour..... 45 PDH
 - (b) 1 college or unit quarter hour..... 30 PDH
 - (c) 1 continuing education unit..... 10 PDH
 - (d) 1 hour of professional development in coursework, seminars, webinars, or professional or technical presentations made at meetings, conventions or conferences..... 1 PDH
 - (e) Teaching any of (a) through (d) above..... PDH value times 2
Teaching credit shall only be valid for the first offering or presentation. Full-time faculty may not claim teaching credit associated with regular duties of employment.
 - (f) Publications:
 - (1) Each published peer-reviewed paper or book in the registrant's area of professional practice..... 10 PDH
 - (2) Each published paper or article, other than (f)(1) above, in the registrant's area of professional practice..... 5 PDH
 - (g) Active participation as an officer or committee member in professional and technical societies..... 2 PDH
 - (h) Each patent obtained..... 10 PDH
 - (i) 1 hour of outreach activities..... 1 PDH (not to exceed 3 PDH)

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.05 Types of acceptable continuing education is amended by deleting Paragraph (4) in its entirety and by renumbering the remaining paragraphs. The rule is further amended to add the word "webinars" to Paragraph (1) so that, as amended, the rule shall read:

Rule 0820-05-.05 Types of Acceptable Continuing Education

- (1) Continuing education activities for which credit may be given by the board include college and university courses which are awarded continuing education units (CEU's), and those portions of technical meetings, seminars, webinars, tutorials, short courses and correspondence courses that are related to practice of land surveying.
- (2) The Board will grant credit for only such continuing education activities that satisfy the following criteria:
 - (a) There is clear purpose and objectivity for each activity;
 - (b) The content of each presentation is well organized and presented in a sequential manner;

- (c) There is evidence of pre-planning which should include the opportunity for input by the target group to be served;
 - (d) The presentation will be made by persons who are well-qualified by reason of education or experience; and,
 - (e) There is provision for individual participant registration which will include information required for record keeping and reporting.
- (3) The Board will grant no credit to a registrant for a course, technical meeting, seminar, webinar or tutorial repeated by the registrant within three (3) years (if credit was originally granted), unless, in the Board's opinion, there is a substantial change in the content of such course, technical meeting, seminar or tutorial of the complexity of the subject matter that warrants award of additional credit.
- ~~(4) Other activities which may be used to satisfy continuing education requirements are:~~
- ~~(a) Approved programs conducted by corporations, government agencies or other organizations;~~
 - ~~(b) Authorship of published papers, articles or books; and~~
 - ~~(c) First-time preparation and presentation of technical meetings, short courses or seminars.~~
- ~~(5)~~(4) All activities submitted to the Board for continuing education credit are subject to approval by the Board.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.06 Inactive registrants is amended by adding the words "or retired" to each paragraph. The rule is further amended by deleting "annual renewal" from Paragraph (2) so that, as amended, the rule shall read:

Rule 0820-05-.06 Inactive and Retired Registrants

- (1) A registered land surveyor in good standing may request in writing to be placed on the Board's inactive or retired roll, thereby obtaining inactive or retired status.
- (2) An inactive or retired registrant will be permitted to retain that registrant's original certificate of registration by paying the ~~annual renewal~~ fee for registration without submitting proof of complying with the continuing education requirements prescribed herein.
- (3) An inactive or retired registrant may not engage in the practice of land surveying in the State of Tennessee. Any practice or offer to practice land surveying in the State of Tennessee by an inactive or retired registrant shall constitute misconduct for the purpose of Tennessee Code Annotated, Section 62-18-116(a)(1)(B) (grounds for revocation or suspension of certificate by the Board.)

Authority: T.C.A. §§62-18-105(d), 62-18-106(d) and 62-18-128.

Rule 0820-05-.07 Reinstatement to active registration is amended by adding the words "or retired," "biennial," "Tennessee State Specific Land Surveying" to the rule. The rule is further amended by changing one (1) year to two (2) years in Paragraph (2) so that, as amended, the rule shall read:

Rule 0820-5-.07 Reinstatement to Active Registration

- (1) An inactive or retired registrant seeking to reinstate an inactive registration of one (1) year ~~of~~ or more must submit a request in writing to the Board with a fee of twenty-five dollars (\$25.00) and must satisfy one (1) of the following requirements:

- (a) Satisfaction of the annual biennial PDH requirement multiplied by the number of years of inactive or retired status up to a maximum of thirty (30) PDH's; or
 - (b) Successful completion of the ~~Principles and Practice of Land Surveying Tennessee State Specific Land Surveying~~ examination within one (1) year immediately prior to application for reinstatement.
- (2) An inactive or retired registrant seeking to reinstate an inactive or retired registration of less than ~~one (1) year~~ two (2) years must meet the annual biennial PDH requirement.

Authority: T.C.A. §§62-18-105(d) and 62-18-119(d).

Rule 0820-05-.08 Noncompliance is amended by adding the words "or retired" to the rule so that, as amended, the rule shall read:

Rule 0820-05-.08 Noncompliance

Unless a request for inactive or retired status is made, any registrant failing to furnish the required continuing education form, properly completed and signed, shall not be granted renewal of registration by the Board and shall lose the right to practice land surveying in the State of Tennessee upon the ~~December 31~~ expiration of registration.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.09 Hardships is amended by adding Paragraph (1)(c) to the rule so that, as amended, the rule shall read:

Rule 0820-05-.09 Hardships and Exemptions

- (1) Notwithstanding any other provision of this Chapter to the contrary, the Board may exempt a registrant from complying with all or part of the continuing education requirements for a given year in the following cases:
 - (a) A registrant affected by physical disability, illness, or other extenuating circumstances as reviewed and approved by the Board; provided that adequate supporting documentation is furnished to the Board.
 - (b) A non-career military registrant serving on active duty in the armed forces of the United States for a period of one hundred twenty (120) consecutive days in a calendar year; provided that the adequate supporting documentation is furnished to the Board.
 - (c) Those who are sixty-five (65) years of age or older who also have twenty-five (25) or more years of active registration; provided that adequate supporting documentation is furnished to the Board. Registrants under this exemption must still obtain the two (2) PDH's relative to surveying ethics and standards of practice as provided by rule 0820-05-.03(1).

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.10 Reports and records is amended by deleting the text of Paragraph (1) in its entirety and substituting instead the following so that, as amended, the rule shall read:

Rule 0820-05-.10 Reports and Records

- (1) ~~At the time of application for registration renewal, e~~Each registrant shall report, on a form provided by the Board, the continuing education activities undertaken during the preceding year renewal period.
- (2) The registrant shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, printed program schedules, registration receipts or other proof of

participation, and other appropriate documentation, for a period of three (3) years after the date of the program or activity.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.12 Approval of programs is repealed in its entirety and substituting instead the following language so that, as amended, the new rule shall read:

Rule 0820-05-.12 Approval of Programs

- (1) Approval of any program may be granted for a period of two (2) years from the date of approval to a sponsoring organization or individual if the following information is submitted to the Board:
 - (a) Instructors and their qualifications; and,
 - (b) Synopsis of course material.
- (2) ~~The Board will approval of disapprove the request within ninety (90) days of the date the request is submitted to the Board. If the Board. If the Board fails to act upon the request within ninety (90) days, the program will be considered approved as submitted. No sponsor may provide any continuing education course(s) without prior approval from the Board.~~
- (3) Upon completion of the approved course the sponsor shall submit to the Board the record of attendees as provided in Rule 0820-05-.11 above and time, place and schedule of activities.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

Rule 0820-05-.14 Comity is repealed in its entirety and substituting instead the following language so that, as amended, the new rule shall read:

Rule 0820-05-.14 Comity

- (1) The Board will deem a registrant to have met the continuing education requirements provided herein if such registrant, when making annual submission of continuing education toward renewal of Tennessee registration, certifies in writing the following:
 - (a) The registrant resides in another state or territory which has been recognized by the Tennessee Board as ~~having continuing education requirements acceptable to the Tennessee Board;~~ and shall satisfy all continuing education requirements for renewal in Tennessee.
 - (b) ~~The registrant has satisfied all continuing education and registration requirements of that state or territory.~~

Authority: T.C.A. §§62-18-105(d) and 62-18-106(d).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Timothy Lingerfelt, Chairman	X				
Galyon Northcutt, Vice Chairman	X				
Jay Caughman, RLS Board Member	X				
Sue Braly, Public Member	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Examiners for Land Surveyors on 10/24/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/09/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 10/24/2013



Date: 10/24/2014

Signature: [Handwritten Signature]

Name of Officer: Robert E. Herndon

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: October 24, 2014

Notary Public Signature: [Handwritten Signature]

My commission expires on: 9.11.2014

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
11/7/2014
 Date

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Filed with the Department of State on: 11/17/14

Effective on: 2/15/15

[Handwritten Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards – Burial Services Section

SUBJECT: Cemeteries

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 46-1-102, 46-1-301(b), 46-1-106(b), 46-1-306, 46-1-206(c), and 62-5-401

EFFECTIVE DATES: February 12, 2015 through June 30, 2015

FISCAL IMPACT: None at this time. However, there is a pending contested case in which a cemetery company has been charged for violating the Tennessee Pre-paid Funeral Benefits Act ("TPFBA") due to its allegedly improper trusting of monies received on a pre-need basis. The cemetery company alleges that the TPFBA does not apply to cemetery companies and, consistent with that view, expressed concerns with the professional conduct rules, in particular 0780-05-09-.28(4). See the public comments.

STAFF RULE ABSTRACT: Rule 0780-05-09-.02 adds the definition of "Director" to the definition section, and refers to the Executive Director of the Burial Services Section.

0780-05-09-.14: This rule deletes several subdivisions that are currently required when requesting an exemption as a community cemetery, making it easier to apply and be granted the exemption.

0780-05-09-.15 This rule adds the "best interests of the citizens of the State of Tennessee" as a factor to be considered regarding the granting of community cemetery status and is amended to allow community cemeteries to maintain upkeep funds in a savings account as well as a trust account.

0780-05-09-.16 This rule deletes language that requires the applicant to notify the Commissioner of a change in the terms of a trust agreement.

0780-05-09-.17: This rule deletes the rule requiring that community cemeteries have improvement care trust funds, as the requirement was found to be too burdensome on applicants for community cemetery status.

0780-05-09-.26 This rule adds a new section in which registrants must submit all documents to Burial Services on 8.5 x 11 inch size paper.

0780-05-09-.27 This rule adds a new section regarding the types of status changes a cemetery company is required to communicate to Burial Services.

0780-05-09-.28 This rule adds specific rules setting out standards of professional conduct to which a cemetery company must adhere.

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 1

0780-05-09-.28(2) [Originally Paragraph (3)]

There was a comment that this rule, which was moved to (2) in the renumbering of the professional conduct violations, is too broad, vague, and could create liability for cemetery operators arising from natural elements rather than negligence.

Agency Response to Comment 1: The Department agrees with the comment. The rule has been clarified to state that there must be a negligent failure to protect the safety, health, and welfare of the public in order to show a violation of this rule.

Comment 2

0780-05-09-.28(4) [As originally published]

There was a comment that this rule on selling interment rights was duplicative of T.C.A. § 46-1-306(a)(16), which provides similar acts as grounds for disciplinary action.

Agency Response to Comment 2: The Department agrees with this comment. This rule has been deleted as duplicative.

Comment 3

0780-05-09-.28(3) [Originally Paragraph (5)]

There was a comment that providing a false or misleading statement to the Department does not necessarily constitute a breach of professional conduct and that a higher standard should be used.

Agency Response to Comment 3: The Department disagrees with this comment. The Department relies on the information provided by registrants in making regulatory decisions. It is the duty of a registrant to ensure that information provided to the Department is truthful and accurate. Failure to do so hinders the Department's ability to protect the health, safety, and welfare of the public, as the Department would lack information necessary to make meaningful decisions. Providing any false or misleading information to the Department is not acceptable; setting a higher standard would provide less protection for the public.

Comment 4

0780-05-09-.28(4) [Originally Paragraph (6)]

There were several comments that it was not appropriate for a violation under the Tennessee Pre-paid Funeral Benefits Act to be considered a violation of professional conduct for cemetery companies and operators.

Agency Response to Comment 4: The Department disagrees with this comment. Cemetery companies and operators may engage in the sale of some pre-paid funeral benefits as defined under the Tennessee Pre-Paid Funeral Benefits Act. Failure to follow that Act, to any extent it applies to their activities, may reflect on a cemetery company or operator's fitness to continue acting in such capacity, given the great public trust involved in operating a cemetery. Failing to abide by the requirements of that Act should constitute a violation of the expectations of professional conduct for a cemetery company or operator.

Comment 5

0780-05-09-.28(4) [Originally Paragraph (6)]

There was a comment expressing concern that this rule might be broadened to enforce the prohibition of discounts on cemetery property and merchandise.

Agency Response to Comment 5: The Department disagrees with this comment. The Tennessee Pre-paid Funeral Benefits Act already applies to cemetery owners and operators to the extent they choose to engage in the sale of pre-paid funeral merchandise. The prohibition on discounts is found at T.C.A. 62-5-409(c) and expressly applies to funeral merchandise only. This rule does not broaden any existing limit on discounts to include cemetery property or merchandise.

Comment 6

0780-05-09-.28(7) [Originally Paragraph (1)]

There was a comment that the scope of this rule was too vague.

Agency Response to Comment 6: The Department agrees with this comment and has edited the rule to give cemeteries and cemetery operators more guidance as to the standards the Department will expect. Because of the nature of the industry, the Department thinks that it is especially important for cemetery operators to be respectful and cognizant that their customers are going through an emotional and stressful time.

Comment 7

There was a comment that the Department should notify the Cemetery Association of Tennessee prior to formulating new rules

Agency Response to Comment 7: The Department appreciates the Cemetery Association of Tennessee's interest in the rulemaking process and will consider its request in the future. However, the Department would note that the Cemetery Association of Tennessee, and other members of the public, were given notice of this hearing pursuant to the Uniform Administrative Procedures Act and were given the opportunity provide both oral and written comments regarding these rules.

Comment 8

There was a comment that the Department should provide a list of items for a cemetery to prepare for prior to an audit, as current standards are inconsistent.

Agency Response to Comment 8: The requested list of items is outside of the scope of this rulemaking proceeding, so the Department cannot address this comment at this time.

Comment 9

There was a comment asking how rules are drafted, who is involved, and when the rules at this hearing were promulgated.

Agency Response to Comment 9: Rules are drafted with the assistance of Departmental staff, including the Executive Director for Burial Services and legal counsel. Notice of this hearing was filed with the Tennessee Secretary of State's Office on September 23, 2013, and the hearing was held on December 12, 2013. After review of the comments, the final version of the rules is filed with the Secretary of State. These rules will be effective ninety (90) days after their final filing with the Secretary of State's Office pursuant to T.C.A. § 4-5-207.

Comment 10

There was a comment that the Cemetery Association of Tennessee generally supported the rules outside of their concerns with Rule 0780-05-09-.28 [Professional Conduct]

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 proposed rules would apply equally to all registered cemeteries located in the state of Tennessee, regardless of size. The cemetery companies will not incur additional costs due to the promulgation of these rules; furthermore, smaller cemeteries may benefit from changes to the community cemetery rules that clarify the community cemetery requirements and reduce the burden on applicants. The estimated number of registered cemetery companies in Tennessee is one hundred eighty six (186).

- (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;

Any reported, recordkeeping and /or other administrative costs resulting from these proposed rules is necessary to protect the citizens of the State of Tennessee, which is accomplished by providing less burdensome requirements in attaining the status of community cemetery, requiring cemetery companies to notify Burial Services of a change in manager or update any change in criminal history of an individual with ownership interest or employee status with a cemetery company, and clear expectations of professional conduct expected from cemetery companies and their representatives. These rules are not expected to create any additional reporting, recordkeeping and/or other administrative costs that may be deemed burdensome to small businesses.

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

The proposed rules are expected to have little to no effect on impacted small businesses, as the proposed rules make it less burdensome to attain community cemetery status and provide clear and concise expectations regarding what is expected from cemetery companies regarding changes in the status of a person's criminal history, specifically any partnership, corporation, associations, employee, owner, director, principal, manager, member, stockholder with majority ownership interest, or other person who has any interest in, or has any control over, financial operations of a cemetery for a misdemeanor involving fraud, dishonesty or moral turpitude or a conviction of any felony. Consumers will be impacted in positive ways as the rules for community cemetery exemption will be more relaxed, allowing small non-profit corporations to attain community cemetery status more easily, and will provide clear and concise expectations regarding professional conduct, and the requirements for individuals to notify Burial Services regarding changes in criminal history.

- (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 businesses;

The proposed rules appear to be the least burdensome, least intrusive and least costly methods of achieving the purpose and objectives of the rules proposed by the Commissioner in comparison to other alternatives that may be available. The proposed rules reduce the burden on small not for profit corporations seeking community cemetery exemptions and places very little burden on cemetery companies to notify Burial Services of a change in the status of the person responsible for compliance with cemetery statutes or change in the criminal history of specific individuals listed in the rule. Furthermore, the rules clarify the expectations of the Commissioner regarding professional conduct of a cemetery company or cemetery operator.

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

The proposed rules appear consistent with similar rules adopted by other boards as well as by the Burial Services Section with regard to its other registrants. There are no known federal counterparts to these laws. However, many states regulate cemeteries to varying degrees. For instance, it is a violation of Wisconsin law at Wis. Stat. Ann. § 440.93 to "[e]ngage[] in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly demonstrates a lack of knowledge or ability to apply professional principles or skills." Illinois maintains an extensive professional standards rule at Ill. Admin. Code tit. 68, § 1249.330, which includes violations for dishonorable, unethical or unprofessional conduct as well as professional incompetence.

Cemetery operators in Washington State are subject to the disciplinary authority of the Washington Department of Licensing. That disciplinary authority under Wash. Rev. Code 18.235.130(4) includes potential discipline for "[i]ncompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another.

Georgia, in Ga. Code Ann. § 590-3-1-.15, has a list of prohibited "Dishonest or Unethical Business Practices" that includes a prohibition on false, misleading, or incomplete statements and any misleading action.

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

Exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee. Furthermore, such exemption may create more burdensome regulations for not for profit corporations seeking the status of community cemetery exemption. Exempting small businesses from the rules of professional conduct and the requirements to notify Burial Services of any changes in criminal history may cause harm to the public and place an unfair burden on larger businesses that are held to different standards.

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 have no projected impact on local governments

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For Department of State Use Only

Sequence Number: 11-14-14
Rule ID(s): 5833
File Date: 11/14/2014
Effective Date: 2/12/2015

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:	Burial Services Section
Division:	Department of Commerce and Insurance, Regulatory Boards Division
Contact Person:	Ellery Richardson
Address:	Office of Legal Counsel 500 James Robertson Parkway Davy Crockett Tower, 5 th Floor Nashville, TN 37243
Zip:	37243
Phone:	615-741-8689
Email:	Ellery.richardson@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
0780-05-09	Cemeteries
Rule Number	Rule Title
0780-05-09-.02	Cemeteries – Definitions
0780-05-09-.14	Community Cemeteries – Request for Exemption
0780-05-09-.15	Community Cemeteries – Granting of Exemption
0780-05-09-.16	Community Cemeteries – Notice of Changes
0780-05-09-.17	Community Cemeteries – Improvement Care Trust Fund
0780-05-09-.26	Cemeteries – Paper Size
0780-05-09-.27	Cemeteries – Changes
0780-05-09-.28	Cemeteries – Professional Conduct

(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>)

Substance of Proposed Rules
Chapter 0780-5-9
Cemeteries

Amendments

Rule 0780-05-09-.02 Cemeteries - Definitions is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-.02 Definitions.

All definitions contained in T.C.A. 46-1-102 apply equally to the rules of this chapter, with the following additions and exceptions:

- (1) "Cemetery owner" means any individual, association, partnership, corporation, limited liability company or other legally cognizable entity that owns or controls cemetery lands or property and conducts the business of a cemetery.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (3) "Director" means the Executive Director of Burial Services.
- (4) "Master Map" means a cemetery map showing each site for disposition of human remains, including sites for interment, inurnment and entombment.
- (5) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity.

Authority: T.C.A. §§ 46-1-102 and 46-1-301(b).

Rule 0780-05-09-.14 Community Cemeteries – Request for Exemption is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-.14 Community Cemeteries – Request for Exemption.

~~The person in responsible charge of the cemetery shall~~ A cemetery may submit a written request for exemption as a community cemetery in typewritten form on 8 ½ x 11 inch paper which shall contain the following information:

- (1) The name and address of the cemetery, or description of its location if it has no street address;
- (2) The name, address, and telephone number of the person in responsible charge of the cemetery who is submitting the application on behalf of the cemetery;
- ~~(3) A statement as to whether a cemetery association has been formed and incorporated or is to be incorporated, and, if so, a copy of the charter and by-laws of the associations and the names, addresses, and telephone numbers of the officers and directors of the association, and whether the cemetery association has been granted tax exempt status, and, if so, documentation of such status;~~
- ~~(4) A statement as to whether a trust fund or a not-for-profit general welfare trust corporation pursuant to T.C.A. Title 46, Chapter 7, has been, or is to be, created for the maintenance and upkeep of the cemetery, and, if so, the name, address, and telephone number of the trustee appointed or to be appointed and a copy of the trust agreement or a copy of the charter and by-laws of the trust corporation with the names, addresses, and telephone numbers of the officers and directors of the corporation;~~
- ~~(5) Identification of the source of funds (i.e. lot sales, donations, bequests, or other contributions) used for the maintenance and upkeep of the cemetery, the method used to account for such funds, and the frequency of audits and/or examinations of financial records of the cemetery and trustee, and by whom such audits and/or examinations are performed;~~

- ~~(a) For funds derived from lot sales, identification of the percentage of the lot sale price which is deposited into the trust fund;~~
- ~~(b) For funds derived from donations, bequests, and other contributions, identification of the percentage which is deposited into the trust fund;~~
- ~~(6) The age of the cemetery;~~
- (3) A description of the historic nature of the cemetery and/or its environs, if applicable;
- (4) The area remaining for future use and (if different) the area remaining for future sales;
- (5) The sale of lots, by number of lots sold per year, over the preceding ten (10) years and the price or prices at which the lots sold; and
- (6) The population of the community normally served by the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-15 Community Cemeteries – Granting of Exemption is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-05-09-15 Community Cemeteries – Granting of Exemption.

The Commissioner has the discretion to grant an exemption from the registration requirements of this chapter to a community cemetery after taking into consideration the intent of T.C.A. Title 46, Chapter 1 and factors including, but not limited to, the following:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years and the price at which sold;
- (4) The population of the community normally served by the cemetery;
- (5) Whether a community cemetery association has been formed and such association has been incorporated or has been granted tax exempt status;
- (6) The historic nature of the cemetery and/or its environs;
- (7) Whether a savings account or a trust fund in the name of the cemetery has been established at a financial institution for the maintenance and upkeep of the cemetery; and
- (8) The source or sources of funds used for the maintenance and upkeep of the cemetery; and
- (9) Whether the exemption is in the best interest of the citizens of the State of Tennessee.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-16 Community Cemeteries – Notice of Changes is amended by deleting subparagraph (1)(f) in its entirety, adding the word "or" to the end of subparagraph (1)(e) and re-lettering the remaining subparagraph accordingly so that, as amended, the rule shall read:

0780-05-09-16 Community Cemeteries – Notice of Changes.

- (1) With respect to an exempt community cemetery and/or its trust corporation, if applicable, the Commissioner shall be notified in writing within ten (10) days of the effective date of any change in:

- a. The corporate charter;
 - b. The corporate by-laws;
 - c. The officers and/or directors of the corporation;
 - d. The tax exempt status;
 - e. The corporate registration status with the Tennessee Secretary of State;
 - ~~f. The terms of the trust agreement; or~~
 - g. f. The amount of land dedicated to cemetery purposes; or
 - g. The identity of the controlling party.
- (2) Such notice of change shall be submitted in writing to the Burial Services Section of the Tennessee Department of Commerce and Insurance and shall include copies of all documents affected by such change.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Rule 0780-05-09-.17 Community Cemeteries – Improvement Care Trust Fund is deleted in its entirety.

~~0780-5-9-.17 Community Cemeteries – Improvement Care Trust Fund.~~

- ~~(1) As a condition precedent to the granting of an exemption as a community cemetery, the cemetery applying for such status shall deposit all funds allotted for the maintenance and upkeep of the cemetery into an improvement care trust fund. The trust fund shall be overseen by an independent third party trustee or a not-for-profit general welfare trust corporation created pursuant to T.C.A. Title 46, Chapter 7.~~
- ~~(2) Only the interest and earnings shall be withdrawn from the trust fund for the maintenance and upkeep of the cemetery. Withdrawals from the trust fund shall be made for no purpose other than reasonable compensation to the trustee, which shall in no event exceed the amount of interest earned.~~
- ~~(3) The trust agreement shall state the percentage of a lot sale price which shall be deposited into the trust fund. In no event shall the percentage be less than twenty percent (20%).~~
- ~~(4) Donations, bequests, and other contributions shall be deposited into the trust fund in the amount or percentage designated by the donor, or, in the event that no amount or percentage is specified, then one hundred percent (100%) of the donation, bequest, or other contribution shall be deposited into the trust fund.~~

Authority: T.C.A. §§ 46-1-106(b) and 46-1-301(b).

Chapter 0780-05-09
Cemeteries

New Rules

Rule 0780-05-09-.26 Paper Size
Rule 0780-05-09-.27 Changes
Rule 0780-05-09-.28 Professional Conduct

0780-05-09-.26 Paper Size.

- (1) All documents submitted to Burial Services, including those submitted to auditors pursuant to any audit, shall be on 8.5 X 11 inch paper if the documents are not submitted by electronic means.
- (2) The requirements of this rule may be waived by the Director.

Authority: T.C.A. §§ 46-1-301(b).

0780-05-09-27 Changes.

In addition to any other requirement of the rules promulgated by the Commissioner or any statute pertaining to the operation of a cemetery company, the cemetery company shall report the following changes in writing to the Commissioner within ten (10) days of the effective date of the change:

- (1) Change in the identity of person responsible for compliance with cemetery statutes;
- (2) The conviction of any partnership, corporation, association, employee, owner, director, principal, manager, member, stockholder with a majority ownership interest, or other person who has any ownership interest in, or has any control over, the financial operations of a cemetery for a misdemeanor involving fraud, dishonesty or moral turpitude or a conviction of any felony.

Authority: T.C.A. §§ 46-1-301(b) and 46-1-306(a)(8)

0780-05-09-28 Professional Conduct.

The Commissioner may deem a cemetery company, or any cemetery operator, to have violated the rules of professional conduct for:

- (1) Failing to perform legal obligations under any contract with a purchaser;
- (2) Negligently failing to protect the safety, health and welfare of the public in the performance of the registrant's professional duties;
- (3) Providing any false or misleading statement on any reports submitted to the Commissioner;
- (4) Selling or offering to sell any contract in violation of the Tennessee Pre-paid Funeral Benefits Act [Tenn. Code Ann. §§ 62-5-401 et seq.];
- (5) Failing to submit payment within the time provided by a written notice from Burial Services assessing a fee pursuant to statute or rule;
- (6) Failing to respond within the time specified in any notice from Burial Services, provided, however, that the director may grant a request for extension submitted within the period of time stated in the original notice; or
- (7) Treating members of the public in an unreasonable manner that, under the circumstances, falls below the standard of professional cemetery operators. Such treatment includes, but is not limited to:
 - (a) Abusive, aggressive, hostile, or disrespectful conduct; or
 - (b) Being unresponsive to a member of the public for an unreasonable period of time without justification, such as: not returning phone calls, not answering inquiries, or leaving a member of the public unattended.

Authority: T.C.A. §§ 46-1-301(b), 46-1-206(c) and 46-1-306(a)(7).

* 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 of the Department of Commerce and Insurance (board/commission/ other authority) on 10/27/14, 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: 9/23/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 12/12/2013



Date: 10/27/14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 10/27/14

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
11/12/14
 Date

Department of State Use Only

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Filed with the Department of State on: 11/14/2014

Effective on: 2/12/2015

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards – Board of Architectural and Engineering Examiners

SUBJECT: Registration Requirements and Procedures

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-2-203(c) and 62-2-203(d)

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

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

Rule 0120-01-.03 Residency Requirements is repealed. There is no practical need to require applicants for examination to be physically in the state to take the national examination under the new computerized scheme.

Rule 0120-01-.17 Postponement of Examinations - General is repealed. The Board will no longer oversee or administrate the costs of taking the examination, and scheduling a time to take the computerized examination is the responsibility of the applicant.

Rule 0120-01-.19 Postponement of Examinations - Engineering Intern is repealed; the Board no longer oversees this examination.

Rule 0120-01-.26 Fee for Transfer of Examinations is repealed; the Board no longer oversees examinations.

Rule 0120-01-.04 Applications - General is amended to provide that certification as well as registration is available on the Board's web site, and deletes the provision that applications for engineering interns are available at the various schools of engineering.

Rule 0120-01-.05 Applications - Engineer is amended to remove the Board from the approval process to take

examinations or managing the costs of taking an examination.

Rule 0120-01-.06 Applications - Engineer Intern is amended by reducing the cost of the application for the certification fee from fifty dollars (\$50.00) to fifteen dollars (\$15.00), which must be submitted with another application each time an applicant sits for the examination; the rule is also amended to remove the Board's requirement to set deadlines for the receipt of applications for Spring and Fall examinations since computer-based examinations may be taken at any time during the year.

Rule 0120-01-.08 Applications - Landscape Architect is amended by deleting the Board's requirement to set deadlines for applications in conformance with the examination provider's responsibility for administering and reporting examination results to the Board.

Rule 0120-01-.09 References is amended by deleting the requirement for interior design applicants to provide the Board with five (5) references.

Rule 0120-01-.10 Education and Experience Requirements is amended to delete the acceptability of a master's degree in engineering for applicants to meet the educational requirement and to clarify that accredited programs that allow experience learning, other than cooperative program experience, will not be acceptable, nor will degrees obtained from non-accredited institutions within the United States or its territories. The rule is also amended to allow engineering degrees accredited by the Canadian Engineering Accreditation Board (CEAB), awarded after 1980, to not require evaluation.

Rule 0120-01-.11 Education and Experience Requirements - Architects is amended to allow Canadian accredited degrees to be considered substantially equivalent to those accredited by the National Architectural Accrediting Board (NAAB).

Rule 0120-01-.14 Examinations - Engineer, Engineer Intern is amended to delete the requirement that a senior student who fails to report for a required examination must reapply for the examination.

Rule 0120-01-.20 Reexamination - Engineer is amended to delete the requirement that the Board receive the costs of examination from the applicant for registration.

Rule 0120-01-21 Reexamination - Engineer Intern is amended to delete the reexamination fee.

Rule 0120-01-.27 Mailing Addresses is repealed and the new language requires registrants and applicants for registration to notify the Board in writing within thirty (30) days of any change of address or other contact information in residence, and are encouraged to report any change in employment information.

Rule 0120-02-.02 Proper Conduct of Practice is amended to clarify what is expected of registrants possessing knowledge of an applicant's qualifications.

Rule 0120-02-.05 Conflicts of Interest is amended to delete duplicate language for misconduct that appears in rule 0120-02-.07 in order to make the rule more gender neutral.

Rule 0120-02-.07 Misconduct is amended by deleting the provision that delinquency in child support payments constitutes professional misconduct in order to make the rule more gender neutral.

Rule 0120-02-.08 Seals is amended by clarifying that registrants may not affix their seal to any documents that are not produced under their responsible charge. The rule is also amended to clarify sealing requirements for documents amended after the documents are sealed and final.

Rule 0120-04-.05 Experience Requirements is amended to increase the number of applicants for registration as a registered interior designer, from three to five, and clarifies the requirements for submitting these references. The rule is also amended to move this requirement under Chapter 120-04 [Interior Designers] and to duplicate the language provided for the Board's licensed registrants.

Rule 0120-04-.10 Professional Conduct is amended by adding identical provisions for registrants possessing knowledge of a registered interior designer applicant.

Proposed rule 0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers is added to provide specific guidelines for the submission of alternative methods of obtaining continuing education that is acceptable to the Board.

Public Hearing Comments

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

Please see attached documentation for copies of letters that the Board sent in response to public comments.

0120-01-27 Notification to the Board

Candy Toler, representing the American Council of Engineering Companies of Tennessee and the Tennessee Society of Professional Engineers, expressed that the rule asking for any change of status for registrants seemed to be overreaching. The Board members explained that this was necessary in order to maintain current contact information on registrants rather than receive updated information only at renewal times.

0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers

A written comment was received from Julie Harse, P.E., Environmental Protection Specialist 3, Department of Environment and Conservation, Division of Water Resources, remarking that this rule establishing that only 12 professional development hours are allowed in one calendar year and excess hours may not be credited for future years is burdensome and would prevent employers from financing classes over 12 hours. The Board explained that this rule applies only to architects and interior designers, not engineers.

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)

1. Types of small businesses directly affected:

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

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

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

3. Probable effect on small businesses:

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

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

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

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules.

Impact on Local Governments

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

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Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee State Board of Architectural and Engineering Examiners
Division: Division of Regulatory Boards, Department of Commerce and Insurance
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0120-01	Registration Requirements and Procedures
Rule Number	Rule Title
0120-01-03	Residency Requirements
0120-01-04	Applications – General
0120-01-05	Applications – Engineer
0120-01-06	Applications – Engineer Intern
0120-01-08	Applications – Landscape Architect
0120-01-09	References
0120-01-10	Education and Experience Requirements – Engineer
0120-01-11	Education and Experience Requirements – Architect
0120-01-14	Examinations – Engineer, Engineer Intern
0120-01-17	Postponement of Examinations – General
0120-01-19	Postponement of Examinations – Engineer Intern
0120-01-20	Reexamination – Engineer
0120-01-21	Reexamination – Engineer Intern
0120-01-26	Fee for Transfer of Examination Grades
0120-01-27	Mailing Addresses

Chapter Number	Chapter Title
0120-02	Rules of Professional Conduct
Rule Number	Rule Title
0120-02-02	Proper Conduct of Practice
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Chapter Number	Chapter Title
0120-04	Interior Designers
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0120-04-.05	Experience Requirements
0120-04-.10	Professional Conduct
0120-04-.12	Notification to the Board

Chapter Number	Chapter Title
0120-05	Continuing Education
Rule Number	Rule Title
0120-05-.14	Alternative Continuing Professional Development Option for Architects and Registered Interior Designers

Chapter 0120-01
Registration Requirements and Procedures

Repeal/Amendments/New

Table of Contents is amended by deleting 0120-01-.27 Mailing Addresses and substituting instead 0120-01-.27 Notification to the Board so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0120-01-.01 Definitions	0120-01-.14 Examinations – Engineer, Engineer Intern
0120-01-.02 Applicability	0120-01-.15 Examinations – Architect
0120-01-.03 Residency Requirements <u>Repealed</u>	0120-01-.16 Examinations – Landscape Architect
0120-01-.04 Applications – General	0120-01-.17 Postponement of Examinations – General <u>Repealed</u>
0120-01-.05 Applications – Engineer	0120-01-.18 Repealed
0120-01-.06 Applications – Engineer Intern	0120-01-.19 Postponement of Examinations – Engineer Intern <u>Repealed</u>
0120-01-.07 Applications – Architect	0120-01-.20 Reexamination – Engineer
0120-01-.08 Applications – Landscape Architect	0120-01-.21 Reexamination – Engineer Intern
0120-01-.09 References	0120-01-.22 Reexamination – Architect
0120-01-.10 Education and Experience Requirements – Engineer	0120-01-.23 Reexamination – Landscape Architect
0120-01-.11 Education and Experience Requirements – Architect	0120-01-.24 Duplicate Certificates of Registration
0120-01-.12 Education and Experience Requirements – Landscape Architect	0120-01-.25 Renewal of Registration
0120-01-.13 Examinations – General	0120-01-.26 Fees for Transfer of Examination Grades <u>Repealed</u>
	0120-01-.27 Mailing Addresses Notification to the Board

Authority: T.C.A. § 62-2-203(c).

Rule 0120-01-.03 Residency Requirements is repealed in its entirety.

- (1) ~~In order to be eligible to take an examination, an applicant must:~~
- (a) ~~Be a resident of Tennessee; or~~
 - (b) ~~Have his principal place of business in Tennessee; or~~
 - (c) ~~Be registered to practice in the state where he resides; or~~
 - (d) ~~Have passed the required examination for engineer intern certificate while a resident of Tennessee.~~

Authority: T.C.A. § 62-2-203(c).

Rule 0120-01-.06 Applications – Engineer Intern is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0120-01-.06 Applications – Engineer Intern

- (4) ~~An application for certification as an engineer intern shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00) fifteen dollars (\$15.00). This fee shall entitle the applicant to take one (1) examination, and receive a certificate upon passing such examination and meeting the other legal requirements. The application and fee must be submitted each time an applicant sits for the required examination. An applicant shall receive a certificate upon passing the required examination and meeting the other legal requirements.~~
- (2) ~~The deadlines for receipt of applications from candidates for certification as an engineer intern for the spring and fall examinations shall be set annually by the Board.~~

Authority: T.C.A. §§ 62-2-203(c), 62-2-402(b), and 62-2-404(c)(2).

Rule 0120-01-.17 Postponement of Examinations – General is repealed in its entirety.

~~Any applicant who postpones and requests to reschedule an examination after the date in which the examination is ordered shall pay a processing fee of twenty-five dollars (\$25.00) upon making the request to be rescheduled.~~

Authority: T.C.A. § 62-2-203(c).

Rule 0120-01-.19 Postponement of Examinations – Engineer Intern is repealed in its entirety.

~~Senior students applying for certification as an engineer intern may not postpone the scheduled examination.~~

Authority: T.C.A. § 62-2-203(c).

Rule 0120-01-.26 Fee for Transfer of Examination Grades is repealed in its entirety.

~~The fee for each requested transfer of architectural or landscape architectural grades to another state board shall be in the amount of twenty dollars (\$20.00).~~

Authority: T.C.A. §§62-2-203(c).

Rule 0120-01-.27 Mailing Addresses is amended by changing the title to Notification to the Board and repealing the text of the rule in its entirety and substituting instead the following language so that the new rule in its entirety shall read:

0120-01-.27 Mailing-Addresses Notification to the Board

- (1) A registrant or applicant for registration shall notify the Board in writing within thirty (30) calendar days of any change in of name, mailing address, e-mail address, or phone number. Registrants and applicants are encouraged to notify the Board of a change of employment.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-207.Amendments

Rule 0120-01-.04 Applications – General is amended by deleting the text of paragraph (1) in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

0120-01-.04 Applications – General

- (1) Applications for registration and certification are available on the Board website and upon request from the office of the Board; except, however, that applications for certification as an engineer intern may be obtained at various schools of engineering within the State of Tennessee.
- (2) Any application submitted which lacks required information or reflects a failure to meet any requirement will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed five (5) years from the date of application.
- (3) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded.

Authority: T.C.A. §62-2-203(c).

Rule 0120-01-.05 Applications – Engineer is amended by deleting the text of paragraph (1) in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

0120-01-.05 Applications – Engineer

- (1) An applicant for registration as an engineer shall submit with the application a nonrefundable application fee of thirty dollars (\$30.00). ~~Upon notification to the applicant of approval to take any~~

~~required examination(s), the applicant shall pay to the Board the cost of the current examination(s), administration of the examination(s) and scoring. An applicant who has passed the required examination(s) shall also pay a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.~~

- (2) An applicant for registration as an engineer by comity shall pay a nonrefundable application fee of fifty-five dollars (\$55.00) and, if approved, a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.
- (3) The deadline for receipt of applications from candidates who must be examined prior to registration as an engineer shall be determined annually by the Board after the Board receives notification from the National Council of Examiners for Engineers and Surveyors (NCEES) of the dates of the examinations.

Authority: T.C.A. §§ 62-2-203(c), 62-2-301(a) and 62-2-404(b).

Rule 0120-01-.08 Applications – Landscape Architect is amended by deleting paragraph (3) in its entirety so that, as amended, the rule in its entirety shall read:

0120-01-.08 Applications – Landscape Architect

- (1) An applicant for registration as a landscape architect shall submit with the application a nonrefundable application fee of thirty dollars (\$30.00). An applicant who has passed the required examination(s) shall also pay a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.
- (2) An applicant for registration as a landscape architect by comity shall pay a nonrefundable application fee of fifty-five dollars (\$55.00) and, if approved, a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.
- ~~(3) The deadline for receipt of applications from candidates who must be examined prior to registration as a landscape architect shall be determined annually by the Board after the Board receives notification from the CLARB of the dates of the examinations.~~

Authority: T.C.A. §§ 56-1-302(b), 56-1-302(h), 62-2-203(c), 62-2-307, 62-2-301(a), and 62-2-804(d) and (e).

Rule 0120-01-.09 References is amended by deleting the text of paragraph (1) in its entirety and substituting instead the following language, so that, as amended, the rule in its entirety shall read:

0120-01-.09 References

- (1) References named in applications for registration must be acquainted with the technical ability of the applicant, but need not be residents of the State of Tennessee. A minimum of five (5) references for architect, engineer, and landscape architect ~~and interior designer~~ applicants shall be submitted. References from relatives will not be considered. No reference will be considered if prepared more than two (2) years prior to the date of application.
- (2) Three (3) such references must be registered architects or engineers with registration and experience in the applicant's field(s) of experience; except, however, that applicants for registration as a landscape architect may use references who are registered engineers, architects or landscape architects.
- (3) A maximum of three (3) references shall be obtained from the employer listed by the applicant. References are required from both the applicant's current employer/supervisor and a past employer/supervisor (if applicable).
- (4) If a reference reply is uncomplimentary, derogatory, or unfavorable of the applicant, the applicant may be required to furnish additional references. If subsequent replies are unfavorable, the applicant will be scheduled for an interview with the Board for further consideration.

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

Rule 0120-01-10 Education and Experience Requirements – Engineer is amended by deleting the text of subparagraphs (1)(f) and (1)(g) in their entirety and substituting instead the following language, so that, as amended, the rule in its entirety shall read:

0120-01-10 Education and Experience Requirements – Engineer

- (1) (a) Accredited engineering programs. An engineering curriculum of four (4) years or more which was accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) (or its predecessor) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory.
- (b) Nonaccredited engineering programs. An engineering curriculum of four (4) years or more which is a non-ABET accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an ABET accredited engineering program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is substantially equivalent to ABET accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding engineering degrees from institutions which do not have ABET accredited engineering programs in consideration of the factors outlined below.
- (c) In reviewing applicants holding degrees from nonaccredited engineering programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from ABET accredited programs, the Board may consider the following factors:
 1. Evidence of having obtained the statutory minimum acceptable progressive professional experience of a grade and character which indicates to the Board that the applicant may be competent to practice engineering; and
 2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an engineer on projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering.
- (d) Applicants meeting the above requirements shall be reviewed by the Board for determination of eligibility for either the Fundamentals of Engineering examination or the Principles and Practice of Engineering examination or for registration by comity.
- (e) An engineering technology program, whether four (4) or two (2) years in length, is not considered by the Board to be an acceptable curriculum.
- (f) ~~Master's degree programs. A master's degree program in engineering which was either accredited by the EAC of the ABET (or its predecessor) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, or which was offered by an institution with an undergraduate engineering program in the same discipline which was either accredited by the EAC of the ABET (or its predecessor) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory. Applicants meeting this requirement shall be reviewed by the Board for determination of eligibility for the Principles and Practice of Engineering examination or for registration by comity. Programs taught strictly by distance education or correspondence, or that allow credit for work experience and experiential learning (with the exception of cooperative education programs), or which are not part of an institution that is accredited or recognized as a degree-granting institution of higher learning within a national territory or in the United States, are not considered by the Board to be acceptable curricula.~~
- (g) ~~Programs taught strictly by distance education or correspondence, or that allow credit for work experience and experiential learning (with the exception of cooperative education programs), or which are not part of an institution that is accredited or recognized as a~~

degree-granting institution of higher learning within a national territory or in the United States, are not considered by the Board to be acceptable curricula. Engineering degrees from programs accredited by the Canadian Engineering Accreditation Board (CEAB) that were awarded in or after 1980 are considered substantially equivalent and do not require evaluation.

- (2) In general, "progressive experience in the practice of engineering" consists of engineering experience which is supervised by a registered professional engineer. The Board may grant toward experience requirements for registration as an engineer one (1) year of credit for graduation with a Master's degree (or higher) in engineering from an approved curriculum or up to one (1) year of qualified experience obtained in an established cooperative education program, which is carried out within the framework of an approved engineering curriculum, and which has been approved by the Board. At least one (1) year of engineering experience must be completed in the United States. Unless otherwise noted above, an applicant's engineering experience must be obtained after graduation with the qualifying degree and completed by the date of the examination.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-401.

Rule 0120-01-11 Education and Experience Requirements – Architect is amended by adding the following language as a new subparagraph (3)(d), so that, as amended, the rule in its entirety shall read:

0120-01-11 Education and Experience Requirements – Architect

- (1) For purposes of evaluating the education and experience of applicants for examination and registration as an architect, the Board will utilize the "Table of Equivalents" contained in Appendix "A" to Circular of Information No. 1, published in July 1983 by the National Council of Architectural Registration Boards (NCARB), except to the extent that such document conflicts with any applicable statute.
- (2) Accredited architecture programs. An architecture program which was accredited by the National Architectural Accrediting Board (NAAB) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory. For purposes of this paragraph, a state-supported school of architecture approved by the Tennessee Higher Education Commission is deemed to have an accredited degree curriculum.
- (3) (a) Non-accredited architecture programs. For purposes of T.C.A. §§62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an NAAB accredited program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is equivalent to NAAB accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.
- (b) In reviewing a non-accredited architectural curriculum, the Board may approve either an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a NAAB accredited degree or its equivalent.
- (c) In reviewing applicants holding degrees from non-accredited architecture programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from NAAB accredited programs, the Board may consider the following factors:
1. Evidence of having obtained the statutory minimum acceptable practical experience in architectural work, and
 2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an architect.

(d) For purposes of this paragraph, an architectural degree from a program accredited by the Canadian Architectural Certification Board (CACB), or from a program deemed substantially equivalent by the NAAB, is deemed to be equivalent to a degree from a NAAB-accredited program.

- (4) For purposes of Tenn. Code Ann. § 62-2-501(3), an approved "architecture-related curriculum" is an architectural engineering or architectural engineering technology curriculum accredited by the Accreditation Board for Engineering and Technology (ABET).
- (5) Effective December 1, 1984, an applicant for the required examination for registration as an architect must have completed the Intern-Architect Development Program (IDP) of the NCARB prior to registration.
- (6) An applicant for registration by comity shall submit proof acceptable to the Board of having obtained the practical experience in architectural work required by Tenn. Code Ann. §§ 62-2-501 and 62-2-502.
- (7) In general, "practical experience in architectural work" consists of architectural experience which is supervised by a registered architect and meets the requirements of Tenn. Code Ann. § 62-2-503.
- (8) Applicants meeting the above requirements shall be reviewed by the Board for determination of eligibility for either the Architect Registration Examination prepared by the National Council of Architectural Registration Boards or for registration by comity.

Authority: T.C.A. §§ 62-2-203(c), 62-2-501, 62-2-502 and 62-2-503.

Rule 0120-01-.14 Examinations – Engineer, Engineer Intern is amended by deleting paragraph (4) in its entirety so that, as amended, the rule in its entirety shall read:

0120-01-.14 Examinations – Engineer, Engineer Intern

- (1) The NCEES prepares the examinations administered to candidates for registration as an engineer or certification as an engineer intern. The use of materials, reference books, notes, calculators and equipment in such examinations shall be in accordance with instructions by the NCEES.
- (2) The passing score on both the "Fundamentals of Engineering" and "Principles and Practice of Engineering" examinations shall be determined by the NCEES and shall be reported as "pass" or "fail."
- (3) A candidate who passes either the "Fundamentals of Engineering" examination or the "Principles and Practice of Engineering" examination may retain credit for passing such examination indefinitely.
- ~~(4) Any senior student applicant for certification as an engineer intern who fails to report for the required examination as scheduled must reapply for examination.~~

Authority: T.C.A. §§ 62-2-203(c), 62-2-401(a) and 62-2-405.

Rule 0120-01-.20 Reexamination – Engineer is amended by deleting paragraph (2) in its entirety so that, as amended, the rule in its entirety shall read:

0120-01-.20 Reexamination – Engineer

- (4) The "Principles and Practice of Engineering" examination is graded as a whole. A candidate for registration as an engineer who fails the examination must retake the examination in its entirety.

- ~~(2) The fee for reexamination shall be the cost to the Board of the current NCEES examination, administration of the examination and scoring.~~

Authority: T.C.A. §§ 62-2-203(c) and 62-2-405(c).

Rule 0120-01-.21 Reexamination – Engineer Intern is amended by deleting paragraph (2) in its entirety so that, as amended, the rule in its entirety shall read:

- (1) The "Fundamentals of Engineering" examination is graded as a whole. A candidate for certification as an engineer intern who fails the examination must retake the examination in its entirety.
- ~~(2) The nonrefundable fee for reexamination shall be fifty dollars (\$50.00).~~

Authority: T.C.A §§ 62-2-203(c), 62-2-404, and 62-2-405(c).

Chapter 0120-02
Rules of Professional Conduct

Amendments

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

0120-02-.02 Proper Conduct of Practice

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (2) If the registrant becomes aware of a decision taken by an employer, client, or contractor, against the registrant's advice, which violates applicable Federal, State or Local building Laws and Regulations or which may affect adversely the safety to the public, the registrant shall:
- (a) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable Federal, State or Local building Laws and Regulations;
- (b) Refuse to consent to the decision; and
- (c) In circumstances where the registrant reasonably believes that other such decisions will be taken notwithstanding the registrant's objections, terminate services with reference to the project.
- (3) A registrant possessing knowledge of a violation of T.C.A. Title 62, chapter 2, or this chapter, shall report such knowledge to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as it may require.
- (4) The registrant shall maintain the continuing education records required by rule 0120-05-.10 "Records" for a period of four (4) years and shall furnish such records to the Board for audit verification purposes within thirty (30) days of the Board's request.
- (5) A registrant possessing knowledge of an applicant's qualifications for registration shall respond in writing to the Board regarding those qualifications when requested to do so by the Board. A registrant possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant and/or the Board by responding appropriately regarding those qualifications when requested to do so. A registrant shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. A registrant shall not knowingly sign any verification document that contains false or misleading information.

- (6) A registrant may not enter into a contract for professional services on any basis other than direct negotiation with any governmental entity that is prohibited by T.C.A. § 12-4-106(a)(2)(A) from making a selection or awarding a contract on the basis of competitive bids, thereby precluding participation in any system requiring a comparison of compensation. Upon selection, a registrant may state compensation to a prospective client in direct negotiation where architectural, engineering, or landscape architectural services necessary to protect the public health, safety, and welfare have been defined.

Authority: T.C.A. §§ 62-2-203(c) and (d) and 62-204.

Rule 0120-02-.05 Conflicts of Interest is amended by deleting paragraph (5) in its entirety and renumbering the subsequent paragraphs. The rule is further amended by adding the words "or her" to paragraphs (1) and (2) and the words "the registrant" to paragraphs (2), (5), (6) and (7) so that, as amended, the rule in its entirety shall read as follows:

0120-02-.05 Conflicts of Interest

- (1) The registrant shall conscientiously strive to avoid conflicts of interest with his or her employer or his client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to his or her employer or client in writing.
- (2) The registrant shall avoid all known conflicts of interest with his or her employer or client, and shall promptly inform his or her employer or client in writing of any business association, interests or circumstances which could influence his the registrant's judgment or the quality of his the registrant's services.
- (3) The registrant shall not accept compensation (financial or otherwise) from more than one (1) party for services on or pertaining to the same project unless the circumstances are agreed to in writing by all interested parties prior to the acceptance of any such compensation.
- (4) The registrant shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
- ~~(5) A registrant may be deemed by the Board to be guilty of misconduct in his professional practice if:~~
 - ~~(a) He has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony;~~
 - ~~(b) His license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings;~~
 - ~~(c) He has been certified by the department of human services as not being in compliance with an order of support pursuant to T.C.A. §§36-5-705—36-5-709; or~~
 - ~~(d) He has been delinquent in the payment of the professional privilege tax pursuant to T.C.A. §§67-4-1702—67-4-1704.~~
- ~~(65)~~ When in public service as a member, advisor or employee of a governmental body or department, the registrant shall not participate in considerations or actions with respect to services provided by him the registrant or his the registrant's organization in private professional practices.
- ~~(76)~~ The registrant shall not solicit or accept any contract from a governmental body on which he the registrant, or a principal or officer of his the registrant's organization, serves as a member.
- ~~(87)~~ When acting as the interpreter of construction contract documents and the judge of construction contract performance, the registrant shall render decisions impartially, favoring neither party to the construction contract.

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

Rule 0120-02-07 Misconduct is amended by adding the words "or her" to paragraph (1) and by deleting subparagraph (5)(c) in its entirety and renumbering the subsequent subparagraphs. The rule is further amended so that all remaining subparagraphs of paragraph (5) shall begin with the words "The registrant" instead of "He" and "His," so that, as amended, the rule in its entirety shall read as follows:

0120-02-07 Misconduct

- (1) The registrant shall not knowingly associate with, or permit the use of his or her name or firm name in, a business venture by any person or firm which ~~he~~ the registrant knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.
- (2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
 - (a) Federal, State and Local building laws and regulations, including building permit requirements; or
 - (b) Registration requirements of T.C.A. Title 62, chapter 2.
- (3) The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements of T.C.A. Title 62, Chapter 2.
- (4) The registrant may not make or promise to make contributions of money for the purpose of securing a commission or influencing the engagement or employment of the registrant for a project.
- (5) A registrant may be deemed by the Board to be guilty of misconduct in his the registrant's professional practice if:
 - (a) ~~He~~ The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;
 - (b) His The registrant's license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or ~~he~~ the registrant fails to report such action to the Board in writing within sixty (60) days of the action;
 - (c) ~~He has been certified by the department of human services as not being in compliance with an order of support pursuant to T.C.A. §§ 36-5-705 – 36-5-709; or~~
 - (d) ~~He~~ The registrant has been delinquent in the payment of the professional privilege tax pursuant to T.C.A. §§ 67-4-1702 – 67-4-1704;
 - (e) ~~He~~ The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or
 - (f) ~~He~~ The registrant fails to comply with a lawful order of the Board.

Authority: T.C.A. § 62-2-203(c), 62-204, 62-212, and 62-2-308.

Rule 0120-02-08 Seals is amended by deleting the text of paragraphs (5) and (6) in their entirety and substituting instead the following language so that, as amended, paragraphs (5) and (6) shall read as follows:

0120-02-08 Seals

- (5) (a) ~~Except as provided by rule 0120-02-08(5) and (6), n~~No registrant shall affix his or her seal or signature to sketches, working drawings, specifications or other documents developed by others not under his the registrant's responsible charge and not subject to the authority of that registrant in critical professional judgments.
- (b) In circumstances where a registrant can no longer provide services on a project (such as death, retirement, disability, contract termination, etc.), a successor registrant may perform work on a set of plans originally prepared by another registrant. If the plans are incomplete (are at a stage prior to submittal to a reviewing official), the successor registrant may not seal the set of drawings prepared by the original registrant; rather, the successor registrant must take all steps necessary to ensure that the drawings were prepared under his or her responsible charge before sealing them. If the plans are complete and have been submitted to a reviewing official, the successor registrant may prepare and seal addenda sheets or document and seal changes to the original sheets if revisions are necessary.
- (6) (a) Responsible Charge. Plans, specifications, drawings, reports or other documents will be deemed to have been prepared under the responsible charge of a registrant only when:
1. The client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the registrant, or to the registrant's employee at the time initial client contact is made, so long as the registrant has the right to control and direct the employee in the material details of how the work is to be performed;
 2. The registrant supervises and is involved in the preparation of the plans, specifications, drawings, reports or other documents and has input into and full knowledge of their preparation prior to their completion;
 3. The registrant reviews the final plans, specifications, drawings, reports or other documents; and
 4. The registrant has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents; and
 5. Contributions of information or predrawn detail items or detail units that are incidental to and intended to be integrated into a registrant's technical submissions are from trusted sources (including, but not limited to, manufacturers, installers, consultants, owners, or contractors), are subject to appropriate review, and are then coordinated and integrated into the design by the registrant.
- (b) Except as provided by Rule 0120-02-08(5)(b), Any changes made to the final plans, specifications, drawings, reports or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, including but not limited to owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns.
- (c) Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge unless the registrant has met the criteria set out above.
- (d) The intent of the definition of responsible charge may be met if all provisions of the definition are met using remote electronic or other communication means.

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

Table of Contents is amended by adding 0120-04-.13 Notification to the Board so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0120-04-.01 Definitions	0120-04-.08 Renewal of Registration
0120-04-.02 Applicability	0120-04-.09 Registration Without Examination
0120-04-.03 Applications	0120-04-.10 Professional Conduct
0120-04-.04 Education Requirements	0120-04-.11 Civil Penalties
0120-04-.05 Experience Requirements	0120-04-.12 Other Enforcement Actions
0120-04-.06 Initial Registration	<u>0120-04-.13 Notification to the Board</u>
0120-04-.07 Duplicate Certificates of Registration	

Authority: T.C.A. § 62-2-203(c).

Rule 0120-04-.05 Experience Requirements is amended by deleting the text of paragraph (4) in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

0120-04-.05 Experience Requirements

- (4) Diversified interior design experience shall be demonstrated to the Board by the applicant who shall furnish the following:
- (a) An affidavit by the applicant attesting that the applicant has engaged in the practice of interior design for the number of years for which the applicant is claiming experience; and
 - (b) Three (3) references ~~A minimum of five (5) references~~, on forms supplied by the Board, certifying that the applicant has provided interior design services for the period of experience claimed by the applicant. References from relatives will not be considered. No reference will be considered if prepared more than two (2) years prior to the date of application. ;~~such references to be submitted from the following:~~
 - 1. ~~Prior to January 1, 1994:~~
 - ~~(i) Interior designers who have passed the NCIDQ examination;~~
 - ~~(ii) Registered architects; and/or~~
 - ~~(iii) Professional members of one of the professional organizations specified in subsection (3)(c)1 of rule 0120-04-.09;~~
 - 2. ~~As of January 1, 1994 and thereafter:~~
 - ~~(i) Registered interior designers; and/or~~
 - ~~(ii) Registered architects.~~
 - (c) Three (3) such references must be registered interior designers and/or registered architects. In addition, one (1) client reference and one (1) employer reference are required. A client reference may be substituted for the employer reference if an applicant is self-employed.
 - (d) If a reference reply is uncomplimentary, derogatory, or unfavorable of the applicant, the applicant may be required to furnish additional references. If subsequent replies are unfavorable, the applicant will be scheduled for an interview with the Board for further consideration.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-904(a).

Rule 0120-04-.10 Professional Conduct is amended by deleting the text of paragraph (17) in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

0120-04-.10 Professional Conduct

- (17) A registrant possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant and/or the Board by responding appropriately regarding those qualifications when requested to do so. A registrant shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. A registrant shall not knowingly sign any verification document that contains false or misleading information.

Authority: T.C.A. § 62-2-203(c).

Rule 0120-04-.13 Notification to the Board is added to Chapter 0120-04, and shall read as follows:

0120-04-.13 Notification to the Board

A registrant or applicant for registration shall notify the Board in writing within thirty (30) calendar days of any change of name, mailing address, e-mail address, or phone number. Registrants and applicants are encouraged to notify the Board of a change of employment.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-207.

Chapter 0120-05
Continuing Education

New Rule

Table of Contents is amended by adding 0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0120-05-.01 Purpose	0120-05-.08 Exemptions
0120-05-.02 Definitions	0120-05-.09 Certification
0120-05-.03 Continuing Education Review	0120-05-.10 Records
0120-05-.04 Basic Requirements	0120-05-.11 Disallowances
0120-05-.05 Conversion Table	0120-05-.12 Noncompliance
0120-05-.06 Types of Acceptable Continuing Education	0120-05-.13 Reciprocity
0120-05-.07 Credits	<u>0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers</u>

Authority: T.C.A. § 62-2-203(c).

Rule 0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers is added to Chapter 0120-05, and shall read as follows:

0120-05-.14 Alternative Continuing Professional Development Option for Architects and Registered Interior Designers

- (1) As an alternative to the requirements of Rule 0120-05-.04 Basic Requirements, a registered architect or registered interior designer may meet the continuing education requirement for renewal by obtaining twelve (12) Continuing Education Hours (CEH) per calendar year. All twelve (12) Continuing Education Hours must be completed in Health, Safety, and Welfare subjects acquired in structured educational activities. Continuing Education Hours may be acquired at any location. Excess Continuing Education Hours may not be credited to a future calendar year.

- (2) For the purposes of this rule, CEH means one continuous instructional hour (no less than 50 minutes of contact) spent in structured educational activities intended to increase or update the architect's or registered interior designer's knowledge and competence in Health, Safety, and Welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the Board finds the prescribed time to be unreasonable, be accepted as the architect's or registered interior designer's time for Continuing Education Hour purposes irrespective of actual time spent on the activity. Registrants will not receive credit for activities less than one (1) CEH in duration.
- (3) For purposes of this rule, a structured educational activity is one (1) in which at least seventy-five percent (75%) of an activity's content and instructional time must be devoted to Health, Safety, and Welfare subjects related to the practice of architecture or interior design, including courses of study or other activities under the areas identified as Health, Safety and Welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.
- (4) For purposes of this rule, health, safety, and welfare subjects are technical and professional subjects that the Board deems appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment.

Building Systems: Structural, Mechanical, Electrical, Plumbing, Communications, Security, Fire Protection

Construction Contract Administration: Contracts, Bidding, Contract Negotiations

Construction Documents: Drawings, Specifications, Delivery Methods

Design: Urban Planning, Master Planning, Building Design, Site Design, Interiors, Safety and Security Measures

Environmental: Energy Efficiency, Sustainability, Natural Resources, Natural Hazards, Hazardous Materials, Weatherproofing, Insulation

Legal: Laws, Codes, Zoning, Regulations, Standards, Life Safety, Accessibility, Ethics, Insurance to Protect Owners and Public

Materials and Methods: Construction Systems, Products, Finishes, Furnishings, Equipment

Pre-Design: Land Use Analysis, Programming, Site Selection, Site and Soils Analysis, Surveying

Preservation: Historic, Reuse, Adaptation

Authority: T.C.A. § 62-2-203(d).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Susan K. Ballard, RID	X				
Hal Balthrop, PE	X				
Wilson Borden	X				
Robert G. Campbell, Jr., PE	X				
Jerome M. Headley, RA	X				
Philip K. S. Lim, PE	X				
Paul W. Lockwood, RLA	X				
Richard D. Thompson, RA	X				
Frank W. Wagster, RA	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Architectural and Engineering Examiners on 08/14/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/21/13

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/13

Date: 10/24/2014

Signature: [Handwritten Signature]

Name of Officer: Robert E. Herndon

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: October 24, 2014

Notary Public Signature: Sandra K. Cooper

My commission expires on: May 5, 2015

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



Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
11/7/2014
 Date

Department of State Use Only

Filed with the Department of State on: 11/27/14

Effective on: 2/15/14

Tre Hargett

Tre Hargett
Secretary of State

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