

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Department of Health
<u>DIVISION:</u>	Division of Health Planning
<u>SUBJECTS:</u>	Hospital Cooperative Agreements
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 68-11-1301—68-11-1309, and Chapter No. 464 of the Public Acts of 2015
<u>EFFECTIVE DATES:</u>	July 14, 2015 through January 10, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>This emergency rulemaking seeks to implement the law relative to cooperative agreements and the granting of certificates of public advantage pursuant to the Hospital Cooperation Act of 1993, Tenn. Code Ann. §§ 68-11-1301 through 68-11-1309, and Chapter No. 464 of the Public Acts of 2015.</p> <p>Pursuant to the Act, the Department of Health is responsible for active state supervision to protect the public interest and to assure the reduction in competition of health care and related services continues to be outweighed by clear and convincing evidence of the likely benefits of the cooperative agreement, including improvements to population health, access to services, and economic advantages to the public. A certificate of public advantage will be denied or terminated if the likely benefits of the cooperative agreement fail to outweigh any disadvantages attributable to a potential reduction in competition resulting from the cooperative agreement by clear and convincing evidence.</p> <p>The Hospital Cooperation Act originally provided that hospitals could enter into a cooperative agreement for the sharing or referral of personnel, patients, and assets. Public Chapter 464 expanded the Act by now providing that a cooperative agreement may also include consolidation by merger or other combination of assets. The new law also changed the enumeration of benefits that parties are required to demonstrate and provides a different procedure for appeal and review of a decision denying or terminating a certificate of public advantage.</p>

## REGULATORY FLEXIBILITY ANALYSIS

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

These rules do not overlap, duplicate or conflict with other federal, state and local government rules.

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

These rules are established with clarity, conciseness and lack of ambiguity.

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

These rules do not contain compliance and/or reporting requirements for small businesses.

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

These rules do not contain compliance and/or reporting requirements for small businesses.

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

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

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

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

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

These rules do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs.

### **Impact on Local Governments**

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

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

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Division of Health Planning, Certificate of Public Advantage (COPA)

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

Any impact upon small businesses flows from the Hospital Cooperation Act of 1993 which authorizes the proposed rules. The Act implicitly recognizes that the hospitals are entering into a cooperative agreement to share assets and in some cases completely merge their assets. To the extent the transaction affects the market of the region served by the hospitals, there may be some effect on small businesses; however, the extent to which this may occur is unknown.

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

The parties to the cooperative agreement will submit an application and reports concerning all aspects of their service. These reports will require varying levels of skill, including economic experts, population health experts, executive leadership expertise, and financial reporting experts.

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

See answer to question 1 above.

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

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

**Federal:** N/A

**State:** Rules are established in states with similar enabling legislation. During the drafting process, the rules were compared to rules regulating cooperative agreements in Maine, New York, Montana, and North Carolina. The rules in all states noted above aim to set forth active state supervision, as required under *FTC v. Phoebe Putney Health System, Inc.*, 133 S. Ct. 1003.

- 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.**

N/A

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End Effective Date: 11/01/16

## Emergency Rule Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Health
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**Rule Type:**

Emergency Rule

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

Amendment

New

Repeal

**Statement of Necessity:**

The Hospital Cooperation Act of 1993, Tenn. Code Ann. § 68-11-1301 – § 68-11-1309 was amended by the General Assembly on May 18, 2015, 2015 Tenn. Pub. Acts, ch. 464. The original legislation provided that hospitals could enter into a "cooperative agreement" for the sharing or referral of personnel, patients and assets. The parties to the cooperative agreement could apply to the Department of Health ("department") for a certificate of public advantage governing the cooperative agreement. After consultation with and agreement from the attorney general, the department was required to issue the certificate of public advantage if it determined that the applicants had demonstrated by clear and convincing evidence that the likely benefits from the agreement outweighed any disadvantages attributable to a reduction in competition.

The 2015 legislation made significant changes to this Act. The Act now provides that a cooperative agreement among hospitals may include consolidation by merger or other combination of assets. The Act also now includes a statement that "[i]t is the policy of this state, in certain instances, to displace competition among hospitals with regulation," and specifically requires that there be active supervision of such cooperative agreements in order to provide state action immunity from federal and state antitrust law to the fullest extent possible. Among the benefits that must result from the cooperative agreement are enhancement of the quality of hospital care, demonstration of population health improvement of the region served according to criteria approved by the department, and the extent to which medically underserved populations have access to and are projected to utilize the proposed services. The 2015 Act also changed the enumeration of benefits that the parties are required to demonstrate and provides a different procedure for appeal and review of a decision denying or terminating a certificate of public advantage. These amendments to the Hospital Cooperation Act allowing for the consolidation by merger of hospital entities went into effect immediately upon becoming law.

The Department has received notice from two hospital entities that they propose to merge and to apply for a Certificate of Public Advantage under the amendments to the Act within the next several months. The proposed merger of the two hospital entities will result in the consolidation not only of the assets of these two entities, but also a consolidation of the services and products and service locations of these two entities, including but not limited to hospitals, inpatient facilities, insurance products, physician practices, pharmacies, accountable care

organizations, psychiatric facilities, nursing homes, rehabilitation units, home care agencies, wellness centers or services, surgical centers or services, dialysis centers or services, cancer center or services, imaging centers or services, and support services. Clearly, such a merger will have a significant effect on the public health and safety of the citizens located in the geographic service areas of these two hospital entities.

The Commissioner of Health ("Commissioner") is authorized pursuant to Tenn. Code Ann. § 4-5-208 to promulgate emergency rules in the event of an immediate danger to the public health, safety or welfare. Because of the significant changes to the Hospital Cooperation Act allowing the consolidation of hospital entities and because of the imminent filing of an application for a certificate of public advantage, emergency rules governing the application process, the approval process, including the measures for determining whether the likely benefits of the proposed merger will outweigh any disadvantages resulting from a reduction in competition, are necessary in order to ensure that the public health, safety and welfare of the citizens are adequately protected. The Commissioner believes that it is not possible to promulgate either rulemaking hearing rules or publication rules in time to provide the necessary guidance to sufficiently review the proposed merger of the two hospital entities and application for Certificate of Public Advantage, which is imminent. This inability to conduct a sufficient review presents an immediate danger to the public health, safety and welfare of the citizens located in the geographic service areas of these two hospital entities. Thus, these emergency rules are necessary to provide the Department with the sufficient guidance to be able to adequately and appropriately review the proposed merger and application in order to protect the public health, safety and welfare.

**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/RuleTitle per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-38-01	Hospital Cooperation Act of 1993
<b>Rule Number</b>	<b>Rule Title</b>
1200-38-01-.01	Purpose and Definitions
1200-38-01-.02	Application Process
1200-38-01-.03	Terms of Certification
1200-38-01-.04	Notice and Hearing
1200-38-01-.05	Issuance of COPA
1200-38-01-.06	Active Supervision by Terms of Certification
1200-38-01-.07	Modification/Termination
1200-38-01-.08	Hearing and Appeals

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

Chapter 1200-38-01  
Hospital Cooperation Act of 1993

New Chapter

Table of Contents

1200-38-01-.01 Purpose and Definitions  
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1200-38-01-.06 Active Supervision by Terms of Certification  
1200-38-01-.07 Modification/Termination  
1200-38-01-.08 Hearing and Appeals

1200-38-01-.01 Purpose and Definitions.

The rules in this chapter implement the law relative to Cooperative Agreements and the granting of Certificates of Public Advantage pursuant to the Hospital Cooperation Act of 1993, T.C.A. §§ 68-11-1301 through 68-11-1309.

Pursuant to the Act, the Department is responsible for active state supervision to protect the public interest and to assure that the reduction in competition of health care and related services continues to be outweighed by clear and convincing evidence of the likely benefits of the Cooperative Agreement, including but not limited to improvements to population health, access to services and economic advantages to the public. The COPA will be denied or terminated if the likely benefits of the Cooperative Agreement fail to outweigh any disadvantages attributable to a potential reduction in competition resulting from the Cooperative Agreement by clear and convincing evidence.

- (1) "Advisory Group" means the group of stakeholders from Applicants geographic service area, as specified in the Application, appointed by the Commissioner, in consultation with appropriate constituencies and government agencies, to recommend Measures to be considered for inclusion in an Index to objectively track Public Advantage of a single Cooperative Agreement.
- (2) "Applicant" means the parties to a Cooperative Agreement who submit an Application to the Department in accordance with 1200-38-01.02.
- (3) "Application" means the written materials submitted to the Department in accordance with 1200-38-01.02, by entities who desire to apply for a Certificate of Public Advantage.
- (4) "Attorney General" means the Attorney General and Reporter for the State of Tennessee.
- (5) "Certificate of Public Advantage ("COPA" or the "Certificate")" means the written approval by the Department which governs the Cooperative Agreement.
- (6) "Certificate Holder" means the entity holding the Certificate of Public Advantage issued by the Department.
- (7) "Commissioner" means the Commissioner of the Department of Health.
- (8) "Cooperative Agreement" means an agreement among two (2) or more hospitals for the consolidation by merger or other combination of assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or

laboratory facilities or procedures or other services traditionally offered by hospitals, including any parent or subsidiary at the time the transaction occurs or at any time thereafter.

- (9) "Department" means the Department of Health.
- (10) "Hospital" means an institution required to be licensed as a hospital pursuant to § 68-11-201, or defined as a psychiatric hospital in § 68-11-102; or any parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically-related diagnostic and laboratory services or engages in ancillary activities supporting those services.
- (11) "Index" means a set of Measures used to objectively track the progress of a Cooperative Agreement over time to ensure Public Advantage. The components of the Index may be assigned differential weightings and modified from time to time as determined by the Department.
- (12) "Intervenor" means any hospital, physician, allied health professional, healthcare provider or other person furnishing goods or services to, or in competition with, a hospital, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization or any employer or association that directly or indirectly provides health care benefits to its employees or members.
- (13) "Measure" means some number of factors or benchmarks, which may be binary, a range or continuous factors.
- (14) "Plan of Separation" means the written proposal submitted with an Application to return the parties to a Cooperative Agreement to a pre-consolidation state, which includes a plan for separation of any combined assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or any combined sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals, including any parent or subsidiary at the time the consolidation occurs or thereafter.
- (15) "Population" means the entirety of the human population residing or domiciled in the geographic service area set out in the proposed Cooperative Agreement unless otherwise defined.
- (16) "Public Advantage" means the likely benefits accruing from a Cooperative Agreement which outweigh, by clear and convincing evidence, the likely disadvantages attributable to a reduction in competition likely to result from the Cooperative Agreement.

Authority: T.C.A. §§ 68-11-1301 through 68-11-1309.

#### 1200-38-01-.02 Application Process.

- (1) Letter of Intent. At least forty-five (45) days prior to filing an Application, the parties to the proposed Cooperative Agreement shall file a letter of intent with the Department.
  - (a) Contents. A letter of intent shall contain the following:
    - 1. A brief description of the proposed Cooperative Agreement, including the physical location of the entities and parties to the Cooperative Agreement;
    - 2. A list that includes all assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or in part, directly or indirectly, by any party to the Cooperative Agreement that the parties propose to be included in the COPA or any assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or part, by any party to the Cooperative Agreement that will be divested, sold or affected as a result of the Cooperative Agreement;
    - 3. A list of all business interests or units for which each party to the Cooperative Agreement has any ownership interest or a management contract that is not proposed to be included in the Cooperative Agreement;

4. The name, address and contact information of the parties to the proposed Cooperative Agreement including the executive officers, each party's respective board members and each party's general counsel;
  5. A description of the entities' governing structure under the Cooperative Agreement;
  6. The anticipated date of submission of the Application; and the anticipated effective date of the proposed Cooperative Agreement; and
  7. The geographic service area and Population covered by the Cooperative Agreement.
- (b) Amendment. The parties shall amend the letter of intent if material changes occur prior to submission of the parties' Application.
- (c) Expiration. A letter of intent expires six (6) months after the date of receipt by the Department, if no Application is filed with the Department within that period.
- (d) Public Record. The Department shall post letters of intent on the Department's website until an Application is filed or until the letter of intent expires.
- (2) Application.
- (a) Parties seeking a COPA shall apply to the Department in writing. Parties shall submit the following information in the Application:
1. A descriptive title;
  2. A table of contents;
  3. An executive summary which includes:
    - (i) Goals for change to be achieved by the Cooperative Agreement;
    - (ii) Benefits and advantages to parties and the public including but not limited to:
      - (I) Population health;
      - (II) Access to health care and prevention services; and
      - (III) Healthcare operating costs, including avoidance of capital expenditures, reduction in operating expenditures and improvements in patient outcomes.
    - (iii) Description of how the Cooperative Agreement better prepares and positions the parties to address anticipated future changes in health care financing, organization and accountability initiatives; and
    - (iv) Potential disadvantages of the Cooperative Agreement.
  4. The names of each party to the Application and the address of the principal business office of each party;
  5. A verified statement signed by the Chairperson of the Board of Directors and Chief Executive Officer of each party to the Application; or, if one or more of the Applicants is an individual, signed by the individual Applicant; attesting to the accuracy and completeness of the enclosed information;
  6. A description of the prior history of dealings between the parties to the Application, including, but not limited to, their relationship as competitors and any prior joint ventures

or other collaborative arrangements between the parties;

7. A detailed description of the proposed geographic service area, not limited to the boundaries of the State of Tennessee. If the proposed geographic service area differs from the service areas where the parties have conducted business over the five (5) years preceding the Application, a description of how and why the proposed geographic service area differs and why changes are proposed;
8. Identification of whether any services or products of the proposed Cooperative Agreement are currently being offered or capable of being offered by other providers or purchasers in the geographic service area described in the Application;
9. Explanation of how the Cooperative Agreement will assure continued competitive and independent operation of the services or products of entities not a party to the Cooperative Agreement;
10. A statement of whether there will be a Public Advantage or adverse impact on Population health, quality, access, availability or cost of health care to patients and payers as a result of the Cooperative Agreement;
11. A statement of whether the projected levels of cost, access to health care or quality of health care could be achieved in the existing market without the granting of a COPA; and, for each of the above, an explanation of why or why not;
12. A report used for public information and education that is documented to have been disseminated prior to submission of the Application and submitted as part of the Application. The report must include the following:
  - (i) A description of the proposed geographic service area, services and facilities to be included in the Cooperative Agreement;
  - (ii) A description of how health services will change if the Application is accepted;
  - (iii) A description of improvements in patient access to health care including prevention services for all categories of payers and advantages patients will experience across the entire service area regarding costs, availability or accessibility upon initiation of the Cooperative Agreement and/or findings from studies conducted by hospitals and other external entities, including health economists, clinical services and population health experts, that describe how implementation of the proposed Cooperative Agreement plans will be: effective with respect to resource allocation implications; efficient with respect to fostering cost containment, including, but not limited to, eliminating duplicate services and future plans; and equitable with respect to maintaining quality and competition in health services within the service area, assuring patient access to and choice of insurers and providers within the health care system;
  - (iv) Findings from service area assessments that describe major health issues and trends, specific population health disparities and comparisons to state and other similar regional areas proposed to be addressed;
  - (v) Impact on the health professions workforce including long-term employment and wage levels and recruitment and retention of health professionals; and
  - (vi) A record of community stakeholder and consumer views of the proposed Cooperative Agreement collected through a public participatory process including meetings and correspondence in which this report or its components were used.
13. A signed copy of the Cooperative Agreement, including:
  - (i) A description of any consideration passing to any individual or entity under the

Cooperative Agreement including the amount, nature, source and recipient;

- (ii) A detailed description of any merger, lease, operating or management contract, change of control or other acquisition or change, direct or indirect, in ownership of the assets of any party to the Cooperative Agreement;
- (iii) A list of all services and products and of all service locations that are the subject of the Cooperative Agreement, including those not occurring within the boundaries of the State of Tennessee, and including, but not limited to, hospitals or other inpatient facilities, insurance products, physician practices, pharmacies, accountable care organizations, psychiatric facilities, nursing homes, physical therapy and rehabilitation units, home care agencies, wellness centers or services, surgical centers or services, dialysis centers or services, cancer centers or services, imaging centers or services, support services or any other product, facility or service;
- (iv) A description of each party's contribution of capital, equipment, labor, services or other value to the transaction;
- (v) A description of the competitive environment in the parties' geographic service area, including:
  - (I) Identification of all services and products likely to be affected by the Cooperative Agreement and the locations of the affected services and products;
  - (II) The parties' estimate of their current market shares for services and products and the projected market shares if the COPA is granted;
  - (III) A statement of how competition among health care providers or health care facilities will be reduced for the services and products included in the Cooperative Agreement; and
  - (IV) A statement regarding the requirement(s) for any Certificate(s) of Need resulting from the Cooperative Agreement.
- (vi) Impact on the service area's health care industry workforce, including long-term employment and wage levels and recruitment and retention of health professionals;
- (vii) Description of financial performance, including:
  - (I) A description and summary of all aspects of the financial performance of each party to the transaction for the preceding five (5) fiscal years including debt, bond rating and debt service and copies of offering materials, subsequent filings such as continuing disclosure agreements and material event disclosures, and financial statements prepared by external certified public accountants, including management reports;
  - (II) A copy of the current annual budget for each party to the Cooperative Agreement and a three (3) year projected budget for all parties after the initiation of the Cooperative Agreement. The budgets must be in sufficient detail so as to determine the fiscal impact of the Cooperative Agreement on each party. The budgets must be prepared in conformity with generally accepted accounting principles (GAAP) and all assumptions used must be documented;
  - (III) A detailed explanation of the projected effects including expected change in volume, price and revenue as a result of the Cooperative Agreement, including;

- I. Identification of all insurance contracts and payer agreements in place at the time of the Application and a description of pending or anticipated changes that would require or enable the parties to amend their current insurance and payer agreements;
- II. A description of how pricing for provider insurance contracts are calculated and the financial advantages accruing to insurers, insured consumers and the parties to the Cooperative Agreement, if the COPA is granted including changes in percentage of risk-bearing contracts;
- III. The following policies:
  - A. Policy that assures no restrictions to Medicare and/or Medicaid patients,
  - B. Policies for free or reduced fee care for the uninsured and indigent,
  - C. Policies for bad debt write-off; and
  - D. Policies that assure parties to the Cooperative Agreement will maintain or exceed the existing level of charitable programs and services.
- (IV) Identification of existing or future business plans, reports, studies or other documents of each party that:
  - I. Discuss each party's projected performance in the market, business strategies, capital investment plans, competitive analyses and financial projections including any documents prepared in anticipation of the Cooperative Agreement; and
  - II. Identification of plans that will be altered, eliminated or combined under the Cooperative Agreement or subsequent COPA.
- (viii) A description of the plan to systematically integrate health care and preventive services among the parties to the Cooperative Agreement, in the proposed geographic service area, that addresses the following:
  - (I) A streamlined management structure, including a description of a single board of directors, centralized leadership and operating structure;
  - (II) Alignment of the care delivery decisions of the system with the interest of the community;
  - (III) Clinical standardization;
  - (IV) Alignment of cultural identities of the parties to the Cooperative Agreement; and
  - (V) Implementation of risk-based payment models to include risk, a schedule of risk assumptions and proposed performance metrics to demonstrate movement toward risk assumption and a proposed global spending cap for hospital services.
- (ix) A description of the plan, including economic metrics, that details anticipated efficiencies in operating costs and shared services to be gained through the Cooperative Agreement including:

- (I) Proposed use of any cost savings to reduce prices borne by insurers and consumers;
  - (II) Proposed use of cost savings to fund low or no-cost services such as immunizations, mammograms, chronic disease management and drug and alcohol abuse services designed to achieve long-term Population health improvements; and
  - (III) Other proposed uses of savings to benefit advancement of health and quality of care and outcomes.
- (x) Proposed Measures and suggested baseline values with rationale for each Measure to be considered by the Department in development of an Index. Proposed Measures are to be used to continuously evaluate the Public Advantage of the results of actions approved in the COPA through the Cooperative Agreements under active supervision of the Department. Measures should include source and projected trajectory over each of the first five (5) years of the Cooperative Agreement and the trajectory if the COPA was not granted; Proposed Measures may include:
- (I) Improvements in the Population's health that exceed Measures of national and state improvement;
  - (II) Continuity in availability of services throughout the service area;
  - (III) Access and use of preventive and treatment health care services throughout the service area;
  - (IV) Operational savings projected to lower health care costs to payers and consumers; and
  - (V) Improvements in quality of services as defined by surveys of the Joint Commission.

14. An explanation of the reasons for the exclusion of any information set forth in section 1200-38-01-.02, the Application Process, including an explanation of why the item is not applicable to the Cooperative Agreement or to the parties;
15. A detailed description of the total cost resulting from the Cooperative Agreement, including, but not limited to, costs for consultant and professional services, capital costs, financing costs and management costs. The description should identify costs associated with the implementation of the Cooperative Agreement, including documentation of the availability of the necessary funds. The description should identify which costs are borne by each party;
16. A timetable for implementing all components of the Cooperative Agreement;
17. The Department shall require a Plan of Separation be submitted with the Application. The Plan of Separation shall be updated annually by the parties to the Cooperative Agreement. The parties shall provide an independent opinion from a qualified organization verifying the Plan of Separation can be operationally implemented without undue disruption to essential health services provided by the parties; and
18. The name, address and telephone number of the person(s) authorized to receive notices, reports and communications with respect to the Application.

(3) Additional Department Requirements.

- (a) The Department may request additional information from the parties prior to deeming the

Application complete or issuing a final decision. The Application shall not be deemed complete nor shall the one hundred twenty (120) day review period commence until all information is received by the Department.

- (b) The Department shall notify the parties in writing when the Application is deemed complete.
- (c) The parties shall submit simultaneously a copy of the Application and copies of all additional related materials to the Attorney General and to the Department. The Department and the Attorney General are vested with the active and continuing oversight of all Cooperative Agreements.
- (d) The Department may waive any of the requirements or timeframes that it finds, at its sole discretion, due to the nature of a particular Cooperative Agreement, are inapplicable to its analysis of the Cooperative Agreement.
- (e) The Application and accompanying documents are public records pursuant to T.C.A. § 10-7-503 and are subject to public inspection in accordance with § 10-7-503, except for records which are confidential pursuant to state or federal law. The parties shall specify any portion of the Application which the parties contend is exempt from the Public Records Act. The parties shall include the specific authority for said exemption. Applicants shall submit two (2) copies of the Application. The first copy shall include all requested information. The second copy shall contain all requested information; however, the parties shall redact confidential information wherever possible. Nothing in this subsection shall limit or deny access to otherwise public information because an Application or accompanying document contains confidential information.

Authority: T.C.A. § 68-11-1303.

1200-38-01-.03 Terms of Certification. All COPAs shall be governed by terms of certification. The terms of certification shall include:

- (1) Charges.
  - (a) Parties to a Cooperative Agreement who have applied to the Department for a COPA shall pay all charges incurred in the examination of the Application and, in the event the COPA is approved, all charges incurred for the review and ongoing supervision of the Cooperative Agreement. The charges shall include all expenses of the Department, including, but not limited to, the fees and expenses of experts and examiners employed in the review and ongoing supervision of the Application and COPA.
  - (b) The charges assessed by the Department, and the fees and expenses of experts and examiners contracted by the Commissioner to examine and review the Cooperative Agreement and all records shall be fixed by the Commissioner at an amount commensurate with usual compensation for like services.
  - (c) The Department shall develop a formula to include charges incurred in the examination of the Application and charges incurred for review and ongoing supervision and invoice COPA Applicants and holders Department's costs at a regular interval.
  - (d) The obligation to pay charges assessed under this section shall be the joint and several obligation of the parties to the Cooperative Agreement.
- (2) Evaluation by the Department that demonstrates Public Advantage in accordance with the standards set forth in these rules.
  - (a) Benefits to include:
    - 1. Enhancement of the quality of Hospital and hospital-related care provided to Tennessee citizens;
    - 2. Preservation of hospital facilities in geographical proximity to the communities

traditionally served by those facilities;

3. Gains in the cost containment and cost-efficiency of services provided by the Hospitals involved;
4. Improvements in the utilization of hospital resources and equipment;
5. Avoidance of duplication of Hospital resources;
6. Demonstration of Population health improvement of the region served according to criteria set forth in the Cooperative Agreement and approved by the Department;
7. The extent to which medically underserved populations have access to, and are projected to utilize, the proposed services; and
8. Any other benefits that may be identified.

(b) Disadvantages to include:

1. The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other healthcare payers to negotiate appropriate payment and service arrangements with Hospitals, physicians, allied healthcare professionals or other healthcare providers;
2. The extent of any reduction in competition among physicians, allied health professionals, other healthcare providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the Cooperative Agreement;
3. The extent of any likely adverse impact on (i) patients in the quality and availability of healthcare services and (ii) patients and payers in the price of healthcare services; and
4. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the Cooperative Agreement.

(3) Ongoing Supervision through the use of an Index tracking demonstration of Public Advantage.

(a) An Index will be created and used by the Department to evaluate the proposed and continuing Public Advantage of the COPA.

(b) The Index will include measures of the cognizable benefits in the following categories:

1. population health;
2. access to health services;
3. economic; and
4. other cognizable benefits.

(c) Each category may be comprised of Measures for subcategories of the Index which shall be recommended separately by the Advisory Group and the parties to the Cooperative Agreement for the COPA. The Department retains exclusive authority to add to, modify, or to accept or reject recommendations when creating the Index.

(d) The Department shall establish a baseline score at the outset of the Index composition to allow for the future demonstration of a Public Advantage. Subsequently, established ranges for the score should demonstrate whether:

1. The advantage is clear and convincing, in which event the COPA will continue in effect,
2. The advantage is not clear and convincing in which event a modification to the Cooperative Agreement under the terms of certification will be necessary,
3. The advantage is not evident, in which event COPA will be terminated in accordance with 1200-38-01-.07.

(e) Advisory Group

1. Recommendations. The Advisory Group shall recommend to the Commissioner Measures to be considered for inclusion in an Index to objectively track the Public Advantage of a Cooperative Agreement.
2. Meetings. The Advisory Group shall hold at least four (4) meetings with stakeholders to obtain community input and comment, with guidance from the Department.
  - (i) All meetings shall be open in accordance with T.C.A. §§ 8-44-101 through 8-44-111.
  - (ii) One (1) meeting shall provide for comment from internal stakeholders, such as persons employed by, or agents, of the parties to the Cooperative Agreement, affiliates, contractors or vendors, staff clinicians and other persons deriving income from their activities with any of the parties to the Cooperative Agreement.
  - (iii) One (1) meeting shall provide for comment from external stakeholders, such as competing health care providers, non-staff clinicians, payers including self-insured employers, governmental agencies, and non-governmental agencies, and other parties who derive income from health or health care services or are who are not employed or affiliated with and do not derive income from the parties to the Cooperative Agreement.
  - (iv) One (1) meeting shall provide for comment from other members of the community not represented in the internal or external stakeholder groups, including, current or potential patients, customers or other entities who are not affiliated, competing, or otherwise contracting with the parties to the Cooperative Agreement.
  - (v) The final meeting shall be open to all persons expressing an interest in the Cooperative Agreement and shall be held following the completion of the Advisory Group's recommendation of Measures to be considered for inclusion in the Index.
  - (vi) The Advisory Group, in consultation with, and with the approval of, the Department, may elect to alter the number and composition of the meetings previously described.
  - (vii) The Department may provide guidance to the Advisory Group.
3. Completion of Duties.
  - (i) The Advisory Group's service shall conclude when the Department receives the Advisory Group's recommendation of Measures proposed for inclusion in the Index.
  - (ii) The Commissioner shall have the authority to reconvene the Advisory Group if necessary.

- (4) Additional conditions of reporting and operations determined by the Department to demonstrate Public Advantage.

Authority: T.C.A. §§ 68-11-1303 and 68-11-1307.

1200-38-01-.04 Notice and Hearing.

- (1) Prior to acting on an Application for a Certificate, the Department shall hold at least one (1) public hearing which will afford the right to any interested parties to express their views regarding an Application, and may gather additional feedback through other means from the community as needed.
- (2) The Department shall give notice of the completed Application to interested parties by publishing a notice in the Tennessee administrative register in accordance with the Uniform Administrative Procedures Act, compiled in T.C.A., title 4, chapter 5. The notice shall include a brief summary of the requested action, how to access the Application and information concerning the time and place of the public hearing. The notice shall be published at least forty-five (45) days prior to the date set for the public hearing and shall be deemed given five (5) business days from the date notice was transmitted to the secretary of state for publication.

Authority: T.C.A. § 68-11-1303.

1200-38-01-.05 Issuance and Maintenance of COPA.

- (1) After consultation with and agreement from the Attorney General, the Department shall issue a Certificate for a Cooperative Agreement if it determines the Applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the Cooperative Agreement outweigh any disadvantages attributable to a reduction in competition that may result from the Cooperative Agreement.
- (2) The Department shall grant or deny the Application within one hundred twenty (120) days after the date of filing of the Application. An Application shall not be deemed filed until the Application is complete. The Department shall act promptly to determine whether the Application is complete and may request additional documents or information from the Applicants necessary to make the Application complete. The Department's decision whether the Application should be granted or denied shall be in writing and shall set forth the basis for the decision. The Department shall furnish a copy of the decision to the Applicants, the Attorney General and any Intervenor. Prior to granting the COPA, the parties and the Department will agree upon terms of certification and specific conditions that assure Public Advantage.
- (3) The Department shall maintain on file all effective COPAs.

Authority: T.C.A. § 68-11-1303 and 68-11-1.

1200-38-01-.06 Active Supervision by Terms of Certification.

- (1) The Department shall maintain active supervision in accordance with the terms of certification described in 1200-38-01-.03. The Department shall not be bound by measures, indices or other conditions found outside of the COPA.
- (2) Periodic Reports. The Department shall maintain active supervision in addition to requesting COPA holders to submit periodic reports to the Department in a format determined by the Department. The periodic reports shall be filed with the Department on January 1 and July 1 (or the following business day) each year. The reports shall include the name, address, telephone number and other contact information for the party responsible for completing future reports, who may be contacted by the Department to monitor the implementation of the Cooperative Agreement.
- (3) Update Plan of Separation. The parties to the Cooperative Agreement shall update the parties' Plan of Separation annually and submit the updated Plan of Separation to the Department. The parties shall provide an independent opinion from a qualified organization which states the Plan of Separation may be operationally implemented without undue disruption to essential health services provided by the parties.
- (4) Modification of Index. The Department retains the right to modify any Measure, Index or condition under the COPA at any time.

- (5) The Department shall conduct a public hearing in the geographic service area where a COPA is in effect at least once every three (3) years.
- (6) Departmental Review. At least annually, the Department shall review such documents necessary to determine compliance with the terms of the COPA and calculate the Index. In addition to any required documents, the parties shall provide the Department with the most recent verifiable values available for those Measures that are included in the Index (except any Measures or factors which the Department itself regularly generates, receives or holds). The Department reserves the right to request supplemental information when needed, as determined by the Department.
- (7) Parties to the Cooperative Agreement must timely pay all applicable fees and invoices for initiation and maintenance of the COPA.
- (8) The Department shall make public its determinations of compliance, and the Index score and trends.
- (9) Failure to meet any of the terms of the COPA shall result in termination or modification of the COPA.

Authority: T.C.A. § 68-11-1303.

#### 1200-38-01-.07 Modification/Termination.

- (1) If the Department determines that the benefits no longer outweigh the disadvantages by clear and convincing evidence, the Department may first seek modification of the Cooperative Agreement with the consent of the parties.
- (2) If modification is not obtained, the Department may terminate the COPA by written notice to the Certificate Holder and the Certificate Holder may appeal in the same manner as if the COPA were denied.
- (3) The COPA shall remain in effect until such time as the Certificate Holder has submitted, the Department has approved, and the Certificate Holder has completed, the Plan of Separation.
- (4) Voluntary Termination. The Certificate Holder shall notify the Department at least forty-five (45) days prior to voluntary termination of the Cooperative Agreement.

Authority: T.C.A. §§ 68-11-1303 and 68-11-1306.

#### 1200-38-01-.08 Hearing and Appeals.

- (1) Applicant or Certificate Holder. Any Applicant or Certificate Holder aggrieved by a decision of the Department denying an Application, refusing to act on an Application or terminating a Certificate is entitled to judicial review of the Department's decision by the Chancery Court of Davidson County, as specified in T.C.A. 68-11-1303.
- (2) Intervenor. An Intervenor aggrieved by a decision of the Department to grant or deny the Application shall have the right to appeal the Department's decision, except that there shall be no stay of the Department's decision granting an Application unless the Chancery Court of Davidson County shall have issued a stay of the Department's decision in accordance with § 68-11-1304, which shall be accompanied by an appeal bond from the Intervenor. If the Intervenor shall appeal the Department's decision and the appeal is unsuccessful, the Intervenor shall be responsible for the costs of the appeal and attorneys' fees of the Applicants.

Authority: T.C.A. § 68-11-1303.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

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

Date: July 14, 2015

Signature: Malaka Watson

Name of Officer: Malaka Watson

Assistant General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 7/14/2015

Notary Public Signature: Lunenia Harrison

My commission expires on: September 10, 2018

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.

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
7/14/2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 7/14/15

Effective for: 180 \*days

Effective through: 1/10/16

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

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

DEPARTMENT: Tennessee Wildlife Resources Agency

DIVISION: Biodiversity

SUBJECT: Invasive Species

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-1-206

EFFECTIVE DATES: October 22, 2015 through June 30, 2016

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule amendment adds invasive species, specifically the African clawed frog and the marbled crayfish, to the list of public prohibited species.

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.

RULE: 1660-01-18-.03

New \_\_\_\_\_  
Amendment   **X**    
Repeal \_\_\_\_\_

---

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

### **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, and/or directly benefit from the proposed rule; The Commission does not anticipate significant impacts to small businesses in Tennessee. The rule amendment limits public possession of invasive species only.

(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; The Commission anticipates no record keeping associated with this rule.

(3) A statement of the probable effect on impacted small businesses and consumers; The Commission anticipates no probable effect to small businesses and customers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business; The commission is unaware of any alternatives to the proposed rule amendment.

(5) A comparison of the proposed rule with any federal or state counterparts; and The Commission is unaware of federal or state counterparts to this rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule. The Commission anticipates no probable effect to small businesses and exemptions to this rule would not be beneficial.

### **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)

Will passage of this rule have a projected financial impact on local governments?

The Commission is unaware of any projected impacts to local governments.

Please describe the increase in expenditures or decrease in revenues:

No increases or decreases in revenues are anticipated as a result of this rule change.

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**For Department of State Use Only**

Sequence Number: 07-18-15  
 Rule ID(s): 5989  
 File Date: 07/24/15  
 Effective Date: 10/22/15

## Rulemaking Hearing Rules(s) Filing Form

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

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

**Agency/Board/Commission:** Tennessee Wildlife Resources Agency  
**Division:** Biodiversity  
**Contact Person:** Lisa Crawford  
**Address:** P O Box 40747, Nashville, TN  
**Zip:** 37204  
**Phone:** 615-781-6606  
**Email:** Lisa.Crawford@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
1660-01-18	Rules and Regulations of Live Wildlife
Rule Number	Rule Title
1660-01-18-.03	Classes of Wildlife

### Amendment

1660-01-18-.03, Classes of Wildlife, Paragraph (4), is amended by deleting the language in the paragraph in its entirety and substituting the following language to read as follows:

#### **1660-01-18-.03 CLASSES OF WILDLIFE.**

- (1) The following species or groups of wildlife are added to the existing listing designated by legislation as Class I:
  - (a) Hybrids resulting from the cross of two Class I species shall be considered Class I.
- (2) Native species of wildlife are considered to be Class II unless specifically designated otherwise by *T.C.A. §70-4-403* or rules and regulations authorized therein.
- (3) The following species or groups of wildlife are added to the existing listing designated by legislation as Class III:
  - (a) All waterfowl species except those defined in Part I, Title 50, of the U. S. Code of Federal regulations as North American migratory game birds.
  - (b) Ostriches, cassowaries, calmans, and gavials.
- (4) The following species or groups of wildlife are added to the group of animals designated by legislation as Class V:
  - (a) Nandaya or Black-Hooded parakeets (*Nandayus nenday*)
  - (b) Quaker or Monk parakeets (*Myiopsitta monachus*)
  - (c) African clawed frog- (*Xenopus lacvis*)
  - (d) All non-native freshwater aquatic life except the following:
    1. Goldfish
    2. Triploid grass carp
    3. Salmon – all species
    4. Species approved for fish farming
    5. Fish, crustaceans, and mollusks held in aquaria. This exception does not apply to the following species which shall be regarded as Class V:
      - (i) Zebra mussels (*Dreissena polymorpha*)
      - (ii) Black Carp (*Mylopharyngodon piceus*)
      - (Hi) Blueback Herring (*Alosa aestivalis*)
      - (iv) Ruffe (*Gymnocephalus cernua*)
      - (v) Bighead carp (*Aristichthys nobilis*)
      - (vi) Silver carp (*Hypophthalmichthys molitrix*)

- (vii) Snakeheads (all members of the Family *Channidae*)
- (viii) New Zealand mud snail (*Potamopyrgus antipodarum*)
- (viv) Round goby (*Neogobius melanostomus*)
- (x) Rudd (*Scardinius erythrophthalmus*)
- (xi) Swamp eels (all members of the Family *Synbranchidae*)
- (xii) Marbled crayfish (Marmorkreb) (*Procambarus fallax f. virginalis*)

\* 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
Jeff McMillin	✓			
Chad Baker	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeff W. Cook, M.D.				✓
Connie King	✓			
Kurt Holbert	✓			
Jim Ripley	✓			
Bill Swan	✓			
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 06/26/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/22/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 06/26/2015

Date: 6/26/15

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 6-26-15

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19



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  
7/16/2015  
 Date

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Filed with the Department of State on: 07/24/15

Effective on: 10/22/15

*Tre Hargett*

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Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Commerce and Insurance
<u>DIVISION:</u>	Real Estate Appraiser Commission
<u>SUBJECT:</u>	Appraiser Practice: Registration, Licensure, Certification, and Education
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 32-39-102 and 62-39-203
<u>EFFECTIVE DATES:</u>	October 18, 2015, through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The proposed rule regarding fingerprinting for initial registration, licensure, or certification must be enacted by January 1, 2015, in order to ensure compliance with federal regulations developed by the Appraisal Qualifications Board (AQB). In addition, the Tennessee Real Estate Appraiser Commission is required to implement appraiser licensing and certification requirements that are no less stringent than those issued by the AQB. Under the provision of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the AQB has established the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification. These criteria will become effective on January 1, 2015. This rulemaking was presented to the Tennessee Real Estate Appraiser Commission for approval at its January 12, 2015, Commission meeting and was approved.</p> <p>The proposed rules require fingerprinting for all new applicants for registration, license, or certification, for the purpose of obtaining a criminal background check pursuant to Tennessee Code Annotated, Section 62-39-102. In addition, the proposed rules require applicants applying for a state certified residential appraiser certification to have at least a bachelor's degree or higher. The rules currently require an associate's degree for certification. These education changes are necessary to maintain the Commission's compliance with the most recent appraiser qualifications issued by the AQB. The proposed rules add language regarding foreign education, which will be evaluated for equivalency for applicants applying for a state certified residential appraiser certification.</p>

The proposed rules require that all applicants applying for a general certification obtain a bachelor's degree. The current rule allows for an individual to apply without a bachelor's degree so long as they have thirty (30) hours of courses in certain topics; however, this is no longer consistent with AQB requirements. The proposed rules add language to make requirements for a reciprocal license clearer.

## 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.

### Rule 1255-01-.02: Definitions

**Comment** as to 1255-01-.02(9): Chip Baine; Please clarify what is meant by “good standing”. In reference to reciprocal license or temporary practice permits, whether good standing comes into play from a practicing appraiser who is actually licensed in another state.

**Response:** The proposed rule, as drafted, would still allow for the issuance of letters of good standing. The AQB requirement is the restriction. How the Board will impose discipline will be something the Board will have to determine moving forward. Even if an appraiser is fined, and they agree to this, they are in good standing, according to this definition. This definition encompasses revocation, suspension, or a downgrade in licensing, i.e., something that does restrict an appraiser’s practice. If an appraiser is given a disciplinary action such as taking additional courses or a civil penalty, they are still in good standing. They would not be an appraiser in good standing if they have a suspension, revocation, downgrade, or inability to supervise. Anything aside from that would not prohibit you from being in good standing.

### Rule 1255-01-.12: Registered Trainee

Comment as to 1255-01 12(5): Policy Managers: The “examination” section contains an error. Sections (b), (c), and (d) should be removed because the trainees cannot take the examination before their experience is completed. Section (e) should say their application for “license or certificate,” not “registration”.

Response: The revision would be under Rule 1255-01 -.12, Section (5) to strike items (b), (c), and (d) and amend Section (e) by striking the term “registration” on Line 2 and substituting “license or certificate”. These changes were made by the Board to reflect the comment made by the Policy Managers.

### Rule 1255-01-.04: Course Guidelines

**Comment** as to 1255-02-.04(3)(a): Todd Flanders, Steven Galyon, Weston Woodford, Steven Goodpaster, Mari Carlson, Rex Garrison, Todd Rogers, William Wilson, Donald White, Bob Abbott, George Long, Eric Trotz, Rand Bouldin, Sandy Akridge, Fred Metz, Randy Button: All of these individuals had similar comments expressing concern over the proposed rule to allow 100 percent online education for both qualifying and continuing education. They expressed there is no substitute for the student/teacher interaction. If this interaction is taken away, they feel the future students will not be exposed to the wealth of real world knowledge possessed by the AI instructors. They urge the Board not to approve this 100 percent online education.

**Response:** The Commission agreed with the comments and took necessary steps to deny the changes to the proposed rules based on those comments. The Commission also made the necessary changes to the other sections of that rule to ensure consistency, based on the public comments.

### **Regulatory Flexibility Addendum**

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

#### **~~Regulatory Flexibility Analysis—Methods of Reducing Impact of Rules on Small Businesses:~~**

##### ~~1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:~~

~~The Appraisal Subcommittee (ASC) monitors the requirements established by the States for the certification and licensing of appraisers. The proposed rules articulate the standards developed by the Appraisal Qualifications Board, so while there is no overlap, the rules pertaining to upgrade and foreign education are duplicitous. The rules should act in concert with the federal regulation to clarify the education requirements for Tennessee appraisers.~~

##### ~~2. Clarity, conciseness, and lack of ambiguity in the rules:~~

~~The rules are clear in purpose and intended execution. The rules are not open to different interpretations.~~

##### ~~3. Flexible compliance and/or reporting requirements for small businesses:~~

~~These rules do not impose any additional reporting requirements on small businesses~~

##### ~~4. Friendly schedules or deadlines for compliance and/or reporting requirements:~~

~~Deadlines for compliance and/or reporting are the same as exist currently.~~

##### ~~5. Consolidation or simplification of compliance or reporting requirements:~~

~~Compliance and reporting requirements are simple and are no more complex than those currently existing~~

##### ~~6. Performance standards for small businesses:~~

~~The performance standard for small businesses is the same as those operating larger businesses, since the law and rules apply equally to all individual real estate appraisers.~~

##### ~~7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:~~

~~There are no known barriers stifling entrepreneurial activity, curbing innovation or increasing cost:~~

## Economic Impact Statement:

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

These rules primarily affect new applicants for registration, licensure, or certification from the Tennessee Real Estate Appraiser Commission, ~~however, to the extent that this rule affects appraisers through setting out allowed continuing education.~~ There are approximately 2,109 registered trainees, certified appraisers, and licensed appraisers currently in Tennessee. These rules set out general compliance guidelines and are not expected to create any additional costs other than a minimal fee associated with obtaining fingerprints prior to registration. All new registrants, licensees, and certified appraisers must obtain a background check. Current registrants, licensees, and certified appraisers are exempt from this requirement by statute. Further, new applicants that are either certain military personnel or the spouse of certain military personnel will benefit from this rule.

- (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;

The only administrative cost expected to be associated with these rules is the obtaining of fingerprints. Applicants do not need to generate this report themselves as it will be provided by the company providing the fingerprinting services. As such there are no professional skills associated with that report.

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

These rules will allow appraiser applicants that are certain military personnel or the spouse of certain military personnel to more quickly obtain licensure or certification in Tennessee. Fingerprinting new applicants should benefit consumers by providing greater protection against application fraud. Further, small businesses will be better protected through the background checking of those going through the application process.

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

It is believed that these rules are the least burdensome, intrusive, and costly methods to achieve the purpose and objectives of this rule.

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

Many of these rules are required by the Appraisal Qualifications Board, which is a federally mandated entity that regulates appraisers. As such, the fingerprinting rule is required to meet the standards set out in Title 44XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and it follows the statutory requirement in Tennessee. ~~As a regulation,~~ Appraisers are federally mandated and it is expected that the regulation in Tennessee is similar to that in other states.

The Appraisal Subcommittee (ASC) monitors the requirements established by the States for the certification and licensing of appraisers. The proposed rules articulate the standards developed by the Appraisal Qualifications Board, so while there is no overlap, the rules pertaining to upgrade and foreign education are duplicitous. The rules should act in concert with the federal regulation to clarify the education requirements for Tennessee appraisers.

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

It is not believed that these rules create any additional reporting, recordkeeping, and other administrative costs ~~required to comply with the proposed rule~~ aside from the cost of fingerprinting, ~~and such.~~ It is not expected that the exemption of small businesses from all or part of these rules will benefit small businesses and would instead result in less protection for the public ~~or~~ and less uniformity throughout the state.

### **Impact on Local Governments**

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

These rules do not have a negative impact on local government.

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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 (Tenn. Code Ann. § 4-5-205).*

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

**Agency/Board/Commission:** Department of Commerce and Insurance  
**Division:** Tennessee Real Estate Appraiser Commission  
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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
1255-01	General Provisions
Rule Number	Rule Title
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1255-04-01	Continuing Education Requirements
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1255-06	Reciprocity
Rule Number	Rule Title
1255-06-01	Reciprocal Agreements
1255-06-03	Expedited Licensure for Certain Military Personnel and Spouses

Rules  
Of  
Tennessee Real Estate Appraiser Commission

Chapter 1255-01  
General Provisions

Amendments

Rule 1255-01-.02 Definitions is amended by adding a new paragraph (9) which shall read as follows:

1255-01-.02 Definitions.

- (9) "Good Standing" means a person has not been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the appraiser's legal eligibility to engage in appraisal practice. An appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.

Authority: T.C.A. §§ 62-39-203 and 62-39-333.

Rule 1255-01-.03 is amended by deleting the text of the rule in its entirety and replacing it with the following language so that, as amended, the rule shall read:

1255-01-.03 Restrictions on Appraiser Practice.

- (1) An appraiser shall be required to comply with the transaction limits set forth in Tennessee Code Annotated, Title 62, Chapter 39. Violation of these limits shall be grounds for disciplinary action.
- (2) For the purposes of this rule, "transaction value" means:
  - (a) For loans or other extensions of credit, the amount of the loan or extension of credit;
  - (b) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and
  - (c) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.
  - (d) For condemnation appraisals the value will be the total market value of the property before any acquisition of property occurs.
  - (e) For non-federally related transaction appraisals, transaction value shall mean market value.
    1. The classification includes the appraisal of vacant or unimproved land that is utilized for one-to-four residential units, or for which the highest and best use is for one-to-four residential units.
    2. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

- (3) No language in any Commission rule shall authorize an appraiser to appraise any property that would cause the appraiser to violate the competency provision of the edition of the Uniform Standards of Professional Appraisal Practice effective when the work was performed.

Authority: T.C.A. §§ 62-39-203, 62-39-302, and 62-39-333.

Rule 1255-01-.04 Application for Appraiser License or Certificate is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.04 Application for Appraiser License or Certificate.

- (1) All new applicants for a real property appraiser credential who are not currently licensed or certified and in good standing in another jurisdiction must undergo a State and national background check. Applicants shall submit fingerprints of the individual applying for the credential, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation and/or any governmental agency or entity authorized to perform such background checks.
- ~~(1)(2)~~ A person who wishes to file an application for a real estate appraiser trainee registration, license or certificate may obtain the required form upon request to the Commission.
- (3) At the time of filing an application for trainee registration, licensure, or certification, each applicant shall sign a pledge to comply with the standards set forth in the Act and the Commission's rules and state that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against a registered trainee, or a state licensed or certified appraiser, as set forth in the Act.
- (4) Each applicant shall complete all application and examination requirements within one (1) year of the date the Commission grants approval for the applicant to take the required examination. An applicant may not take the required examination more than four (4) times within the one (1) year period following approval; thereafter, an applicant wishing to take the required examination shall reapply and submit a new application fee. The Commission may grant exceptions to the requirements set forth in this paragraph upon appropriate individual request.
- (5) Any person may apply for upgrade of an unexpired license or certificate by filing an application for the same on a form which may be obtained from the Commission. The appropriate application fee must be filed with the application.
- (6) Filing and Fees. Properly completed applications must be accompanied by the appropriate fees. Once the application has been filed and processed, the application fee may not be refunded. The following fees shall be charged:
  - (a) Application for initial real estate appraiser license .....\$125.00
  - (b) Application for initial real estate appraiser certificate .....\$125.00
  - (c) License or certificate issuance fee .....\$350.00
  - (d) Application for upgrade.....\$125.00
  - (e) Letter of good standing .....\$25.00
  - (f) Application for temporary authorization..... \$31.25 per three six (6) month increment
  - (g) Temporary authorization issuance fee..... \$31.25 per three six (6) month increment
- (7) Payment of application fees shall be made by certified check, bank check, or money order made payable to the State of Tennessee.

Rule 1255-01-.05 Qualifications for State Licensed Appraiser is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.05 Qualifications for State Licensed Appraiser.

(1) An applicant for a state licensed real estate appraiser license who has satisfied the prerequisites for certification provided in rule 1255-01-.07 or rule 1255-01-.08 will also satisfy the requirements of this rule. All other applicants for a state licensed real estate appraiser license shall first register as a registered trainee with the Commission and complete the training requirements established in rule 1255-01-.12. An applicant shall then satisfy all of the following education, experience, and examination requirements:

(a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for licensure as a state licensed real estate appraiser:

~~1. High school diploma or its equivalent. (An applicant who has not obtained a high school diploma or its equivalent may apply and have his or her educational background reviewed on an individual basis).~~

1. Applicants for the licensed Residential credential shall successfully complete thirty (30) semester hours of college-level education from an accredited college, junior college, community college, or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-level Examination Program® (CLEP) and examination(s) and issues a transcript for the exam showing its approval, it will be considered as credit for the college course.

2. Applicants holding an Associate degree, or higher, from an accredited college, junior college, community college, or university satisfy the thirty (30) hour college-level education requirement.

3. Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state licensed appraiser examination:

1. One hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal (hereinafter, "qualifying education requirement") which shall include:

- (i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;
  - (l) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
  - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles;
  - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;
  - (iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use;
  - (v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach;
  - (vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches; and
  - (vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies.
2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
  3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and the individual successfully completes an examination pertinent to that educational offering.
  4. An applicant may obtain credit for the qualifying education requirement from any of the following educational providers:
    - (i) colleges or universities;
    - (ii) community or junior colleges;
    - (iii) real estate appraisal or real estate related organizations;
    - (iv) state or federal agencies or commissions;
    - (v) proprietary schools;
    - (vi) other providers approved by the Commission; and
    - (vii) The Appraisal Foundation or its Boards.
  5. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of qualifying educational requirements.
  6. In the event of a denial, an applicant for licensure may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of

the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for licensure is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tenn. Code Ann. T.C.A., Title 4, Chapter 5), and the applicant may then reapply for licensure.

- (c) Experience. An applicant shall satisfy the following experience requirements as a prerequisite for licensure as a state licensed real estate appraiser:
1. An applicant shall complete a minimum of two thousand (2,000) hours of appraisal experience over a period of at least twenty-four (24) months preceding the date of the application to the Commission. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. An applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~
  2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
    - (i) A minimum of twenty-four (24) months of experience as a licensed or certified real estate appraiser in another state, territory, or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules established by the Commission.
  3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period that the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:
    - (i) type of property;<sub>i</sub>
    - (ii) date of report;<sub>i</sub>
    - (iii) address of appraised property;<sub>i</sub>
    - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;<sub>i</sub>
    - (v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;<sub>i</sub>
    - (vi) client name and address;<sub>i</sub> and
    - (vii) signature and State certification number of the supervising appraiser, if applicable.

4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
  5. There is no minimum number of hours that must be obtained in any one (1) twelve (12)-month period.
- (d) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Licensed Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.
  - (e) ~~If, after passing the licensure examination, a registered trainee fails to meet any other requirements for licensure prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for licensure and retake the examination.~~
  - (f)(e) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for licensure. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
  - (g) ~~An applicant may complete the education, experience and/or the examination requirements for licensure before January 1, 2008 in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirements for licensure before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
1. ~~An applicant completing the education segment of the qualification criteria prior to January 1, 2008 will be required to complete ninety (90) hours of qualifying education, which shall include:~~
    - (i) ~~Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.~~
    - (i) ~~The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~
    - (ii) ~~Successful completion of a thirty (30) hour course in Appraisal Principles, and~~
    - (iii) ~~Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~
    - (iv) ~~The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-303, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.07 Qualifications for State Certified Residential Appraisers is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.07 Qualifications for State Certified Residential Appraisers.

- (1) An applicant applying for a state certified residential real estate appraiser certification shall first register as a real estate appraiser trainee, or be a licensed or certified general real estate appraiser. The applicant shall then satisfy all of the following education, experience, and examination requirements:
  - (a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for certification as a state certified residential real estate appraiser:
    1. Associate Bachelor's degree or higher, ~~or in lieu of a degree, a minimum of twenty-one (21) college semester hours in all specified coursework as follows:~~
      - (i) ~~English composition,~~
      - (ii) ~~principles of economics (micro or macro),~~
      - (iii) ~~computers word processing/spreadsheets,~~
      - (iv) ~~finance,~~
      - (v) ~~business or real estate law,~~
      - (vi) ~~algebra, geometry, or higher mathematics, and~~
      - (vii) ~~statistics.~~
  - (b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified residential appraiser examination:
    1. Two hundred (200) classroom hours of courses in subjects related to real estate appraisal (hereinafter "qualifying education requirement"). These modules shall include:
      - (i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;
      - (l) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
      - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles;
      - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;

- (iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use;
  - (v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach;
  - (vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches;
  - (vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies;
  - (viii) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;
  - (ix) Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and
  - (x) Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.
2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
  3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and an applicant successfully completes an examination pertinent to that educational offering.
  4. An applicant may obtain credit for the qualifying education requirement from any of the following:
    - (i) colleges or universities;
    - (ii) community or junior colleges;
    - (iii) real estate appraisal or real estate related organizations;
    - (iv) state or federal agencies or commissions;
    - (v) proprietary schools;
    - (vi) other providers approved by the Commission; and
    - (vii) The Appraisal Foundation or its Boards.
  5. The qualifying education requirement may include the one hundred fifty (150) hour qualifying education requirement for the state licensed real estate appraiser classification.
  6. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of the qualifying education requirements.
  7. In the event of a denial, an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tenn. Code

Ann.T.C.A., Title 4, Chapter 5) and the applicant may then reapply for certification.

(c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified residential appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree-granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES), or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(e)(d) Experience. An applicant shall satisfy the following experience requirements as a prerequisite for certification as a state certified residential real estate appraiser:

1. An applicant shall complete a minimum of two thousand five hundred (2,500) hours of appraisal experience over a period of at least twenty-four (24) months. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. A registered trainee applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~
2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
  - (i) A minimum of twenty-four (24) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.
3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission which shall include the following information:
  - (i) type of property;
  - (ii) date of report;
  - (iii) address of appraised property;
  - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
  - (v) number of actual work hours by the trainee/applicant on the assignment, ~~up to the maximum allotted by property type;~~

- (vi) client name and address; and,
  - (vii) signature and State certification number of the supervising appraiser, if applicable.
4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
  5. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.
- (d)(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified Residential Real Property Appraiser Examination. An applicant must obtain certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.
- (e) ~~If, after passing the residential certification examination, a registered trainee fails to meet all other requirements for residential certification prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for certification and retake the examination.~~
  - (f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
  - (g) ~~An applicant may complete the education, experience, and/or the examination requirements for licensure before January 1, 2008, in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirement for certification before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
1. ~~An applicant completing the education segment of the qualification criteria prior to January 1, 2008 will be required to complete one hundred twenty (120) hours of qualifying education of which shall include:~~
    - (i) ~~Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board,~~
    - (i) ~~The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~
    - (ii) ~~Successful completion of a thirty (30) hour course in Appraisal Principles, and~~

~~(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~

~~(iv) The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~

(g)(g) An applicant applying for a State Certified Residential Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Real Estate Appraiser credential by completing the following additional educational hours:

1. Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;

2. Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and

3. Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over the minimum shown above in other modules.

(h)(h) An applicant applying for a State Certified Residential Appraiser certification pursuant to subparagraph (2g) must also satisfy the college-level educational requirements as specified in 1255-01-.07(1)(a).

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-311, 62-39-312, 62-39-313, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.08 Qualifications for General Certification is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.08 Qualifications for General Certification,

(1) An applicant applying for a state certified general real estate appraiser license shall first register as a real estate appraiser trainee, or be a licensed or certified residential real estate appraiser, and complete the experience requirements established in rule 1255-01-.12 and shall then satisfy the following education, experience, and examination requirements as a prerequisite for certification:

(a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for certification as a state certified general real estate appraiser:

1. Bachelor's degree or higher, ~~or in lieu of a degree, a minimum of thirty (30) college semester hours in all specified coursework as follows:~~

~~(i) English composition,~~

~~(ii) micro-economics and macro-economics,~~

~~(iii) computers word processing/spreadsheets,~~

~~(iv) finance,~~

~~(v) business or real estate law,~~

~~(vi) algebra, geometry, or higher mathematics,~~

~~(vii) statistics, and~~

~~(viii) electives in accounting, geography, agricultural economics, business management, or real estate.~~

- (b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified general appraiser examination:
1. Three hundred (300) classroom hours of courses in subjects related to real estate appraisal. These modules shall include (hereinafter "qualifying education requirement"):
    - (i) Fifteen (15) hours of the three hundred (300) hours must include the successful completion of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;
    - (l) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
    - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles;
    - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;
    - (iv) Successful completion of a thirty (30) hour course in General Appraiser Market Analysis and Highest and Best Use;
    - (v) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;
    - (vi) Successful completion of a thirty (30) hour course in General Appraiser Sales Comparison Approach;
    - (vii) Successful completion of a thirty (30) hour course in General Appraiser Site Valuation and Cost Approach;
    - (viii) Successful completion of a sixty (60) hour course in General Appraiser Income Approach;
    - (ix) Successful completion of a thirty (30) hour course in General Appraiser Report Writing and Case Studies; and
    - (x) Successful completion of thirty (30) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.
  2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
  3. An applicant's qualifying education requirement may include the one hundred fifty (150) classroom hour requirement for the licensed real estate appraiser classification or the two hundred (200) hour requirement for the certified residential real estate appraiser classification.
  4. The Commission may grant an applicant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen

(15) hours and the applicant successfully completes an examination pertinent to that educational offering.

5. An applicant may obtain credit for the qualifying education requirement from the following:
  - (i) colleges or universities;
  - (ii) community or junior colleges;
  - (iii) real estate appraisal or real estate related organizations;
  - (iv) state or federal agencies or commissions;
  - (v) proprietary schools;
  - (vi) other providers approved by the Commission; and
  - (vii) The Appraisal Foundation or its Boards.
6. An applicant should refer to Chapter 1255-02 Evaluation of Education for further delineation of educational requirements.
7. In the event that an applicant is denied, then an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of his or her education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tennessee Code Annotated T.C.A., Title 4, Chapter 5) and the applicant may then reapply for certification.

(c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified general appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree-granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES) or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(e)(d) Experience. An applicant must satisfy the following experience requirements as a prerequisite for certification as a state certified general real estate appraiser:

1. An applicant shall complete three thousand (3,000) hours of appraisal experience over a period of at least thirty (30) months preceding the date of the applicant's application to the Commission and the Commission shall treat the hours as cumulative. A registered trainee applicant shall complete the minimum of thirty (30) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~

2. An applicant may obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
    - (i) A minimum of thirty (30) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.
  3. An applicant shall complete at least one thousand five hundred (1,500) hours of the total three thousand (3,000) hours in non-residential appraisal work. Residential means one (1) to four (4) residential units. An applicant shall ensure that his or her experience shall satisfactorily demonstrate competence in the cost, income capitalization and direct sales comparison approaches to value.
  4. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:
    - (i) type of property;
    - (ii) date of report;
    - (iii) address of appraised property;
    - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
    - (v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;
    - (vi) client name and address; and
    - (vii) signature and State certification number of the supervising appraiser, if applicable.
  5. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
  6. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.
- (d)(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified General Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.
- ~~(e) If, after passing the general certification examination, a registered trainee fails to meet any other requirements for certification prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for certification and retake the examination.~~

- (f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
- (g) ~~An applicant may complete the education, experience, and/or the examination requirements for licensure before January 1, 2008, in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirement for certification before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
- ~~1. An applicant completing the education segment of the qualification criteria prior to January 1, 2008, will be required to complete one hundred eighty (180) hours of qualifying education, which shall include:~~
- ~~(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;~~
- ~~(i) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~
- ~~(ii) Successful completion of a thirty (30) hour course in Appraisal Principles, and~~
- ~~(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~
- ~~(iv) The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~
- (g) An applicant applying for a State Certified General Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:
1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;
  2. Successful completion of a thirty (30) hour General Appraiser Site Valuation and Cost Approach course;
  3. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;
  4. Successful completion of a thirty (30) hour General Report Writing and Case Studies course;

5. Successful completion of a fifteen (15) hour Statistics, Modeling and Finance course; and
  6. Successful completion of a sixty (60) hour General Appraiser Income Approach course.
- (h) An applicant applying for a State Certified General Appraiser Certification who holds a current State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:
1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;
  2. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;
  3. Successful completion of a thirty (30) hour Site Valuation and Cost Approach course;
  4. Successful completion of a sixty (60) hour General Appraiser Income Approach course; and,
  5. Successful completion of a thirty (30) hour General Appraiser Report Writing and Case Studies course.
- (i) An applicant applying for a State Certified Residential General Appraiser certification pursuant to subparagraph (g) must also satisfy the college-level educational requirements as specified in 1255-01-.08(1)(a).

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-311, 62-39-312, 62-39-313, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.09 Denial of License or Certificate is amended by adding new subparagraphs (1) and (2), which shall read as follows, and renumbering the existing paragraphs appropriately so that, as amended, the rule shall read:

1255-01-.09 Denial of License or Certificate.

~~(1) — An applicant denied a license or certificate shall be notified in writing by the Commission of such denial and the reasons therefor. Such applicant may request an informal conference with the Commission to reconsider such denial at its next scheduled meeting. Such request must be sent to the Commission office within thirty (30) days of the date of the notice of denial.~~

~~(2) — Nothing in this rule shall be construed as creating the right to a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A. Title 4, Chapter 5) if a license or certificate is denied an applicant.~~

(1) An applicant for registration as a trainee, licensure or certification shall not possess a background that could call into question public trust. Applicants shall not be eligible for a real estate appraiser registration, license, or certification if:

(a) The applicant has had an appraiser license or certification revoked in any governmental jurisdiction within the five (5) year period immediately preceding the date of application.

(b) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, or foreign court:

1. during the five (5) year period immediately preceding the date of the application for licensing or certification; or

2. at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(c) The applicant has failed to demonstrate character and general fitness such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly, and ethically within the purposes of the Real Property Appraiser Qualification Criteria issued by the AQB.

(2) The Commission may deny an application for registration, license, or certification if the background information for the applicant includes:

(a) Conviction of any felony;

(b) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the individual or organizations controlled by the individual, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such offense(s);

(c) Civil judicial actions against the individual in connection with financial services-related activities, dismissals with settlements, or judicial findings that the individual violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement; Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(d) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

1. Found the individual to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted;

2. Are entered against the individual in connection with a financial services-related activity;

3. Denied, suspended, or revoked the individual's registration or license to engage in a financial services-related activity; disciplined the individual or otherwise by order prevented the individual from associating with a financial services-related business or restricted the individual activities; or

4. Barred the individual from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business;

(e) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct;

(f) Revocation or suspension of the individual's authorization to act as an attorney, accountant, or State or Federal contractor; and

(g) Customer-initiated financial services-related arbitration or civil action against the individual that required action, including settlements, or which resulted in a judgment; or

(h) Any false or misleading information is reported on an application submitted to the board.

~~(4)~~(3) An applicant denied a license or certificate shall be notified in writing by the Commission of such denial and the reasons therefor. Such applicant may request an informal conference with the Commission to reconsider such denial at its next scheduled meeting. Such request must be sent to the Commission office within thirty (30) days of the date of the notice of denial.

~~(2)(4)~~ Nothing in this rule shall be construed as creating the right to a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A. Title 4, Chapter 5) if a license or certificate is denied an applicant.

Authority: T.C.A. §§ 62-39-203, 62-39-204 and 62-39-333.

Rule 1255-01-.11 License and Certificate Renewal is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.11 License and Certificate Renewal.

- (1) To obtain renewal of a license or certificate, the holder of a current, valid license or certificate must make application on a form available from the Commission not earlier than one hundred twenty (120) days ~~nor later than thirty (30) days but~~ prior to the expiration of the license or certificate then held.
- (2) An application for renewal must be accompanied by the following renewal fee, plus the applicable federal registry fee:
  - (a) Renewal of real estate appraiser license . . . . . \$350.00
  - (b) Renewal of real estate appraiser certificate . . . . . \$350.00
- (3) Each application for renewal of a license or certificate shall be accompanied by sufficient evidence of having completed the continuing education requirement for renewal specified in the Act and the rules and presented in the form prescribed in Chapter 1255-4 Continuing Education.
- (4) If a license or certificate holder fails to file his or her application to renew a license or certificate with the Commission ~~before thirty (30) days~~ prior to the expiration thereof, the license or certificate holder may, upon payment of a one hundred dollar (\$100.00) penalty, apply for renewal.
- (5) No late renewal will be granted if a completed application is not received by the Commission within twelve (12) months since the expiration of the license or certificate.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206, 62-39-301, 62-39-307, 62-39-315, and 62-39-333.

Rule 1255-01-.12 Registered Trainee is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.12 Registered Trainee.

- (1) Application. An applicant for registration as a real estate appraiser trainee shall successfully complete the following requirements prior to obtaining registration:
  - (a) Obtain and complete the required application form from the Commission.
  - (b) Provide proof on the application form showing that he or she has obtained a high school diploma or its equivalent.
  - (c) Provide on the application form the name and certificate number of the certified real estate appraiser under whose direct supervision the applicant will serve.
  - (d) Provide the business address of his or her supervising appraiser and use that address as his or her business address. If an applicant has more than one (1) supervising appraiser, then the applicant shall use the business address of at least one (1) of his or her supervising appraisers.
  - (e) Complete an approved thirty (30)-hour course in Appraisal Principles, an approved thirty (30)-hour course in Practices and Procedures, and the fifteen (15)-hour National Uniform Standards of Professional Appraisal Practice Course.

- (f) On or after January 1, 2015, registered trainees shall be required to complete a seven (7) hour course that, at a minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of Supervisory Appraisers and Trainee Appraisers. The course is to be completed by the registered trainee prior to application.
- (f)(g) Submit with the application a nonrefundable application and registration fee of one hundred twenty-five dollars (\$125.00).
- (2) Upon receipt of a properly completed application form with the required aforementioned documentation and the required fee, the Commission shall review the application to determine whether to issue the applicant a real estate appraiser trainee registration certificate and number.
- (3) Education. Before registration, an applicant for trainee registration shall complete seventy-five (75) hours of courses in subjects related to real estate appraisal, which shall include, but shall not be limited to coverage of the Uniform Standards of Professional Appraisal Practice (hereinafter, "course credit"). An applicant shall complete the required course credit as a prerequisite to applying for registration as a registered trainee. All applicants shall submit evidence of completion of a minimum of an approved thirty (30)-hour course in Appraisal Principles, an approved thirty (30)-hour course in Practices and Procedures, and the fifteen (15)-hour National Uniform Standards of Professional Appraisal Practice Course. An applicant shall also ensure that his or her course credit complies with the following:
- (a) A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
- (b) An applicant may obtain course credit only where the minimum length of the education offering is fifteen (15) hours and the individual successfully completes the examination pertinent to that educational offering.
- (c) An applicant may obtain course credit from the following:
1. colleges or universities;
  2. community or junior colleges;
  3. real estate appraisal or real estate related organizations;
  4. proprietary schools; and
  5. other providers approved by the Commission.
- (d) An applicant shall obtain course credit within the five (5)-year period immediately preceding an applicant's submission of his or her application for registration as a registered trainee.
- (e) The content for courses shall include, but is not limited to, coverage of the following real estate appraisal related topics:
1. influences on real estate value;
  2. legal considerations in appraisals;
  3. types of value;
  4. economic principles;
  5. real estate markets and analysis;
  6. valuation process;

7. property description;
8. highest and best use analysis;
9. appraisal statistical concepts;
10. sales comparison approach;
11. site value;
12. cost approach;
13. income approach;
14. valuation of partial interests; and
15. appraisal standards and ethics.

(4) Experience.

- (a) There is no experience prerequisite for an applicant to become a registered trainee.
- (b) A registered trainee may have more than one (1) supervising appraiser.
- (c) A registered trainee shall be subject to direct supervision by a supervising appraiser who shall be a state certified residential real estate appraiser or a state certified general real estate appraiser in good standing.
- (d) A registered trainee shall only appraise those properties which the supervising appraiser is permitted to appraise.
- (e) If a trainee's registration has expired or the trainee is no longer under the supervision of a state certified residential or state certified general real estate appraiser, then the registered trainee shall not perform the duties as a registered trainee until he or she submits an affidavit on a form provided by the Commission which states that he or she has a supervising appraiser. The registered trainee's supervising appraiser shall sign the affidavit stating that he or she is the supervising appraiser responsible for the registered trainee.
- (f) A registered trainee shall maintain an appraisal log of his or her experience, shall maintain a separate appraisal log for each supervising appraiser, and shall, at a minimum, include the following in the appraisal log:
  1. type of property;
  2. date of report;
  3. address of appraised property;
  4. description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
  5. number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;
  6. client name and address; and
  7. signature and State certification number of the supervising appraiser.

- (g) A registered trainee may conduct property inspections alone (without being accompanied by the supervising appraiser) only after completing five hundred (500) hours of acceptable experience. In order to conduct property inspections pursuant to this paragraph, the registered trainee shall submit a form to the Commission on which both the registered trainee and the supervising appraiser shall certify the experience.
  - (h) A registered trainee shall comply with the Uniform Standards of Professional Appraisal Practice.
- (5) Examination.
- (a) There is no examination prerequisite for an applicant to become a registered trainee.
  - ~~(b) A registered trainee or applicant for registration as a registered trainee may apply to take the examination for a state licensed real estate appraiser license or a state certified residential appraiser, provided, that the applicant and/or registered trainee has completed all appropriate education requirements. An applicant for registration as a trainee and/or registered trainee may not apply to take the examination for a state certified general real estate appraiser until the trainee has completed all other requirements for general certification.~~
  - ~~(c) If a registered trainee applies to take the examination prior to application for licensure and completion of the experience interview they shall remit a nonrefundable fee of fifty dollars (\$50.00) with his or her application to take the examination for a state licensed real estate appraiser or a state certified residential real estate appraiser. A registered trainee must obtain licensure or certification within twenty four (24) months of the examination date.~~
  - ~~(d) A license or residential certificate will be issued to a registered trainee or applicant for registration as a registered trainee who passes the examination, only upon the registered trainee or applicant for registration as a registered trainee completing all requirements for licensure or residential certification. If all other requirements are not met prior to the expiration of a trainee's registration and the registered trainee fails to renew, then he or she loses credit for passing the examination.~~
  - (e)(b) Once the registered trainee has completed all of the required qualifying education and experience, then the trainee may submit his or her application for registration license or certificate. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
- (6) Renewal.
- (a) A registered trainee's registration shall expire two (2) years after the date of issuance.
  - (b) A registered trainee must renew his or her registration, at least thirty (30) days prior to its expiration, by filing the prescribed form with the Commission and paying a renewal fee of one hundred twenty-five dollars (\$125.00).
  - (c) If a registered trainee fails to file the prescribed form and pay the renewal fee within thirty (30) days prior to its expiration, the registered trainee may, upon payment of a one hundred dollar (\$100.00) late renewal penalty in addition to the renewal fee, apply for renewal. No late renewal will be granted if more than six (6) months has passed since the expiration of the registered trainee's registration. The registered trainee may then reapply to be a registered trainee.
- (7) Continuing Education.

- (a) A registered trainee who remains in the classification of registered trainee in excess of two (2) years shall be required to obtain a minimum of twenty-eight (28) classroom hours of instruction in courses, seminars, workshops, or conferences approved by the Commission, prior to the next renewal period (hereinafter, "continuing education").
- (b) As part of a registered trainee's continuing education, a registered trainee shall complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Course at least once every two (2) years as defined and required by rule 1255-04-.01(2).
- (c) A classroom hour is defined as fifty (50) minutes of actual instruction for each sixty (60) minute segment.
- (d) The Commission may grant continuing education credit only where the length of the educational offering is at least two (2) hours.
- (e) An applicant may obtain continuing education credit from the following:
  - 1. colleges or universities;
  - 2. community or junior colleges;
  - 3. real estate appraisal or real estate related organizations;
  - 4. state or federal agencies or commissions;
  - 5. proprietary schools; and
  - 6. other providers approved by the Commission.
- (f) The Commission may grant continuing education credit for educational offerings which are consistent with the purpose of continuing education stated in subparagraph (g) below and cover real estate appraisal topics such as the following:
  - 1. ad valorem taxation;
  - 2. arbitration;
  - 3. business courses related to practice of real estate appraisal;
  - 4. construction estimating;
  - 5. ethics and standards of professional practice;
  - 6. land use planning, zoning and taxation;
  - 7. management, leasing, brokerage and timesharing;
  - 8. property development;
  - 9. real estate appraisal (valuations/evaluations);
  - 10. real estate law;
  - 11. real estate litigation;
  - 12. real estate financing and investment;
  - 13. real estate appraisal related computer applications;
  - 14. real estate securities and syndication; and

15. real property exchange.

- (g) The purpose of continuing education is to ensure that a registered trainee participates in a program that maintains and increases his or her skill, knowledge, and competency in real estate appraisal.
- (8) Each registered trainee shall notify the Commission of such registered trainee's current residence and principal place of business, all mailing and other addresses at which the registered trainee is currently engaged in the business of assisting in the preparation of real estate appraisal reports, and the name of the registered trainee's supervising appraiser(s). When a registered trainee changes any of the above addresses or supervising appraiser(s), the registered trainee shall notify the Commission, in writing, of such change within thirty (30) days thereafter.
- (9) No registered trainee may represent him or herself as a licensed or certified appraiser or use the appellation "State Licensed Real Estate Appraiser," "State Certified Residential Real Estate Appraiser," "State Certified General Real Estate Appraiser," or any form thereof, or do any other act which gives or is designed to give the impression that the registered trainee is a licensed or certified real estate appraiser.
- (10) Supervising Appraisers for Registered Trainees.
- (a) ~~Prior to serving as the supervising appraiser for a registered trainee, an appraiser shall have obtained a minimum of two (2) years experience as a state certified residential or state certified general real estate appraiser. However, in the event that a licensed appraiser upgrades to a certified general or certified residential, then that appraiser may supervise a registered trainee immediately after being upgraded, provided that he or she has a minimum of five (5) years of appraiser experience. Supervisory Appraisers shall be state-certified and in "good standing" in the jurisdiction in which the Trainee Appraiser practices for a period of at least three (3) years. Supervisory Appraisers shall not have been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice. A Supervisory Appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.~~
- (b) The supervising appraiser shall sign each written appraisal report, relating to real property in this state, which was prepared by a registered trainee under the supervising appraiser's direct supervision.
- (c) A supervising appraiser shall ensure that the appraisal reports prepared by the registered trainee are prepared under the supervising appraiser's direct supervision. "Direct Supervision" of a registered trainee means that a supervising appraiser shall:
1. Accompany the registered trainee and personally inspect each subject property with the registered trainee on all assignments until the trainee has complete five hundred (500) hours of acceptable appraisal experience, and accompany the registered trainee and personally inspect each subject property with the registered trainee on all assignments that are over fifty (50) miles from the supervising appraiser's office, even after the registered trainee has accumulated over five hundred (500) hours of acceptable appraisal experience;
  2. Review the registered trainee's appraisal report(s) to ensure the registered trainee's research of general and specific data has been adequately conducted and properly reported, that the registered trainee's application of appraisal principles and methodologies has been properly applied, that the registered trainee's analysis is sound and adequately reported, and that any analyses, opinions, or conclusions of the registered trainee are adequately developed and reported so that the appraisal report is not misleading;
  3. Review the registered trainee's work product and discuss with the registered trainee any edits, corrections, or modifications that need to be made to such work product, and make such edits, corrections, or modifications as are required to such work product; and

4. Accept responsibility for the appraisal report by signing the appraisal report and ~~certify~~certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice by:
- (i) making a clear and prominent disclosure that the registered trainee has provided significant real property appraisal assistance in each appraisal report in accordance with Uniform Standards of Profession Appraisal Practice Standards Rule 2-2 and Standards Rule 2-3;
  - (ii) prohibiting the registered trainee from signing any appraisal report or other document involved in the appraisal which states or implies that said trainee is "licensed" or "certified" in any manner, and by prohibiting the registered trainee from engaging in any activity which is limited to licensed or certified appraisers, or which is designed to give third parties the impression that the registered trainee is a licensed or certified appraiser;
  - (iii) ensuring that the registered trainee gains sufficient knowledge, skills, and abilities that will enable such trainee to accomplish all of the following:
    - (I) Define the appraisal problem, which requires the trainee to:
      - I. Identify and locate the real estate;
      - II. Identify the property rights to be valued;
      - III. Identify the use of the appraisal;
      - IV. Define value(s) to be estimated;
      - V. Establish date(s) of value estimate(s);
      - VI. Identify and describe the scope of the appraisal; and
      - VII. Identify and describe limiting conditions.
    - (II) Conduct preliminary analysis, and select and collect applicable data, which requires the trainee to:
      - I. Identify general data (regional, city, and neighborhood)-social, economic, governmental and environmental factors;
      - II. Identify specific data (subject and comparables)-site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and
      - III. Identify competitive supply and demand in the subject market (inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies).
    - (III) Conduct an analysis of the subject property, which requires a trainee to analyze:
      - I. Site improvements;
      - II. Size;
      - III. Costs;
      - IV. Elements of comparison; and
      - V. Units of comparison;

- (IV) Conduct a highest and best use analysis (specified in terms of use, time, and market participants), which requires a trainee to analyze:
    - I. Land as if vacant and available; and
    - II. Property as improved (existing or proposed).
  - (V) Estimate land value, including on-site improvements.
  - (VI) Estimate value of the property using each of the three approaches to value-cost, sales comparison and income capitalization.
  - (VII) Reconcile each value indication and reconcile the final value estimate.
  - (VIII) Report estimate(s) of value(s) as defined.
- (d) A supervising appraiser may supervise a maximum of three (3) registered trainees at one time.
  - (e) A supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last. The supervising appraiser shall allow the registered trainee to have reasonable access to his or her appraisal reports that he or she prepared upon the registered trainee's request for copies of the reports.
  - (f) A supervising appraiser shall notify the board in writing if he or she is no longer the supervising appraiser for a registered trainee within thirty (30) days thereafter. If the disassociation is for cause, the cause shall be communicated to the Commission.
  - (g) On or after January 1, 2015, supervisory appraisers shall be required to complete a seven (7) hour course that, at a minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers. The course is to be completed by the supervisory appraiser prior to supervising a trainee appraiser.
  - (g)(h) In any appraisal in which a registered trainee has inspected a subject property, the supervising appraiser is also required to disclose in the appraisal report whether the supervising appraiser has inspected the subject property both inside and out, and whether the supervising appraiser has made an exterior inspection of all comparables comparable sales relied upon in the appraisal.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-316, 62-39-326, 62-39-333.

#### New Rules

Rule 1255-01-.16 Fingerprinting is added as a new rule to the Chapter and shall read as follows:

#### 1255-01-.16 Fingerprinting.

- (1) Any applicant for initial registration, licensure, or certification who is required to submit a complete and legible set of fingerprints for the purpose of obtaining a criminal background check pursuant to T.C.A. § 62-39-301 shall submit said fingerprints in an electronic format.
  - (a) An applicant for initial registration, licensure, or certification shall be deemed to have supplied the required set of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI to forward an electronic report based on that applicant's fingerprints to the Commission.
  - (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant for initial registration, licensure, or certification.

- (c) The applicant for initial registration, licensure, or certification shall make the arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.
- (d) All applicants for initial registration, licensure, or certification shall in all cases be responsible for paying application fees for registration, licensure, licensure or certification as established by the Commission in addition to any fees required to submit a complete and legible set of fingerprints pursuant to T.C.A. § 62-39-102.
- (2) In the event that an applicant for initial registration, licensure, or certification furnishes unclassifiable fingerprints or fingerprints which are unclassifiable in nature, the Commission shall refuse to issue the requested registration, license, or certification.
  - (a) For the purposes of this rule "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints cannot be read and, therefore, cannot be used to identify the person.
  - (b) Should an applicant for initial registration, licensure, or certification's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.
- (3) The provisions of this rule shall apply to any applicant applying for initial registration, licensure, or certification on or after January 1, 2015.

Authority: 2014 Pub. Chap. 621, T.C.A. §§ 62-39-102, 62-39-203, 62-39-301.

Chapter 1255-02  
Evaluation of Appraiser Education

Amendments

Rule 1255-02-.01 Educational Logging is amended by deleting the first sentence of Paragraph (2) so that, as amended, the rule shall read:

Rule 1255-02-.01 Educational Logging.

Each applicant for a license or certificate will be required to prepare an educational log.

- (1) The educational log shall provide the following information:
  - (a) Date of course;
  - (b) Name of course;
  - (c) Content of course;
  - (d) Provider;
  - (e) Total classroom hours; and
  - (f) Location of course.
- (2) ~~The log shall be certified by the applicant and authenticated by signature.~~ An applicant may be required to provide additional information on education if deemed necessary by the Commission.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-303, 62-39-312, and 62-39-333.

Rule 1255-02-.03 Course Provider Applications is amended by adding a new subparagraph (1)(g) so that, as amended, the rule shall read as follows:

Rule 1255-02-.03 Course Provider Applications.

- (1) All applicants shall obtain qualifying education credit by successfully completing courses that are approved by the Commission. The Commission shall approve qualifying education courses and course providers based on the qualifications of the providers and the content of the courses. The Commission shall consider the following providers for approval:
  - (a) colleges or universities;
  - (b) community or junior colleges;
  - (c) real estate appraisal or real estate related organizations;
  - (d) state or federal agencies or commissions;
  - (e) proprietary schools; and
  - (f) other providers approved by the Commission.
  - (g) The Appraisal Foundation or its Boards.
- (2) The Commission may approve any qualifying education courses:
  - (a) individually; or
  - (b) as a group if multiple courses are being reviewed from the same provider.
- (3) Anyone seeking approval as a real estate appraisal course provider, and any real estate appraisal course provider seeking approval of a course or courses, shall submit the following with an application provided by the Commission:
  - (a) a resume outlining the education and experience of the instructor(s) of such course(s);
  - (b) a detailed description of the content of each course and the appropriate module(s) for education credit;
  - (c) the projected schedule for the teaching of such course(s);
  - (d) notwithstanding approval prior to July 1, 1991, all providers seeking approval of courses shall submit course outlines to the Commission for approval of each course; and
  - (e) such other information as the Commission may reasonably request.

Authority: T.C.A. §§ 62-39-203, 62-39-204, and 62-39-333.

Rule 1255-02-.04 Course Guidelines is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-02-.04 Course Guidelines.

- (1) The following definitions are provided for the terms qualifying education, continuing education, distance education, and interaction.
  - (a) "Qualifying education" means education that is creditable toward the education requirements for trainee registration, or initial licensure or certification under one (1) or more of the three (3) real estate appraiser classifications (Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser, and Certified General Real Estate Appraiser).
  - (b) "Continuing education" means education that is creditable toward the education requirements that must be satisfied to renew registration as a trainee or licensure or

certification as a Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser, and Certified General Real Estate Appraiser.

(c) "Distance Education" means the educational process in which instruction does not take place in a traditional classroom setting but rather through other media or nonconventional methods in which teacher and student are separated by distance and sometimes by time and the course provides interaction.

(d) "Interaction" means a reciprocal environment where the student has verbal or written communication with the instructor.

(2) An applicant to be a course provider shall demonstrate to the satisfaction of the Commission that each traditional classroom based course submitted for approval shall:

- (a) cover subjects which are reasonably related to the practice of real estate appraisal and suitably advanced to benefit and enrich the students enrolled;
- (b) be conducted in a facility that meets the requirements of the Americans with Disabilities Act and contains adequate space, seating, and equipment;
- (c) consist of no fewer than two (2) classroom hours for continuing education and fifteen (15) hours with an examination for licensure/certification requirements; and
- (d) incorporate appropriate methods for determining whether a student has successfully completed such course. Such methods shall include, but not be limited to:
  1. provisions to make up for classes or hours missed by a student; and
  2. for qualifying education and the fifteen (15) hour course in the Uniform Standards of Professional Appraisal Practice, a minimum passing requirement of seventy percent (70%) and a comprehensive final examination (or equivalent measure of achievement).

(3) Internet Education/ Distance Education for Continuing Education.

- (a) Courses given for continuing education via internet or distance education shall make up no more than fifty percent (50%) of the total requirement for education each cycle and shall may be acceptable to meet the requirements of continuing education if:
  1. The course provides interaction.
  2. Content approval is obtained from the AQB, a state licensing jurisdiction, or an accredited college, community college, or ~~U~~university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Non-academic credit college courses provided by a college shall be approved by the AQB or the state licensing jurisdiction, ~~and~~

~~(b)~~(3) Course delivery mechanism approval is obtained from one of the following sources:

- ~~1-~~ (i) AQB approved organizations providing approval of course design and delivery;
- ~~2-~~ (ii) a college that qualifies for content approval in ~~section part~~ (a2) above that awards academic credit for the distance education course; or
- ~~3-~~ (iii) a-qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

- (4) Continuing educational requirements may be satisfied through the completion of Commission approved distance educational offerings.
- (a) Persons or entities seeking Commission approval for a distance educational offering shall submit an outline and description of the entire course and provide documentation which demonstrates the course complies with the following criteria:
1. The educational offering is either:
    - (i) presented by an approved or accredited college, community or junior college, or university that offers distance educational programs and credit in other disciplines; or
    - (ii) The educational offering is presented by a proprietary school that has been approved by the Tennessee Real Estate Appraiser Commission the course design and delivery mechanism has been approved by the International Distance Education Certification Center (IDECC) and the Appraisal Qualifications Board.
  2. That the course teaches to the mastery of the subject and at a minimum meets the following criteria:
    - (i) Divides the material into major units as approved by the board;
    - (ii) Divides each of the major units of content into modules of instruction for delivery on a computer or other approved interactive audio or audio visual programs;
    - (iii) Divides the learning objectives for each module of instructions.
    - (iv) Specifies an objective, quantitative criterion for mastery used for each learning objective;
    - (v) Provides a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction;
    - (vi) Requires the student to demonstrate mastery of all material covered by the learning objectives for the module before the module is completed;
    - (vii) That the course offering is designed in such a way that the material is presented under an approved instructor who shall be available to answer student questions or provide assistance on a timely basis as necessary;
    - (viii) The instructor will provide reasonable oversight of a student's work to ensure that the student who completes the work is the student who enrolled in the course; and
    - (ix) The course provider must provide documentation of an acceptable method that ensures that the student achieves the classroom hourly equivalent as approved by the Commission. Any form of delivery that provides the student the opportunity to circumvent instructional design strategies that require them to read the material and spend the appropriate amount of time in the course will not be approved;
- (5) Approval by the Commission of any continuing or qualification education course shall be valid for a period of two (2) years. However, notwithstanding previous approval by the Commission, any course that has had a substantive change in course content shall be considered a new course and shall be approved by the Commission prior to presenting.
- (a) Approval of any continuing or qualifying education course may be extended by the Commission for an additional two years upon written request by the provider.

- ~~(b) Failure to timely request an extension prior to the expiration of the Commission's approval shall result in automatic termination of the educational offering's approval status.~~
- ~~(6) The Commission may, at any time, audit any offering that has been approved for qualifying or continuing education by the Commission to ensure compliance with all requirements of the laws and rules governing such education. Any provider of continuing or qualifying education shall provide any requested documentation regarding a continuing or qualifying education course within ten (10) days of a request by the Commission.~~
- ~~(4)(7) Each hour of course instruction shall consist of fifty (50) minutes of actual instruction for every sixty (60) minute segment.~~
- ~~(5) Attendance. For distance education seminars where classroom attendance cannot be proctored by an on-site official approved by the presenting entity, the provider shall have a method acceptable to the Commission for ensuring student achievement of the course-hour equivalent.~~
- ~~(6)(8) The courses listed in rules 1255-2-.05 and 1255-2-.06 are additions to those outlined in other sections and those lists of courses supplement those courses identified in other rules.~~

Authority: T.C.A. §§ 62-39-203, 62-39-204, and 62-39-333.

Rule 1255-02-.13 Fees is amended by replacing the phrase "three (3)" as it appears in subparagraph (3)(c) with the phrase "six (6)" so that, as amended, the rule shall read:

1255-02-.13 Fees.

- (1) The required fee from a course provider for approval of courses fifteen (15) hours or longer shall be two hundred dollars (\$200.00) for each course. Once the application has been filed and processed, the application fee may not be refunded.
- (2) The required fee from a course provider for approval of courses less than fifteen (15) hours shall be one hundred dollars (\$100.00) for each course. Once the application has been filed and processed, the application fee may not be refunded.
- (3) Course approval shall be valid for a two year (2)-year period from the date of approval and shall be renewed biennially thereafter.
  - (a) The provider of an approved course who wishes to renew such approval shall submit an application, on a form approved by the Commission, along with a renewal fee of two hundred dollars (\$200.00) for each course fifteen (15) hours and over or one hundred dollars (\$100.00) for each course less than fifteen (15) hours, within thirty (30) days prior to the approval's expiration.
  - (b) In order to renew course approval and in addition to the payment of the appropriate fee, the provider shall also submit with the application a notarized statement certifying that the provider has not significantly changed the content of the course since its original approval.
  - (c) If a provider fails to renew course approval within thirty (30) days or the approval's expiration date, the provider may, upon payment of a fifty dollar (\$50.00) penalty, apply for a late renewal. No late renewals or course approval will be granted if over ~~three (3)~~ six (6) months have passed since expiration.
- (4) The Commission will not require a fee from state supported universities, colleges, and junior colleges which provide courses for qualifying or continuing education.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206, and 62-39-333.

## Continuing Education

### Amendments

Rule 1255-04-.01 Continuing Education Requirements is amended by adding new parts (1)(c)7., 1(d)14., (1)(d)15., and (1)(d)16. so that as amended the rule shall read:

#### Rule 1255-04-.01 Continuing Education Requirements.

- (1) As a prerequisite to renewal of a real estate appraiser license or certificate, the licensee or certificate holder shall complete at least twenty-eight (28) hours of continuing education instruction approved by the Commission during each renewal period, which is every two (2) years (hereinafter "continuing education").
  - (a) A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
  - (b) The Commission will grant credit toward the continuing education requirement only where the length of the educational offering is at least two (2) hours.
  - (c) A state licensed, state certified residential, ~~or a~~ state certified general real estate appraiser may obtain credit for the continuing education requirement from the following:
    1. colleges or universities;
    2. community or junior colleges;
    3. real estate appraisal or real estate related organizations;
    4. state or federal agencies or commissions;
    5. proprietary schools;
    6. other providers approved by the Commission; and
    7. The Appraisal Foundation or its Boards.
  - (d) The Commission may grant credit for educational offerings which cover real estate appraisal related topics, such as the following, which are consistent with the purpose of continuing education:
    1. ad valorem taxation;
    2. arbitration, dispute resolution;
    3. courses related to practice of real estate appraisal or consulting;
    4. development cost estimating;
    5. ethics and standards of professional practice, USPAP;
    6. land use planning, zoning, taxation;
    7. management, leasing, timesharing;
    8. property development, partial interests;
    9. real estate law, easements, and legal interests;
    10. real estate litigation, damages, condemnation;

11. real estate financing and investment;
  12. real estate appraisal related computer applications;
  13. real estate securities and syndication;
  14. developing opinions of real property value in appraisals that also include personal property and/or business value;
  15. seller concessions and impact on value; and/or
  16. energy efficient items and "green building" appraisals.
- (2) All licensees and certificate holders shall successfully complete the seven (7)-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, a minimum of once every two (2) years. Equivalency shall be determined through the Appraisal Qualifications Board Course Approval Program. The seven (7)-hour National Instructor Recertification Course for Uniform Standards of Professional Appraisal Practice shall fulfill the seven (7) hour continuing education requirement for AQB approved instructors of the National Uniform Standards of Professional Appraisal Practice.
  - (3) The Commission shall grant continuing education credit for the National Uniform Standards of Professional Appraisal Practice Update Course only when at least one of the instructors is an Appraiser Qualifications Board Certified Instructor and a state certified general or residential real estate appraiser.
  - (4) The Commission shall grant continuing education credit for any course that a licensee has taken more than once if the course has undergone a significant update or if the licensee has not taken the course in the last five (5) years.
  - (5) Seminars.
    - (a) The Commission may offer seminars to the licensees for which fees, as appropriate, may be collected to cover costs.
    - (b) These seminars may be used by the licensees for continuing education credit.
    - (c) These seminars may include, but are not limited to the following subjects: laws and rules, policies, and Uniform Standards of Professional Appraisal Practice.
  - (6) The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his or her skill, knowledge, and competency in real estate appraisal.
  - (7) The Commission may grant up to one half (1/2) of an individual's continuing education credit for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which the Commission determines are equivalent to obtaining continuing education. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206, 62-39-306, 62-39-325, and 62-39-333.

Chapter 1255-06  
Reciprocity

Amendments

Rule 1255-06-.01 Reciprocal Agreements is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

1255-06-.01 Reciprocal Agreements.

- (1) If, in the determination of the Commission, a state or territory of the United States is deemed to have established meaningful requirements for the licensure and certification of real estate appraisers, and that state grants reciprocity to Tennessee licensees and certificate holders and is in compliance with the Appraisal Subcommittee, then the Commission shall grant reciprocal rights to real estate appraiser licensees and certificate holders ~~which~~who are in "good standing" in that state.
  - (l) For purposes of implementing the reciprocity policy, states with an Appraisal Subcommittee finding of "Poor" do not satisfy the "in compliance" provision for reciprocity.
- (2) A licensee or certificate holder who resides in another state, is currently credentialed in another state, and is active on the National Registry in another state must show:
  - a. That the licensee or certificate holder has successfully completed one (1) seven (7) hour National USPAP Update Course, or its Appraisal Qualification Board-approved equivalent, within the past two (2) calendar years; and
  - b. That the licensee or certificate holder has met all continuing education requirements in the other state within the past two calendar years.
- (3) A licensee or certificate holder who became licensed or certified through reciprocity and now resides in Tennessee must comply with the continuing education requirements of this section regardless of how the license or certificate was obtained.
- (2)(4) If, in the determination of the Commission, the requirements in paragraph (1) have been met, then upon receipt of a nonrefundable application fee of one hundred twenty-five dollars (\$125.00), a license or certificate issuance fee of three hundred fifty dollars (\$350.00) and a federal registry fee of ~~fifty dollars (\$50.00)~~ eighty dollars (\$80.00), the Commission shall grant to an applicant a reciprocal license or certificate to appraise real estate in the State of Tennessee.
- (3)(5) If a licensee or certificate holder's out-of-state real estate appraiser license or certificate has been revoked, suspended, denied renewal, or restricted, then the Commission may revoke, suspend, refuse to renew, or restrict the licensee's or certificate holder's State of Tennessee real estate appraiser license or certificate.
- (6) An applicant for licensure or certification meeting the requirements of T.C.A. § 4-3-1304(d)(1) may be issued a reciprocal license pursuant to T.C.A. § 62-39-322 and Tenn. Comp. R. & Regs. § 1255-01-.05, § 1255-01-.07, or § 1255-01-.08 upon compliance with all terms therein, including application and payment of all fees required for the issuance of such reciprocal license or certification.
- (7) Notwithstanding Paragraph (1), no license or certification shall be issued pursuant to this Rule to any person:
  - (a) Whose current license or certification as a real estate appraiser from a state that is not "in compliance" with Title XI (FIRREA) as determined by the Appraisal Subcommittee established thereunder; or
  - (b) Who does not hold a valid license or certification in "good standing".

Authority: §§ 62-39-203, 62-39-204, 62-39-206, 62-39-306, 62-39-325, and 62-39-333.

New Rule

Rule 1255-06-.03 Expedited Licensure ~~effor~~ Certain Military Personnel and Spouses is added as a new rule to the Chapter and shall read as follows:

1255-06-.03 Expedited Licensure for Certain Military Personnel and Spouses.

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may be issued a temporary authorization upon completion of such application as may be issued a reciprocal license or certification by the Commission by complying with Rule 1255-06.-01.
- (2) An applicant for registration as a trainee meeting the requirements of T.C.A. § 4-3-1304(d)(1) may be issued a temporary authorization upon completion of such application as may be required by the Commission accompanied by an application fee and temporary authorization issuance fee if the Commission determines that the applicant's registration in another state does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training or experience, in order to meet the requirements for the registration to be substantially equivalent.
- (a) A temporary authorization shall be issued in six (6) month increments and the fee shall be \$31.25 for each such increment.
- (b) In no case shall an original temporary authorization be issued for a period of longer than two (2) years.
- (c) A temporary authorization shall expire upon the date set by the Commission and shall not be subject to renewal except through completion of the requirements for substantial equivalence as required by the Commission or by an extension of time granted for good cause by the Commission.
1. An extension of a temporary authorization shall be in six (6) month increments and the fee shall be \$31.25 for each such increment.
2. A temporary authorization shall only be extended for good cause by one (1) six (6) month increment at a time.
- (d) No temporary authorization shall be granted if the applicant does not hold a registration in "good standing" from another jurisdiction.
- (e) Upon completion of all requirements for substantial equivalency as required by the Commission for the issuance of the temporary authorization, the applicant may apply for a registration from the Commission, including payment of the nonrefundable application and registration fee for the issuance of such registration.

Authority: §§ 62-39-203, 62-39-204, 62-39-206, 62-39-306, 62-39-325, and 62-39-333.

\* 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)
Chairman Mark Johnstone	x				
Warren Fred Mackara	x				
Eric Collinsworth	x				
Norman Hall	x				
Timothy Walton	x				
Gary Standifer	x				
Nancy Point	x				
Randall Thomas	x				
Rosemarie Johnson				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Appraiser Commission on 01/12/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/04/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/12/15

Date: 6/22/15

Signature: Keeling R. Baird

Name of Officer: Keeling R. Baird

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 6/22/15

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16



MY COMMISSION EXPIRES:  
March 8, 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  
Attorney General and Reporter

Date

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Filed with the Department of State on: 7-20-15

Effective on: 10-18-15

Tre Hargett  
Secretary of State

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

**DEPARTMENT:** Real Estate Commission

**DIVISION:** Regulatory Boards

**SUBJECT:** Licensing and Rules of Conduct

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 4-3-1304

**EFFECTIVE DATES:** October 18, 2015, through June 30, 2016

**FISCAL IMPACT:** Minimal

**STAFF RULE ABSTRACT:** New Rule 1260-01-.18 Duplicate or Confusingly Similar Names: This rule states that the Commission reserves the right to refuse to issue a new firm license in a name which is the same or confusingly similar to another firm license already issued and outlines the process for review of an application for a determination regarding the name.

New Rule 1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License: This rule states that any applicant for licensure appearing before the Commission for an informal appearance must also ensure the presence of his or her principal broker or intended principal broker. Informal appearances are often utilized in the case of an applicant who has disclosed circumstances in his or her background which would call into question whether the person has a good reputation of honesty, trustworthiness, integrity, and competence to transact the business of broker, affiliate broker, or time-share salesperson referenced in Tennessee Code Annotated, Section 62-13-303(a)(1). In certain cases, those individuals arrive for an informal appearance where the Commission considers the circumstances and determines whether satisfactory proof of honesty, trustworthiness, integrity, and competence to transact the business of broker, affiliate broker, or time-share salesperson has been presented to warrant granting licensure. As the supervising individual over licensees affiliated within a particular firm, the principal broker's presence and participation is important in this dialogue and determination.

New Rule 1260-01-.20 Military Applicants: This rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for

six (6) months from the release from active duty without penalty when certain specified circumstances are met.

New Rule 1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent: This rule clarifies certain discretionary provisions regarding reinstatement of a license which are found within Tennessee Code Annotated, Section 62-13-319. This rule outlines the possibility of a medical waiver request, the requirements for renewal of a license within sixty (60) days of expiration by way of providing proof of compliance and payment of specified penalty fees, the requirements for reinstatement of a license after sixty (60) days of expiration by way of executing a Reinstatement Order, providing proof of compliance, payment of specified penalty fees and attendance at a Commission meeting, and the requirement for reapplication for licensure when a license is expired for more than one (1) year.

Amendment to Rule 1260-02-.02 Termination of Affiliation: This amendment will add an additional paragraph to the existing rule which provides for circumstances where a firm transfer request is submitted on line. The amendment states that the transfer of an affiliated licensee to a new firm is recognized as completed at the time of the on line transfer request if certain conditions are met, including but not limited to, receipt by the Commission of a completed and signed TREC Form 1 within five (5) business days of the date of the on line transfer request.

Amendment to Rule 1260-02-.09 Deposits and Earnest Money: This amendment will rename the rule to “Managing Escrow or Trustee Accounts” and provide some clarification as well as multiple new provisions relating to the management of a real estate firm’s escrow or trustee account(s). The amendment includes definitions of the terms “commingling” and “trust money” as used within the rule and attempts to clarify multiple existing provisions of the rule and utilizes definitions to assist in the clarification. In addition, the amendment adds a provision specifically stating that commingling of funds within firm accounts is prohibited, which was not directly specified in the existing rule. Finally, the amendment adds an additional paragraph outlining the management of interest-bearing escrow or trustee accounts if said accounts are utilized by a firm.

Amendment to Rule 1260-02-.12 Advertising: This amendment includes a number of new provisions, which are intended to clarify the Commission’s position on advertising. The amendment defines the terms “advertising” and “firm name” for purposes of the rule. Additionally, the amendment specifies the conspicuousness of the firm name in relation to any other entities featured in the advertising and the size of the firm telephone number in relation to other telephone numbers listed. Also, the amendment adds

examples of false, misleading and/or deceptive advertising, which is already prohibited by the existing rule. Most examples refer to issues which have arisen with regard to licensees who hold themselves out as a team, group, or similar entity within a firm and the confusion which has arisen as a result of inclusion of these entities in advertising.

**New Rule 1260-02-.39 Commissions Earned by Affiliated Licensees:** This rule attempts to provide clarification for the payment of commissions earned by an affiliated licensee while working under a principal broker after a number of circumstances occur which result in payment being remitted after the affiliated licensee has ceased his or her affiliation with that principal broker. It is an attempt to provide guidance to individuals finding themselves in these situations and facing concerns of potential discipline from the Commission.

**New Rule 1260-02-.40 Electronic Records:** This rule outlines the procedures that a real estate firm must follow in order to comply with statutory requirements for preserving records in the event that a firm utilizes electronic record keeping.

**New Rule 1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm:** This rule provides guidelines for licensees who hold themselves out as a team, group, or similar entity within a firm and attempts to specifically reinforce issues already included within existing law but clarify those issues more specifically, particularly with regard to licensees who operate in this manner, (as it appears to be an increasingly common practice) in order to ensure compliance with the Commission's statutes and rules.

## 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.

### Rule 1260-02-.02: Termination of Affiliation

**Comment** as to 1260-02-.02(1): J. Russell Farrar (“Mr. Farrar”): Please establish what constitutes “receipt” by the Commission of the TREC 1 form and how this can be proven in the event that a dispute arises.

**Response:** The proposed rule, as drafted, sufficiently defines “receipt” and so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(3): Mr. Farrar: Please clarify what constitutes receipt by the Commission, i.e., as the date and time it was faxed or emailed by the broker or as the date and time the fax or email was received by the Commission? TAR maintains that it should be the date and time that the broker faxed or emailed the TREC 1 form. Also, it is unclear as to whether the affiliate who is attempting the transfer would be held liable during the five (5) day grace period in the event that the new broker fails to send in the completed TREC 1 form timely. TAR maintains that failure to timely submit the TREC 1 form lies with the principal broker and not the affiliate, and the principal broker should be the only agent subject to discipline [pp.42-43].

**Response:** The proposed rule, specifically subsections (1) and (3), defines what constitutes “receipt,” and the rule is clear as to the effect of the five (5) day grace period so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(4): Mr. Farrar: Recommended amendment to include buyer’s representation agreements secured by the firm. Also, please clarify what happens in the event that a principal broker terminates his affiliate with a firm. TAR avers that the departing principal broker should obtain permission from the firm owner prior to taking a listing or buyer’s representation agreement with him.

**Comment** as to 1260-02-.02(4): David Watson (“Mr. Watson”): I would prefer it to be spelled out that the permission to take a listing is to be in writing.

**Response:** The Commission considered the two (2) comments and voted to amend proposed Rule 1260-02-.02(4) to state, “When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.”

### Rule 1260-02-.09: Managing Escrow or Trustee Accounts

**Comment** as to 1260-02-.09(1)(b)(1): Mr. Farrar: Because agents accept funds from consumers when acting in a facilitator capacity, the Rule should be amended to read “Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or”

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5): Mr. Farrar: The Rule amendment appears that anytime a broker accepts earnest money, even if it is to pass it along to a third party escrow agent, the broker must state the terms and conditions under which the funds are to be distributed. However, it is more common that this would be addressed in an escrow agreement between the parties and the escrow agent. TAR recommends the following: “Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the broker shall clearly specify in the contract...”

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5)(b): Mr. Farrar: TAR suggests amending this to require the name and address of the firm holding the funds since most trustee and/or escrow accounts are in the name of the firm.

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(5)(b) to state, “the name and address of the person or firm who will actually hold the trust money.”

**Comment** as to 1260-02-.09(9): Mr. Farrar: TAR suggests amending this to require the funds be disbursed or turned over to an attorney for interpleader within twenty-one days. It is not under the control of a broker to require an attorney to timely file the interpleader

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(9) to reflect the suggestions of the comment so that, as amended, it will state, “Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.”

**Comment** as to 1260-02-.09(12): Mr. Farrar: This Rule is confusing as to whether this applies to security deposits, rent payments, or both. Tenn. Code Ann. § 66-28-301(a) only applies to security deposits, and TAR avers that TREC Rules should not be more strict than that of state statutes. Without clarification, a firm may be required to have three (3) separate escrow or trustee accounts

**Response:** The proposed rule, as written, is not confusing, and the proposed rule does not impose any additional requirements inconsistent with the statute cited.

#### Rule 1260-02-.12: Advertising

**Comment** as to 1260-02-.12(1): Steve Black (“Mr. Black”): Suggestion to include sponsorship of charitable and committee events be added to the list of items not subject to the general terms of this rule

**Response:** The Commission agreed with the comment, and further amended proposed Rule 1260-02-.12(1) to include the sponsorship of charitable and community events within the list of materials which are not included within the term “advertising” for purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Todd Sholar (“Mr. Sholar”): What are the definitions of “incidentally” and “the like”? Also, several people have raised questions about specific things, e.g., a score board at the baseball park or sponsoring charity runs. At one point, there was a distinction between signature on property for sale and signs that are merely advertising the licensee, and we have gotten away from that distinction with the proposed rule

**Response:** The Commission agreed with the comments regarding the words “incidentally” and “the like” and removed the words from proposed Rule 1260-02-.12(1). Further, the Commission added sponsorship of charitable and community events to the list of materials which are not included within the term “advertising” for the purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Mr. Farrar: TAR suggests that this same exception to the Rule be made for agents who are sponsoring charitable or community events because an event coordinator will often limit what can be placed in an advertisement, banner, etc.

**Response:** The Commission agreed with the comment and added sponsorship of charitable and community events to the list of items which are not considered “advertising” for purposes of the proposed rule.

**Comment** as to 1260-02-.12(2): Julie Moss (“Ms. Moss”): Does TREC interpret this proposed rule to mean that the firm’s d/b/a name as filed with TREC can be used in any advertising and any medium in full instead of the firm’s legal corporate name? If, “Crye Leike” is the d/b/a name, would TREC find Crye Leike to be in compliance if it were to choose a distinction such as realtors, REO, or real estate services to allow the company to know which division they are working with

**Response:** The Commission made no further amendment as a result of this comment because it is the Commission’s position that the proposed rule as written speaks for itself.

**Comment** as to 1260-02-.12(3): Mr. Farrar: Do all the subparts of section (3) apply to all advertising or just signage?

**Response:** As stated in paragraph (1), all advertising must conform to the requirements of the proposed rule.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Ms. Moss: What does “prominent” mean? Does it relate to size, position in advertising? Does it include a licensee’s picture, and how would the firm name be more prominent than the picture?

**Response:** Prominence relates to the size and position in advertising. To address the question regarding prominence and a licensee’s picture, the Commission voted to further amend proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name instead of the most prominent entity.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Mr. Farrar: Please clarify to state exactly what prominent means, TREC could interpret this to mean that the firm name must be in a particular place or mentioned more times. TAR would suggest multiple examples of advertising which would be considered complaint as well as noncompliant examples with further explanation.

**Response:** Prominence relates to the size and position of the firm name within advertising. The Commission further amended proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name featured within the advertising.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Phillip Cantrell (“Mr. Cantrell”): The current Rule seems adequate to address repeat offenders. The verbiage proposed would cause an undue hardship which would force replacement of many currently compliant signs, especially when the company name utilizes multiple font sizes

**Response:** The firm name can use multiple font sizes so long as that is the largest name on the sign.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Black: This is one of the most costly changes being proposed which financially impacts every agent and real estate firm in the state, with a \$50 minimum per yard sign alone. Recommend leaving the Rule as is in its current status

**Response:** The Commission understands the concern expressed in the comment, but, in the interest of protecting the public, the Commission believes the change outlined in the proposed rule is needed.

**Comment** as to 1260-02-.12(3)(b)(2): Ms. Moss: Must a firm’s telephone number be on a “sold” sign? Currently, a licensee’s name and phone number are attached on a rider below the sign. Can a firm have more than one phone number on file with TREC, e.g. Customer Service number and office number? If yes, can either number be used on advertising?

**Response:** A sign including riders is one sign. Some firms have an 800 number and an area code number on file with the Commission, and both numbers ring to the same place.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Sholar: What is “greater size and/or prominence,” e.g., the biggest, the brightest, the first listed

**Response:** The Commission agreed that the phrase inquired about in the comment was unclear, and the Commission further amended proposed Rule 1260-02-.12(3)(b)(2) to state, “The firm’s telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.”

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Farrar: Further, agents must be provided a grace period in order to budget for and procure new advertisements. TREC must understand that these items cost significant amounts of money and cannot be corrected overnight. Also, what is the meaning of “prominence?”

**Response:** The Commission does not have the latitude to extend a grace period, and proposed Rule 1260-02-.12(3)(b)(2) was amended to address the question regarding prominence to state that, “The firm’s telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.”

**Comment** as to 1260-02-.12(3)(c): Mr. Black: Southern Americans recognize products and companies in the simplest of terms possible (e.g., John Smith at ABC Realty versus John Smith at ABC Realty & Associates, LLC). The financial impact to agents and firms becomes overwhelming

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Ms., Moss: If "Crye Leike" is 3 inches tall and "Realtors" is 1 inch tall, can licenses have their name be 3 inches tall as to incorporate the d/b/a name versus the realtors or any other delineator chosen

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Mr. Farrar: TAR requests compromise that if the majority of the firm name (or the part of the firm name recognized by the community) is in a different size font than the remainder of the name, the agent's name should be the same size or smaller than the larger portion of the firm name

**Response:** The Commission took this comment into consideration and incorporated the comment in its decision to further amend proposed Rule 1260-02-.12(3)(c) to remove, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(f)(2): Mr. Farrar: The requirement that such websites include each firm name would create a great hardship and a confusing website for large companies. This should only be a requirement for the individual office websites and not the franchise website

**Response:** The Commission reviewed the comment and incorporated this comment into further amending the proposed language of what is now Rule 1260-02-. 12(3)(f)(1) to specify that it is only a licensee's advertisement to which the rule applies and not the franchise website.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Black: As long as it is clear that an entity is part of a particular firm, they should be permitted to use names such as team, group, real estate, realty or associates

**Response:** The Commission took this comment into consideration and further amended the proposed rule to eliminate the word "group" from the listing, but the remaining words have connotations of entities that the public might see as a separate real estate firm, and the Commission elected to retain those words.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Troxel: Restricting the naming and identity of teams is counter to established trends in the national real estate history. If rulemaking related to prominence of the firm name is effective, it should establish that teams are not independent entities or a brokerage, making this section redundant

**Response:** The Commission considered the comment and voted to eliminate the word "group" from the proposed rule. The Commission's decision was not based on national real estate history but what the Commission believes is relevant to the public in the State of Tennessee.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Farrar: TREC references "[l]icensees who hold themselves out as a team, group, or similar entity." However, in the same section, TREC prohibits these agents from using the word "group" in their name. This prohibition is inconsistent with other proposed rules and should be deleted completely. Further, many teams/groups/similar entities have existed for quite some time and have spent a significant amount of money and resources branding their team/group/similar entity and will have to essentially start over to brand a new entity because one of the prohibited words is in their name. They should be permitted to keep their name as long as it is clear that such entity is part of a particular firm. TAR recognizes the need to differentiate between a firm and team/group/similar entity, but suggests that some of the prohibited words ("real estate," "realty," and "group") should be deleted from this proposed rule. Further, the phrase "that would lead the public to believe that those licensees are

offering real estate brokerage services independent of the firm and principal broker” is vague and requests clarification and a detailed explanation. TREC should present several examples of advertisements that are both compliant and noncompliant so agents can understand.

**Response:** The Commission took these comments into consideration and agreed that removal of the word “group” from the proposed rule was appropriate but does not agree with the other comments made.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Cantrell: This would cause our teams to have to rebrand themselves, as we have allowed teams to name themselves within the current TREC guidelines and always require the team name to include, “of Benchmark Realty, LLC.” This will create an undue economic hardship

**Response:** The Commission considered this comment and removed the word “group” from the proposed rule. The Commission believes the remaining rule language is necessary for protection of the public, which the Commission places at the utmost importance.

**Comment** as to 1260-02-.12(3)(f)(4): Mr. Farrar: TAR opposes this Rule as it is believed to be extreme and does not accomplish anything in protecting the public and only places a burden on teams/groups/similar entities

**Response:** The Commission agreed with this comment and removed the provision from the proposed rule.

**Comment** as to 1260-02-.12(3)(f)(5): Mr., Farrar: Please provide a firm definition of what is being prohibited and/or examples of cases which would be considered to be a violation

**Response:** The provision requires no change as its meaning is apparent. The Commission declined to give examples because a list of examples would not be all inclusive as to what is prohibited by the proposed rule.

**Comment** as to 1260-02-.12(4): Mr. Farrar: The term “Cooperative Advertising Group” is not defined in the Broker’s Act or TREC Rules. TAR suggests this term be removed from the Rule as it creates confusion

**Response:** The term “cooperative advertising group” is not being added to the existing rule with the proposed amendments, it is an existing and long-time used term, and the Commission declined to amend the proposed rule by removing this existing provision.

**Comment** as to 1260-02-.12(4) and (5): Ms. Moss: Must a firm have its name and all of its phone numbers on each page of the website? Crye Leike has an office number for each branch office and has over 80 offices that are represented on its nationwide website. Does TREC expect the national franchisors of real estate offices to comply with this also?

**Comment** as to 1260-02-.12(5)(a): Mr. Farrar: This would be difficult for large franchises or companies, and the end result could create more confusion for the public. This should be considered so that these types of websites would be excluded from this rule and only make it applicable to individual offices, agents, and/or teams, groups and similar entities. Also, please clarify how this applies to social media and other emergent trends. The Commission has discussed that it might be sufficient to post a link wherein the firm name and number would be provided given the limited number of characters available in some avenues. If this is permissible, it should be made a part of the rule. Agents should be advised as to what will and will not comply with this rule.

**Response:** The Commission took these two (2) comments into consideration and amended the proposed Rule 1260-02-.12(5) to state that the requirements, “...shall also apply with respect to internet advertising by licensees...”

**Comment** as to 1260-02-.12(5)(c): Ms. Moss: We commend the Commission’s efforts to protect the public from misinformation by getting brokers to keep their web pages and advertising clear, but it doesn’t seem to do any good if we allow syndicated listings to go out to portals where they can then be confusing to the public

**Response:** The Commission considered this comment but does not believe that there is action that the Commission can take to correct this issue.

**Comment** as to 1260-02-.12: Mr. Brown: Most advertising complaints are agent to agent complaints, which generally stem from a bad transaction and rarely deal with protecting the consumer—the intent of the advertising

Rule

**Response:** The Commission acknowledged receipt of the comment but did not see that there was any action requested or necessary.

Rule 1260-02-.39: Commissions Earned by Affiliated Licensees

**Comment:** Mr. Farrar: Please consider amending this Rule to clarify TREC's unwritten position that it considers a commission to be earned by a licensee at the time that the property goes under contract

**Response:** The Commission responded that the comment is not pertinent to the proposed rule and voted to make no amendment.

Rule 1260-02-.41: Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

**Comment** as to 1260-02-.41 (1): Bradley Scott Troxel ("Mr. Troxel"): Agencies are not required to have their agents on site, and yet this rule requires that a team or group has to be on site

**Response:** The requirement that a licensee must have his or her license at the location of his or her principal broker has not changed, and no further amendment of this provision is necessary.

**Comment** as to 1260-02- 41(1): Aaron Armstrong ("Mr. Armstrong"): Request that TREC amend this rule and allow agents at different licensed firms to advertise and market as being part of the same Team or Group so long as they adhere to all advertising Rules and they have permission to do so from their own Principal Broker. For example, if a team or group from Nashville generates significant leads from Murfreesboro consumers, it is common practice that a team or group might refer the consumer to an agent at the Murfreesboro office of their same franchise company, and those agents may want to formalize an ongoing referral relationship. By not allowing this, it would encourage agents to work further outside their general service area.

**Response:** Each principal broker is responsible for the advertisements of his or her agents within his or her firm, and opening the proposed rule to allow agents at different licensed firms to advertise and market as being part of the same team or group is impossible. Therefore, there will be no further amendment to the proposed rule.

**Comment** as to 1260-02- 41(2): Mr. Farrar; It should be made clear that a licensed assistant does not have to be compensated via the principal broker when that licensed assistant is paid a salary as an employee. The licensed assistant can be paid by the licensee for whom the assistant works

**Response:** The Commission does not disagree with the comment but believes that the issue referenced in the comment is already established within the statutes, and there is no reason to amend the language of this particular proposed rule.

**Comment:** Mr. Black: Teams and groups are developed for economic and business growth, customer service, and many other reasons. All teams are paid directly from their principal broker as requested in 1260-02-.41(2)

**Response:** The Commission agreed with the comment, but no change to the rule's proposed language is necessary despite the Commission's agreement.

**Comment:** Mr. Troxel: Agents that lead teams continue to seek training and pursue higher levels of learning than most individual agents do, and their training benefits the consumer and the agent on the other side of the transaction. I encourage TREC not to take a step backwards as it relates to teams and groups

**Response:** The Commission disagreed with the comment as it is still the responsibility of the principal broker to provide supervision, and no change to the proposed rule will be made.

**Comment:** Mr. Brown: I understand if you want to regulate or have supervision of teams, and I understand the education requirements because I believe in education. Most of the time, civil penalties for complaints include the principal broker. Are there better defined rules on "supervision"? For example, if I hold five (5) different classes a month, but I have independent contracts that I can't require to be there, am I supervising my agents

**Response:** Supervision is still the responsibility of the principal broker, and the Commission's statutes and rules define supervision. There is no need to change the proposed rule language further.

**Comment:** Mr. Farrar: If a firm has different divisions within it, can it advertise as such, e.g., commercial division, property management division, residential division, REO division, etc.? Would these divisions fall under the same rules as teams/groups/similar entities? TAR hopes that a company be permitted to have different departments or divisions without being required to register a new firm for each division. Classifying them as specific divisions or departments would not mislead the public but would assist the public in knowing how to reach the agent and/or department that will meet their needs as quickly as possible. TAR requests clarification within the Rules

**Response:** Whatever licenses are affiliated with a principal broker's firm are to be supervised by the principal broker. It does not matter how something is categorized. The principal broker is responsible for every license inside that principal broker's firm. No further amendment to the proposed rule is necessary.

## 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.

### Economic Impact Statement:

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

The proposed rule that is expected to result in a potential cost to small businesses is the proposed amended Rule 1260-02-.12 regarding advertising. According to the Tennessee Code §4-5-102(13), the term "small business" is defined as, "...a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees." It is estimated that there are 3,898 licensed active real estate firms in the State of Tennessee and that most of these firms are, in fact, small businesses under that definition. However, it is recognized that, in many cases, individual licensees rather than the firm bear the cost of advertising. It is estimated that there are 24,429 licensed active affiliate brokers and brokers in the State of Tennessee who could be impacted by the potential cost of this rule change.

- (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;

It is not anticipated that compliance with the proposed rules will result in costs which are reporting, recordkeeping, or administrative in nature.

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

As stated in response to consideration (1) above, the proposed amended Rule 1260-02-.12 regarding advertising is expected to result in a potential cost to small businesses. The proposed rules are expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee.

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

The Commission has considered the burden and cost alternatives and does not believe that there are less burdensome, less intrusive, or less costly alternative methods known at this time to achieve the purposes and objectives of proposed rules but will consider the comments that have been made and determine if the same objectives can be achieved in a less costly way.

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

There are no known federal counterparts to these rules. For many of the rules, there are no known state counterparts, as well. Other states are known to have regulations or rules containing provisions that are similar in nature to the provisions that are included within the proposed amended Rule 1260-02-.12 regarding advertising, and those include Georgia (Rule 520-1-.09), Louisiana (§ 2501), Nevada (NAC 645.610 and NRS 645.315), North Dakota (Rule 70-02-03-02.1), and Washington (WAC 308-124B-210).

- (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.

Any possible exemption of small businesses from these rules would result in significantly less protection for the citizens of the State of Tennessee based on the definition of "small businesses" as provided under the Tennessee Code Annotated.

## **Impact on Local Governments**

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

These rules are not reasonably viewed as having a projected financial impact on local governments.

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**Department of State  
Division of Publications**

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Rule ID(s): 5987-5988  
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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 (Tenn. Code Ann. § 4-5-205).*

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

<b>Agency/Board/Commission:</b>	Tennessee Real Estate Commission
<b>Division:</b>	Regulatory Boards
<b>Contact Person:</b>	Mallorie Kerby
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
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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
1260-01	Licensing
Rule Number	Rule Title
1260-01-.18	Duplicate or Confusingly Similar Firm Names
1260-01-.19	Appearances Before the Commission for the Purpose of Obtaining a License
1260-01-.20	Military Applicants
1260-01-.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson or Acquisition Agent

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.02	Termination of Affiliation
1260-02-.09	Deposits and Earnest Money
1260-02-.12	Advertising
1260-02-.39	Commissions Earned by Affiliated Licensees
1260-02-.40	Electronic Records
1260-02-.41	Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

Chapter 1260-01  
Licensing

New Rules

1260-01-.18 Duplicate or Confusingly Similar Firm Names.

- (1) In order to protect the public from confusion regarding licensed real estate firms, the Tennessee Real Estate Commission reserves the right to refuse to issue a new firm license in a name that is the same or confusingly similar to another firm already issued.
- (2) The Commission staff shall review all applications for a firm name to determine whether the name is the same or confusingly similar to the name of another firm licensed with the Commission. If a name is rejected, the applicant will be notified. If the applicant does not agree with the decision, he or she may appeal to the Executive Director. Upon notification of an appeal, the Executive Director will either approve or reject the name and notify the applicant.
- (3) The applicant may then appeal, in writing, the Executive Director's decision to the Commission. The Commission's decision will be final.
- (4) The Commission expects that the applicant has researched any legal restriction regarding the use of a proposed firm name. The Commission will not attempt to determine ownership, trademark, copyright, or the validity of any other legal means to protect a name.

Authority: T.C.A. § 62-13-203.

1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License.

Any applicant for licensure appearing before the Commission for the purpose of obtaining a license must also ensure the presence of his or her principal broker (or intended principal broker). No such appearance for the purpose of obtaining a license will be heard by the Commission without the presence of that principal broker.

Authority: T.C.A. § 62-13-203.

1260-01-.20 Military Applicants.

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
  - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
  - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
    1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.

2. A temporary permit shall be issued for a period that is less than the length of a renewal cycle for a full license.
  3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
  4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.
- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
- (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
    1. Payment of late fees or other penalties;
    2. Obtaining continuing education credits when:
      - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission;  
or
      - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
    3. Performing any other similar act typically required for the renewal of a license.
  - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
  - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-13-203.

1260-01-21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent.

(1) Expired License Due to Health Issues or Medical Problems:

- (a) If a licensee fails to renew a license within sixty (60) days after expiration of the license because of personal or family health issues, and, as a result, wishes to request a medical waiver from the Commission, that licensee must:
  1. Provide a signed doctor's statement attesting to the nature and length of the illness; and

2. Submit a statement explaining the lapse, which must be signed by the person seeking reinstatement.

(b) If the Commission grants the medical waiver request, then renewal fees must be paid and all other conditions for licensure must be met, but late penalty fees will not be assessed.

(c) Information submitted will become public record unless otherwise prohibited by law.

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121<sup>st</sup>) day; and

3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.

4. Penalty fees will begin accruing on the first (1<sup>st</sup>) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.

5. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements, including timely attending one (1) entire regularly scheduled Commission meeting.

(3) License Expired for More than One (1) Year: if a license is expired for more than one (1) year, then that individual must reapply for licensure, meet current education requirements, and pass all required examinations.

Authority: T.C.A. §§ 62-13-203 and 62-13-319.

Chapter 1260-02  
Rules of Conduct

Amendments

Rule 1260-02-.02 Termination of Affiliation 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:

- (1) Any licensee or principal broker wishing to terminate the licensee's affiliation with a firm shall submit to the Commission a completed Transfer, Release and Change of Status Form (TREC Form 1). The form must be faxed, mailed, or e-mailed to the Commission to be effective. The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form. The principal broker shall retain a copy of the executed form.
- (2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in § 62-13-102 until a change of affiliation is received and processed by the Commission.
- (3) With regard to firm transfer requests which are completed online, the Commission recognizes the transfer of an affiliated licensee to a new firm as having been completed at the time that said transfer request is completed online and the transfer confirmation is printed only if the following conditions are met:
  - (a) Prior to the submission of the online transfer request, the principal broker who is receiving the affiliated licensee into his or her firm has verified that the affiliated licensee has an active Tennessee license and current errors and omissions insurance; and
  - (b) A completed and signed TREC Form 1 is received by the Commission within five (5) business days of the date of the online transfer request. If the completed and signed TREC Form 1 is not received by the Commission within five (5) business days of the online submission, then the transfer shall not be considered by the Commission to be a valid transfer and the affiliated licensee will be placed into broker release status.
- (4) ~~(3)~~ When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.
- (5) ~~(4)~~ Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.
- (6) ~~(5)~~ If the principal broker is deceased or physically unable to sign the release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.
- (7) ~~(6)~~ If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.
- (8) ~~(7)~~ The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

Authority: T.C.A. §§ 62-13-203 and 62-13-310.

Rule 1260-02-.09 Deposits and Earnest Money is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

1260-02-.09 Managing Escrow or Trustee Accounts. DEPOSITS AND EARNEST MONEY.

(1) Definitions: for purposes of this rule, the following definitions are applicable:

(a) "Commingling" is defined as the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.

(b) "Trust money" is defined as either of the following:

1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or

2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others.

(2) ~~(1)~~ Each principal broker shall maintain a separate escrow or trustee account for the purpose of holding any funds trust money which may be received in his fiduciary capacity as deposits, earnest money, or the like. Rental deposits must be held in a separate account.

(3) ~~(2)~~ An affiliated broker shall pay over to the principal broker with whom he is under contract affiliated all deposits and earnest money trust money immediately upon receipt.

(4) ~~(3)~~ Principal Bbrokers are responsible at all times for deposits and earnest money trust money accepted by them or their affiliated brokers, in accordance with the terms of the contract.

(5) ~~(4)~~ Where a contract authorizes a principal broker to place funds trust money in an escrow or trustee account, the principal broker shall clearly specify in the contract:

(a) the terms and conditions for disbursement of such funds the trust money; and

(b) the name and address of the person or firm who will actually hold such funds the trust money.

(6) ~~(5)~~ Where a contract authorizes an individual or entity other than either the principal broker to hold such funds in an escrow or trustee account trust money, the principal broker will be relieved of responsibility for the funds trust money upon receipt of the funds trust money by the specified escrow agent.

(7) ~~(6)~~ A principal broker may properly disburse funds from an escrow account trust money:

(a) upon a reasonable interpretation of the contract which authorizes him to hold such funds the trust money;

(b) upon securing a written agreement which is signed by all parties having an interest in such and is separate from the contract which authorizes him to hold such funds the trust money;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange or option real estate;

(f) upon filing an interpleader action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(8) ~~(7)~~ Funds in escrow or trustee accounts Trust money shall be disbursed in a proper manner without unreasonable delay. Funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request of a written request for disbursement of earnest money.

- (9) Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.
- (10) ~~(8)~~ No postdated check shall be accepted for payment of trust money a deposit or earnest money, unless otherwise provided in the offer.
- (11) ~~(9)~~ Earnest Trust money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as "Earnest Trust money to be deposited by:".
- (12) In addition to the escrow or trustee account referenced in paragraph (2), all trust money received and held which relates to the lease of property must be held in one (1) or more separate escrow or trustee accounts.
- (13) Commingling of funds contained within firm accounts is expressly prohibited.
- (14) Interest-bearing escrow or trustee accounts are neither required nor prohibited by the Commission. If utilized, however, the following provisions shall be observed:
- (a) At the time of contract execution, the licensee shall disclose to the payor that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payor shall execute a written agreement indicating the manner of disposition of any interest earned;
- (b) As a depositor of the trust money, the licensee does not own the trust money or interest earned thereon until properly disbursed to the licensee; and
- (c) The licensee shall keep a detailed and accurate accounting of the precise sum of the interest earned for each separate deposit.

Authority: T.C.A. §§ 62-13-203 and 62-13-321.

Rule 1260-02-.12 Advertising 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:

- (1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.
- (2) For purposes of this rule, the term "firm name" shall mean either of the following:
- (a) The entire name of the real estate firm as licensed with the Commission; or
- (b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.
- (3) ~~(2)~~ General Principles
- (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
- (b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:

1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media, and

2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.

(c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.

(d) (e) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.

(e) (d) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(f) (e) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

1. Any licensee advertising that includes only the franchise name without including the firm name;

2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or

3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.

(4) (3) Advertising for Franchise or Cooperative Advertising Groups

(a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, ~~broker or~~ firm name and firm telephone number (all as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."

(c) Any licensee using a franchise trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:

1. his name, firm name, and firm telephone number (all as registered with the Commission); and

2. the fact that his office is independently owned and operated.

(5) (4) Internet Advertising: in addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees, including, but not limited to, social media:

(a) The listing firm name and the firm telephone number listed on file with the Commission must conspicuously appear on each page of the website.

- (b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.
- (c) Listing information must be kept current and accurate. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

(6) (5) Guarantees, Claims and Offers

- (a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.
- (b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Authority: T.C.A. §§ 62-13-203, 62-13-301, 62-13-310(b), and 62-13-312.

Chapter 1260-02  
Rules of Conduct

New Rules

1260-02-.39 Commissions Earned by Affiliated Licensees.

- (1) The commissions earned by an affiliated licensee while working under a principal broker can still be paid after one (1) or more of the following circumstances occur:
  - (a) the affiliated licensee transfers to a new broker;
  - (b) the affiliated licensee retires his or her license;
  - (c) the affiliated licensee is in broker release status;
  - (d) the affiliated licensee allows his or her license to expire; or
  - (e) the death of the affiliated licensee.

Authority: T.C.A. §62-13-203.

1260-02-.40 Electronic Records.

- (1) Pursuant to T.C.A. § 62-13-312(b)(6), real estate licensees must preserve records relating to any real estate transaction for three (3) years following the consummation of said real estate transaction. Real estate licensees may utilize electronic recordkeeping methods to comply with this requirement, provided that the following conditions are met:
  - (a) All documents required to be retained must be readily accessible in an organized format providing ease in document identification within twenty-four (24) hours of any request for inspection by representatives of the Commission.
  - (b) In order to ensure proper document retention, the principal broker of all real estate firms that use electronic recordkeeping methods must develop and utilize a retention schedule that safeguards the security, authenticity, and accuracy of the records for the entire required retention period and that also provides for the use of technology and hardware that ensures the accessibility of records in a readable format.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm.

- (1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.
- (2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.
- (3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker's firm.
- (4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.
- (5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm's principal broker.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

\* 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)
John Griess	X				
Janet DiChiara	X				
Wendell Alexander				X	
Grover Collins	X				
David Flitcroft				X	
Gary Blume				X	
Marcia Franks				X	
Diane Hills	X				
Austin McMullen	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 01/07/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/04/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 11/05/2014; 01/07/2015

Date: 6/23/15

Signature: Mallorie Kerby

Name of Officer: Mallorie Kerby

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 6/23/15

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16



MY COMMISSION EXPIRES:  
March 8, 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. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter

7/13/2015  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/20/15

Effective on: 10/18/15

Tre Hargett  
Tre Hargett  
Secretary of State

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

<u>DEPARTMENT:</u>	Department of Intellectual and Developmental Disabilities
<u>SUBJECTS:</u>	Methodology Used to Determine Payments to Service Providers
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 33-1-302—33-1-304 and 33-1-309.
<u>EFFECTIVE DATES:</u>	October 27, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	This rulemaking seeks to repeal Chapter 0940-04-03 in its entirety regarding the methodology used by the department to determine payments to service providers.

**Regulatory Flexibility Addendum**

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

Not Applicable, as Chapter is being repealed in its entirety.

### **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)

Not Applicable, as Chapter is being repealed in its entirety.

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 07-21-15  
Rule ID(s): 5992  
File Date: 07/29/15  
Effective Date: 10/27/15

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

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

<b>Agency/Board/Commission:</b>	Department of Intellectual and Developmental Disabilities
<b>Division:</b>	
<b>Contact Person:</b>	Kelly D. Young
<b>Address:</b>	Citizen's Plaza, 400 Deaderick St., 10 <sup>th</sup> Floor, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-770-1006
<b>Email:</b>	Kelly.D.Young@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0940-04-03	Methodology Utilized to Determine Payments to Service Providers (Rate Structure)
Rule Number	Rule Title
0940-04-03-.01 through 0940-04-03-.19	Repealed

Repeal

Chapter 0940-04-03  
Methodology Utilized to Determine Payments to Service Providers (Rate Structure)

Chapter 0940-04-03 Methodology Utilized to Determine Payments to Service Providers (Rate Structure) is repealed in its entirety.

**Authority:** T.C.A. §§ 4-5-201 *et. Seq.*; 33-1-302; 33-1-303; 33-1-304; and 33-1-309(d)

\* 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 DIDD on 07/07/15 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 7, 2015

Signature: Debra K Payne

Name of Officer: Debra K Payne

Title of Officer: Commissioner



Subscribed and sworn to before me on: July 7, 2015

Notary Public Signature: Renee A

My commission expires on: 1/11/2017

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

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
7/16/2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 07/29/15

Effective on: 10/27/15

Tre Hargett  
 Tre Hargett  
 Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Student Assistance Corporation (TSAC)

DIVISION: Higher Education

SUBJECTS: Tennessee Student Assistance Program Awards (TSAA)

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-4-201, 49-4-203, 49-4-204, 49-4-209, 49-4-301, 49-4-302, 49-7-2004.

EFFECTIVE DATES: October 27, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking amends Chapter 1640-01-01 regarding the Tennessee Student Assistance Program Awards (TSAA). The proposed rules make various clarifications to existing language of the TSAA rules to facilitate administration of the program for eligible postsecondary institutions and provide uniformity with other TSAC rules.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

### **Description of Proposed Rule**

Pursuant to T.C.A. § 4-5-202, the Tennessee Student Assistance Corporation (TSAC) intends to file proposed rules to amend the current rules of Chapter 1640-01-01 Tennessee Student Assistance Program Awards (TSAA), in lieu of a rulemaking hearing, it is the intent of TSAC to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of issue of the Tennessee Administrative Register in which the proposed rules are published.

The proposed rules are required to make various clarifications to the existing language of the TSAA rules and to provide uniformity with other TSAC rules.

### **Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses**

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

6. Performance standards for small businesses:

TSAC expects the eligible institutions engaged in the administration of the Tennessee Promise Scholarship Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

#### **Economic Impact Statement**

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

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

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not applicable.

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

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed 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 rules for the Tennessee Student Assistance Program Chapter 1640-01-01, as amended, shall have no projected impact on local governments.

**Department of State  
Division of Publications**

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Sequence Number: 07-22-15  
Rule ID(s): 5993  
File Date: 07/29/15  
Effective Date: 10/27/15

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

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

<b>Agency/Board/Commission:</b>	Tennessee Student Assistance Corporation
<b>Division:</b>	Higher Education
<b>Contact Person:</b>	Peter Abernathy, Senior Associate Executive Director and Attorney
<b>Address:</b>	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615.532.6065
<b>Email:</b>	Peter.Abernathy@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
1640-01-01	Tennessee Student Assistance Program
Rule Number	Rule Title
1640-01-01-.01	Definitions
1640-01-01-.02	Student Eligibility-Award Use
1640-01-01-.03	Financial Need
1640-01-01-.04	Reports and Record Access
1640-01-01-.05	Standards for Institutional Reviews and Error Resolution

**RULES  
OF  
TENNESSEE STUDENT ASSISTANCE CORPORATION  
CHAPTER 1640-01-01  
TENNESSEE STUDENT ASSISTANCE PROGRAM**

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1640-01-01-.01	Definitions	1640-01-01-.04	Reports and Record Access
1640-01-01-.02	Student Eligibility-Award Use	1640-01-01-.05	Standards for Institutional Review and Error Resolution
1640-01-01-.03	Financial Need		

**1640-01-01-.01 DEFINITIONS.**

- (1) Academic Term: A semester, trimester, quarter, or 300 clock hours of training.
- (2) Academic Year: A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of two semesters, two trimesters, or three quarters at an eligible postsecondary institution using credit hours, or at least 900 clock hours of training for a program using clock hours. A clock hour is a 50 to 60 minute class, lecture, recitation, or a faculty supervised laboratory, shop training, or internship.
- (3) Application: The Free Application for Federal Student Aid (FAFSA).
- ~~(4) Contribution Index: The Expected Family Contribution (EFC); which is a measure of parental and/or student ability to contribute toward payment of educational expenses as determined by the FAFSA.~~
- (54) Eligible Postsecondary Institution: Those institutions which are entitled to enroll student assistance award recipients as provided in T.C.A. § 49-4-301.
- ~~(5) Expected Family Contribution (EFC): A measure of parental and/or student ability to contribute toward payment of educational expenses as determined by the FAFSA.~~
- ~~(6) Financially Independent Student: A person who meets the conditions established by the U.S. Department of Education as used in the administration of student assistance programs authorized by the Higher Education Act of 1965, as amended.~~
- (76) Incarcerated: Currently confined to a local, state, or federal correctional institution, which would include work release or educational release facilities.
- (87) Institution of Higher Education: A postsecondary educational institution in Tennessee which:
  - (a) Is a public university, community college, or ~~technology center~~Tennessee college of applied technology; a private business, trade, or technical school; or a nonprofit institution of higher education as defined in these rules;
  - (b) Admits as regular students only persons who have a high school diploma, the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in Tennessee and who have the ability to benefit from the training offered;
  - (c) Is legally authorized to provide an educational program beyond secondary education in Tennessee;

(Rule 1640-01-01-.01, continued)

- (d) Provides an educational program for which it awards an associate or baccalaureate degree, or provides at least a two-year program which is acceptable for full credit toward a baccalaureate degree, or provides at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and
  - (e) Is accredited by:
    1. The Southern Association of Colleges and Schools; or
    2. The Accrediting Council for Independent Colleges and Schools, the Council on Occupational Education, or the Accrediting Commission of Career Schools and Colleges of Technology; and is authorized to operate by the Tennessee Higher Education Commission pursuant to the Postsecondary Education Authorization Act of 1974; or
    3. A regional accrediting agency if the institution is a private, nonprofit institution providing exclusively competency-based education through predominantly on-line degree programs.
- (98) Nonprofit Institution of Higher Education: An institution of higher education owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit, and cannot lawfully benefit any private shareholder or entity.
- (409) Pell Grant Program: The program of federal student assistance authorized by Part A, Title IV, Higher Education Act of 1965, as amended.
- (10) **TSAA: Tennessee Student Assistance Award.**
- (4111) TSAC: Tennessee Student Assistance Corporation ~~(TSAC)~~.
- (4212) Undergraduate student: Those persons enrolled in an eligible postsecondary institution as defined in T.C.A. § 49-4-301 and who have not received a baccalaureate degree.

**Authority:** T.C.A. §§ 49-4-201, 49-4-204, ~~and 49-4-301~~, and ~~2013 Tenn. Pub. Acts Ch. 18549-7-2004~~.

**Administrative History:** Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed July 30, 1982; effective October 13, 1982. Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed October 21, 1987; effective January 27, 1988. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed July 12, 1990; effective October 29, 1990. Amendment filed March 5, 1992; effective June 29, 1992. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed April 28, 1993; effective July 28, 1993. Amendment filed May 27, 1999; effective September 28, 1999. Amendment filed June 30, 2000; effective October 28, 2000. ~~Repeal and new rule filed November 10, 2010; effective April 30, 2011. Amendments filed March 1, 2013; effective August 29, 2013. Amendment filed September 3, 2013; effective February 28, 2014.~~

#### 1640-01-01-.02 STUDENT ELIGIBILITY-AWARD USE.

- (1) ~~A person shall be eligible for a student assistance award upon submission of an application and when TSAC determines~~To be eligible to receive TSAA, a student shall:
  - (a) ~~The applicant is~~Be a resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents;
  - (b) ~~The applicant has~~Have financial need;

(Rule 1640-01-01-.02, continued)

- (c) ~~The applicant is~~Be enrolled or intends to enroll in an eligible postsecondary institution as an undergraduate student on at least a half-time basis ~~as established by federal financial aid minima;~~
  - (d) ~~The applicant has~~ave applied for a Federal Pell Grant under Title IV-A-1 of the Higher Education Act of 1965, as amended, and ~~has~~ have been assigned an ~~Expected Family Contribution (EFC)~~EFC by the U.S. Department of Education or its contractor, ~~and has that EFC on file at the postsecondary institution to be attended;~~
  - (e) ~~If previously enrolled in the eligible postsecondary institution, that the applicant remains~~Remain in good standing and ~~is making~~make satisfactory progress according to the standards and practices of the institution;
  - (f) ~~The applicant does not~~ owe a refund or repayment on any grant, and ~~is not be~~ in default on any loan, received at any institution under provisions of Title IV of the Higher Education Act of 1965, as amended; ~~and~~
  - (g) ~~The applicant is not~~ be incarcerated ~~as defined in rule 1640-01-01-.01(07).~~
- (2) Award recipients must use ~~student assistance awards~~the TSAA for educationally-related expenses. ~~A recipient to whom credit has been extended during the enrollment process should give first priority to the liquidation of that obligation before using the proceeds of the awards to defray other educational expenses. All state financial aid granted to students~~TSAA awards shall be first applied to tuition and fees, room and board, and the excess, if any, shall be distributed to the recipient according to Title IV of the Higher Education Act of 1965, as amended. ~~TSAA awards shall not exceed the recipient's cost of attendance when combined with other financial aid received.~~
- (3) Enrolled award recipients who withdraw prior to or after certification of enrollment, but prior to the completion of the term ~~will~~ may have a portion of the award paid in accordance with the institution's published refund policies.
- (4) Award recipients who desire to transfer their ~~student assistance award~~TSAA from one eligible postsecondary institution to another must make a request ~~in writing to TSAC or transmit the information by updating their FAFSA.~~
- (5) Award recipients may receive awards to a maximum for:
- (a) A four-year program, up to 8 semesters or 12 quarters;
  - (b) A three-year program, up to 6 semesters or 9 quarters;
  - (c) A two-year program, up to 4 semesters or 6 quarters;
  - (d) A one-year program, up to 2 semesters or 3 quarters; ~~and or~~
  - (e) A six-month program, up to 1 semester or 2 quarters or until completion of the program of study, whichever comes first, assuming all other eligibility requirements are met.

**Authority:** T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, 49-4-209, 49-4-301, and 49-4-302. **Administrative History:** Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed July 30, 1982; effective October 13, 1982. Amendment filed July 10, 1984; effective October 14, 1984. Amendment filed

(Rule 1640-01-01-.02, continued)

September 3, 1985; effective December 14, 1985. Amendment filed April 10, 1986; effective July 14, 1986. Amendment filed December 5, 1986; effective March 31, 1987. Amendment filed January 20, 1987; effective April 29, 1987. Amendment filed October 21, 1987; effective January 27, 1988. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed May 7, 1991; effective August 28, 1991. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed April 28, 1993; effective July 28, 1993. Amendment filed October 26, 1993; effective March 1, 1994. Amendment filed May 27, 1999; effective September 28, 1999. Amendment filed August 28, 2002; effective December 27, 2002. *Repeal and new rule filed November 10, 2010; effective April 30, 2011. Amendments filed March 1, 2013; effective August 29, 2013.*

#### 1640-01-01-.03 FINANCIAL NEED.

- (1) The parent's<sup>2</sup> or student's<sup>2</sup> ~~ability to contribute to educational expenses~~ EFC shall be measured using the same guidelines as those used in determining eligibility for assistance under the Federal Pell Grant Program, ~~as these guidelines may be changed or amended.~~
- (2) The maximum award paid each year shall be based on available funds and shall be determined by the TSAC Board of Directors. TSAC shall develop and publish the payment table annually.
- (3) TSAC will establish a maximum ~~contribution index~~ EFC level based on anticipated appropriations. Students with ~~a contribution index~~ an EFC equal to or less than the maximum amount will receive award commitments ~~on a first-come, first-served basis~~ until appropriated funds are exhausted.

**Authority:** T.C.A. §§ 49-4-201, 49-4-204, and 49-4-301. **Administrative History:** Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed December 27, 1979; effective March 30, 1980. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed November 30, 1981; effective March 1, 1982. Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed July 10, 1984; effective October 14, 1984. Amendment filed May 7, 1991; effective August 28, 1991. *Repeal and new rule filed November 10, 2010; effective April 30, 2011. Amendments filed March 1, 2013; effective August 29, 2013.*

#### 1640-01-01-.04 REPORTS AND RECORD ACCESS.

- (1) Postsecondary institutions enrolling ~~student assistance award~~ TSAA recipients shall certify and report the following information to TSAC before payments of assistance are made:
  - (a) That the student is or was enrolled for the appropriate academic term for half-time, three-fourths, or full-time enrollment.
  - (b) That the student is in good standing and making satisfactory progress according to the standards and practices of the institution, under provisions of Title IV of the Higher Education Act of 1965, as amended.
  - (c) That the student does not owe a refund on any grant or is not in default on any loan received at any institution under provisions of Title IV of the Higher Education Act of 1965, as amended.
  - ~~(d) The student's current Expected Family Contribution.~~
  - (ed) That the student's total resources, which when combined with payments by TSAC will not result in the student receiving funds in excess of his or her cost of ~~education attendance~~ as determined by ~~criteria employed by~~ the institution in administration of

(Rule 1640-01-01-.04, continued)

other programs of student financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended.

- ~~(fe)~~ That the student has on file with the institution a Statement of Registration Compliance for periods of instruction beginning on or after July 1, 1983, certifying that ~~he or she~~ the student is registered with Selective Service or that ~~he or she~~ the student is not required to be registered.
  - (gf) That the student has on file with the institution a statement for the periods of instruction beginning on or after July 1, 1989 certifying that ~~he or she~~ the student is in compliance with the Anti-Drug Abuse Act.
- (2) Postsecondary institutions enrolling ~~student assistance award~~ TSAA recipients shall ~~furnish such reports as may be provide information as~~ required by TSAC concerning the recipients, ~~and shall, during regular office hours,~~ make institutional records available to TSAC concerning the recipients, and ~~shall, during regular office hours,~~ make institutional records available to TSAC staff for the purpose of validating any information which affects the recipients' eligibility or the amount of assistance they would receive.
  - (3) ~~Postsecondary institutions shall not violate the~~The confidential relationship of the student ~~shall not be violated.~~ Student files shall be utilized only by the TSAC staff. Confidential information will not be released without written approval from the ~~applicant student.~~ Statistical data may be released provided such reports do not identify individuals. ~~Public requests for program records and information shall adhere to TSAC's open records policy. Outside research projects may utilize reported statistical information, other requests will require approval by the TSAC Board of Directors; and should such requests require special computer programming, care shall be taken to protect the student's confidentiality and any expense generated by special requests shall be paid by the outside research project, provided; however, student records shall be accessible to the Comptroller of the Treasury for audit purposes.~~
  - (4) Persons applying for ~~awards of student assistance~~ the TSAA shall be required to furnish to TSAC or the postsecondary institution such data as is necessary to validate the information on their application. An applicant's social security number shall be furnished in all cases and is required for identity of the applicant and as an account number ~~in order~~ to record necessary data accurately.
  - (5) A ~~student assistance award~~ TSAA recipient who is discovered to have willingly provided false reports or information to TSAC or the postsecondary institution shall, upon evidence, have the award revoked and shall not thereafter be entitled to further payment of benefits.

**Authority:** T.C.A. §§ 49-4-201, 49-4-204, and 49-4-301. **Administrative History:** Original rule filed January 23, 1976; effective April 15, 1976. Repealed and refiled July 6, 1976; effective August 5, 1976. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed February 9, 1984; effective May 15, 1984. Amendment filed July 10, 1984; effective October 14, 1984. Amendment filed September 3, 1985; effective December 14, 1985. Amendment filed April 10, 1986; effective July 14, 1986. Amendment filed August 25, 1986; effective November 29, 1986. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed April 28, 1993; effective July 28, 1993. ~~Repeal and new rule filed November 10, 2010; effective April 30, 2011. Amendments filed March 1, 2013; effective August 29, 2013.~~

#### 1640-01-01-.05 STANDARDS FOR INSTITUTIONAL REVIEWS AND ERROR RESOLUTION.

(Rule 1640-01-01-.05, continued)

- (1) TSAC shall conduct periodic program reviews to evaluate the general operation of the financial aid office relative to the institution's management of the ~~Tennessee Student Assistance Award Program~~ **TSAA**:
- (a) The Chief Executive Officer (**CEO**) of the institution typically will be notified of the visit ~~two-four-to-threesix~~ weeks in advance; the exact date for the visit usually will be scheduled with the Director of Financial Aid. Extenuating circumstances such as a request from the U.S. Department of Education or the school's regulatory board may preclude TSAC from ~~scheduling~~ the review in advance.
  - (b) At the conclusion of the visit, the reviewer shall meet with the ~~Chief Executive Officer~~ **CEO**, or his or her representative(s), and the Director of Financial Aid to discuss the preliminary findings and recommendations resulting from the visit.
  - (c) Following the exit interview, a preliminary report shall be sent to the ~~Chief Executive Officer~~ **CEO** of the institution requesting a response within thirty (30) days. One extension of up ~~to thirty~~ (30) days may be requested in writing by the institution.
  - (d) The final report of findings incorporating the institution's response shall be transmitted to the ~~institution's Chief Executive Officer~~ **CEO** within thirty (30) days of receipt of the institution's response or within thirty (30) days of the date the response should have been received. The final report shall, when necessary, request restitution and/or corrective action.
- (2) TSAC shall resolve disputes related to the final report of an institution's Program Review as noted below:
- (a) The institution shall be allowed an additional thirty (30) day period to request a hearing and/or to provide additional documentation for review by TSAC's Executive Director.
    1. If the Executive Director's review of the additional documentation does not resolve the dispute, the institution may request a hearing within thirty (30) days of the Executive Director's decision.
    2. If a hearing is requested, such hearing shall be requested in writing and sent to the Executive Director. The hearing shall be conducted in accordance with **Tenn. Comp. R. & Regs. Chapter** 1360-04-01, Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Rules of Secretary of State, by the ~~Tennessee Student Assistance Corporation~~ **TSAC** Appeals Committee. Such Appeals Committee, composed of five (5) members of the ~~Tennessee Student Assistance Corporation~~ **TSAC** Board of Directors, appointed ~~annually as needed~~ by the Chairman, shall within a reasonable period of time, set a date for the hearing. The Appeals Committee shall, in consultation with U.S. Department of Education officials, when necessary, render a decision within thirty (30) days of the hearing.
  - (b) Final resolution, which may include financial restitution and/or a plan for corrective action to prevent recurrence, must be made within thirty (30) days of the Appeals Committee's decision.
  - (c) Should the institution fail to respond within forty-five (45) days of the final report or to take corrective action or to make restitution within thirty (30) days after the decision from the Appeals Committee hearing, TSAC shall begin proceedings to suspend the institution from participation in TSAC programs for sixty (60) days. This suspension will be effective twenty (20) days from receipt by the school of TSAC's notification of

(Rule 1640-01-01-.05, continued)

suspension. Notification of suspension, along with copies of all findings and responses, will be sent to the U.S. Department of Education.

- (d) Should the school fail to take corrective action or to make restitution within forty-five (45) days of the suspension, TSAC shall terminate the institution by informing the institution that within twenty (20) days from receipt of notification, the institution is terminated from all TSAC programs.
- (e) If an institution is suspended or terminated during a term, all enrolled students attending that institution who received ~~Tennessee Student Assistance Award~~ **TSAA Program** award letters ~~or on whose behalf TSAC endorsed an educational loan~~ before the effective date of the suspension or termination will be paid ~~for that term.~~
  - ~~(1) For that term, as in the case of a grant, or~~
  - ~~(2) For "the period of the loan," as in the case of an educational loan.~~
- (f) Reinstatement of eligibility may be requested of the ~~Tennessee Student Assistance Corporation~~ **TSAC** Board after a period of one (1) year after date of termination, but only if the institution is eligible for other Title IV programs.

**Authority:** T.C.A. §§ 49-4-201 and 49-4-204. **Administrative History:** Original rule filed July 10, 1984; effective October 14, 1984. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed September 3, 1992; effective December 29, 1992. ~~Repeal and new rule filed November 10, 2010; effective April 30, 2011. Amendments filed March 1, 2013; August 29, 2013.~~

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Russ Deaton	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson	X			
Commissioner Larry Martin, by Mr. David Thurman	X			
Commissioner Candice McQueen, by Dr. Danielle Mazera				X
Chancellor John Morgan, by Mr. David Gregory	X			
Dr. Joe Dipietro, by Dr. Katie High				X
Dr. Gary Weedman	X			
Dr. J. Gary Adcox	X			
Ms. Celena Tulloss	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. Tom Hughes	X			
Ms. Sydney Jones				X

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 05/27/2105, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 6/15/15

Signature: [Handwritten Signature]

Name of Officer: Dr. Russ Deaton

Title of Officer: Interim Executive Director



Subscribed and sworn to before me on: 6/15/15

Notary Public Signature: [Handwritten Signature]

My commission expires on: 08-23-2016

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.

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

7-24-15  
Date

**Department of State Use Only**

Filed with the Department of State on: 07/29/15

Effective on: 10/27/15

[Handwritten Signature]  
Tre Hargett  
Secretary of State

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

<u>DEPARTMENT:</u>	Environments and Conservation
<u>DIVISION:</u>	Solid Waste Management
<u>SUBJECT:</u>	Hazardous Waste Regulations
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 68-212-101 et seq.
<u>EFFECTIVE DATES:</u>	October 8, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The primary intent of this rule amendment is to update the hazardous waste regulations by incorporating the following federal changes that EPA published as final rules in the Federal Register from July 1, 2013 to June 30, 2014:</p> <ul style="list-style-type: none"><li>• The definition of solid waste was amended to conditionally exempt solvent-contaminated wipes that are cleaned and reused, and the definition of hazardous waste was amended to conditionally exempt solvent-contaminated wipes that are sent for disposal. This proposed rulemaking provides a consistent regulatory framework that is appropriate to the level of risk posed by solvent-contaminated wipes in a way that is protective of human health and the environment and reduces cost.</li><li>• To conditionally exclude carbon dioxide (CO<sub>2</sub>) streams that are hazardous from the definition of hazardous waste provided these CO<sub>2</sub> streams are captured from emission sources and injected into Class VI injection wells for the purpose of geologic sequestration.</li><li>• To allow the use of an electronic hazardous waste manifesting system.</li><li>• To update the export provisions of Cathode Ray Tube recycling to reflect applicable federal rules.</li></ul> <p>This rule amendment also updates the rules in order to maintain continued program authorization and includes recently adopted federal exemptions and exclusions. The rules are also amended to include state citations in addition to existing federal citations regarding</p>

transboundary movement of hazardous waste for recovery in cooperation with the Organization for Economic Cooperation and Development.

This rule amendment also restores language regarding mixtures of used oil and hazardous waste from conditionally exempt small quantity generators that was inadvertently deleted from the regulations; adds a perjury statement to three certification statements following the advice of the attorney general; and corrects typographical errors.

## 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 suggested that proposed new subparts (1)(d)1(xxv) and (1)(d)2(xvii) of Rule 0400-12-01-.02 be amended to make it clear that to maintain the exclusion regarding solvent-contaminated wipes on-site accumulation be limited to 180 days. The suggested language is consistent with the intent of EPA's rule and avoids the ambiguity created by the "may" in the proposed language.

**Response:** The Department agrees and has changed the proposed rule as suggested by the commenter.

**Comment:** The commenter pointed out that in 2012 the Office of General Counsel and the Attorney General agreed that the following sentence be added to certification statements: "As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury." They suggested that the sentence be added to the certification statements in three places: Rule 0400-12-01-.02(1)(d)8(iv)(I) and (II), and 0400-12-01-.02(1)(c)3(ii)(II)III.

**Response:** The Department agrees and has added the sentence in the three places suggested by the commenter.

**Comment:** The commenter pointed out a typographical error in proposed amendment to subpart (3)(a)1(iii) of Rule 0400-12-01-.04.

**Response:** The typographical error has been corrected as suggested.

**Comment:** A commenter pointed out that ERA nomenclature was not converted to the state required numbering at Item (6)(b)1(v)(X) of Rule 0400-12-01-.02.

**Response:** The item was changed to state numbering.

**Comment:** A commenter pointed out that proposed regulations incorporating EPA's language regarding electronic manifests that in seven places in the proposed rules the Department converted an EPA rule citation to conform to the comparable state citation. However, to obtain authorization from EPA, the state is required to use the EPA citation. The commenter identified the following proposed rules that need changing: subpart (3)(e)1(i) in Rule 0400-12-01-.03; Item (3)(a)1(iv)(I) and part (3)(f)1 in Rule 0400-12-01-.04; subpart (5)(b)6(i) and subpart (5)(b)11 (i) in Rule 0400-12-01-.05; and subpart (5)(b)6(i) and subpart (5)(b)11(i) in Rule 0400-12-01-.06.

**Response:** The Department agrees with the commenter and the identified rules were changed to include the required EPA citation.

**Comment:** A commenter questioned changing the federal references from the Clean Air Act and Clean Water Act to the analogous state statutes in the amendments to Item (1)(c)1(ii)(IV), subpart (1)(d)1(ii) and item (1)(d)2(xii)(IV) of Rule 0400-12-01-.02. The commenter was concerned about whether the change in reference would change the scope of the exemption in the regulation.

**Response:** The proposed change was made in response to EPA's comments regarding program authorization reviews of past rulemakings. Many of the changes proposed in this rulemaking, in addition to the amendments that concern the commenter, are being made to address EPA's concerns regarding the suitability of regulations to support additional authorization. There is no intention to either expand or narrow the scope of the exemptions cited by the commenter. To ensure that the exemption does not change its scope the proposed rules are being changed in response to this comment to include references to both the applicable federal and state laws.

- Comment: A commenter wanted to know why the proposed rules include the regulatory language regarding Transboundary Movements of Hazardous Waste for Recovery with the OECD if EPA was going to the agency implementing them.
- Response: The department acknowledges that EPA is the agency to implement the transboundary movements of hazardous waste for recovery with the "Organization of Economic Cooperation and Development". A previous version of the regulations simply referenced the EPA as the implementing agency and during an authorization review of those regulations EPA informed the department that Tennessee was required to adopt and spell out the federal regulations, including any internal federal statutory or regulatory references. To support additional authorization we are adding the regulatory language as EPA requires.
- Comment: A commenter noticed that the hazardous waste listing for Commercial Chemical Products at part (4)(d)6 of Rule 0400-12-01-.02 did not also include the chemical name 1,1,1-Trichloroethane for U226 and suggested it be added and asked for additional changes to make the listing easier to use.
- Response: This rulemaking did not propose to amend the listings found at part (4)(d)6 of Rule 0400-12-01-.02 and will be considered in a future rulemaking. The U226 listing already includes the chemical in question by two of its names: Ethane, 1,1,1-trichloro- and Methyl chloroform.

## Regulatory Flexibility Addendum

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

The primary intent of this rulemaking is to update the hazardous waste regulations by incorporating the following federal changes that EPA published as final rules in the Federal Register from July 1, 2013 to June 30, 2014: (1) the definition of solid waste was amended to conditionally exempt solvent-contaminated wipes that are cleaned and reused and revised the definition of hazardous waste to conditionally exempt solvent-contaminated wipes that are disposed; (2) to conditionally exclude carbon dioxide (CO<sub>2</sub>) streams that are hazardous from the definition of hazardous waste provided these CO<sub>2</sub> streams are captured from emission sources and injected into Class VI injection wells for the purpose of geologic sequestration; (3) to allow the use of an electronic hazardous waste manifesting system; and (4) to amend the export provisions of Cathode Ray Tube recycling.

This rulemaking is also intended to correct language EPA identified while reviewing our requests for additional program authorization. These corrections are necessary to obtain additional program authorization and include amending the rules to include state citations where several federal citations are used, if appropriate and to add language regarding transboundary movement of hazardous waste for recovery with the Organization for Economic Cooperation and Development although EPA is responsible to its implementation.

The amendments identified above substantially codify existing federal law and are exempt from the requirements of the Regulatory Flexibility Act of 2007, T.C.A. §§ 4-5-401 et seq. The following amendments are not exempt: (1) The restoration of language regarding mixtures of used oil and hazardous waste from conditionally exempt small quantity generators that was inadvertently deleted from the regulations during renumbering; (2) the addition of a perjury statement to three certification statements; and (3) the correction of typographical errors.

- (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 many small businesses that generate used oil and that also generate hazardous waste in quantities of less than 220 pounds per calendar month. These types of used oil and hazardous waste generators are not required by existing regulations to notify the Department of their generating activities. Therefore, we have no reliable estimate of the number of affected small businesses. Nevertheless, this regulatory amendment is necessary in order to protect public health, welfare and the environment. It is doubtful that any small business will be impacted by the amended certification statements added to the carbon dioxide stream injected for geologic sequestration requirement or to the high temperature metals recovery (HTMR) processing regulations.

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

If the conditionally exempt small quantity generator avoids adding any hazardous waste to his used oil that could result in a mixture that exhibits the characteristic ignitability, corrosivity or reactivity, which is the intent of the amendment, then there are no additional reporting, recordkeeping or other administrative costs.

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

The probable effect is the desired effect, that conditionally exempt small quantity generator will be careful to not mix their hazardous waste with their used oil, if the resultant mixture continues to be ignitable, corrosive or reactive. Mixtures of used oil and hazardous waste that are ignitable, corrosive or reactive, without this amendment, would not be effectively managed in a manner that is protective of public health, welfare or the environment.

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

The Department is not aware of any alternative that will achieve the protection being sought with the used oil hazardous waste mixture amendment.

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

The current regulations are identical to the federal regulations. The amendment will bring the regulations in line with other states' interpretation of how these used oil hazardous waste mixture must be managed.

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

Exempting small businesses from this proposed rule is equivalent to keeping the existing rules unchanged. The amendment is necessary to enhance protection of public health, welfare and the environment and is designed to ensure that hazardous waste and used oil mixtures are appropriately managed.

## **Impact on Local Governments**

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

The Department does not anticipate an impact on local governments.

**Department of State  
Division of Publications**

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Rule ID(s): 5980  
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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 (Tenn. Code Ann. § 4-5-205).*

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
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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 Waste
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-.09	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
0400-12-01-.10	Land Disposal Restrictions

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

Chapter 0400-12-01  
Hazardous Waste Management

Amendments

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

"Manifest" means the shipping document EPA Form 8700-22 (including if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed ~~by the generator or offeror~~ in accordance with ~~the instructions in Appendix I of Rule 0400-12-01-.03(9)(a)~~ and the applicable requirements of Rules 0400-12-01-.03 through 0400-12-01-.06.

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 adding in alphabetical order the definitions of "Carbon dioxide stream," "CRT exporter," "Electronic manifest" or "e-manifest," "Electronic manifest system" or "e-manifest system," "No free liquids," "Solvent-contaminated wipe," "Tennessee Air Quality Act," "User of the electronic manifest system," "Water Quality Control Act" and "Wipe" to read as follows:

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

"CRT exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

"Electronic manifest" or "e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

"Electronic manifest system" or "e-Manifest system" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

"No free liquids," as used in subparts (1)(d)1(xxv) and (1)(d)2(xvii) of Rule 0400-12-01-.02, means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference in subparagraph (b) of this paragraph, and that there is no free liquid in the container holding the wipes.

"Solvent-contaminated wipe" means:

1. A wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents listed in subparagraph (4)(b) of Rule 0400-12-01-.02 or the corresponding P- or U- listed solvents found in subparagraph (4)(d) of Rule 0400-12-01-.02;

- (ii) Exhibits a hazardous characteristic found in paragraph (3) of Rule 0400-12-01-.02 when that characteristic results from a solvent listed in paragraph (4) of Rule 0400-12-01-.02; and/or
  - (iii) Exhibits only the hazardous waste characteristic of ignitability found in subparagraph (3)(b) of Rule 0400-12-01-.02 due to the presence of one or more solvents that are not listed in paragraph (4) of Rule 0400-12-01-.02.
2. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at subparts (1)(d)1(xxv) and (1)(d)2(xvii) of Rule 0400-12-01-.02.

"Tennessee Air Quality Act" means the Tennessee Air Quality Act, as amended, T.C.A §§ 68-201-101 et seq.

"User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

1. Is required to use a manifest to comply with:
  - (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
  - (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and
2. Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or
3. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

"Water Quality Control Act" means the Water Quality Control Act of 1977, as amended, T.C.A §§ 69-3-101 et seq.

"Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

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

Part 1 of 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:

1. Here is a list of Publications publications/materials referred to in these rules and where they may be obtained ~~or referred to in these rules are~~ as set forth by EPA in 40 CFR 260.11 and 40 CFR 270.6.

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

Part 1 of subparagraph (a) of paragraph (7) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

1. Purpose, Scope, and Applicability

Any Except as provided under subparts (i) and (ii) of this part, any information which is supplied to the Department by persons who are subject to these rules ~~or by other governmental agencies~~ and which is designated as proprietary information (as defined in subpart 2(viii) of this subparagraph) shall be handled by the Department as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary, any information supplied to the Department under or relating to these rules shall be available for public review at any time during the State's normal business hours.

(i) After the effective date of these rules, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03.

(ii) The Department will make any electronic manifest that is prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, or any paper manifest that is submitted to the system under item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06 available to the public under this paragraph when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by the Department to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(Note: See 40 CFR 260.2(b) for additional requirements.)

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

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

(IV) It is a mixture of solid waste and one or more hazardous wastes listed in paragraph (4) of this rule and has not been excluded from subpart 1(ii) of this subparagraph under Rule 0400-12-01-.01(3)(a) and (c), parts 7 or 8 of this subparagraph; however, the following mixtures of solid wastes and hazardous wastes listed in paragraph (4) of this rule are not hazardous wastes (except by application of items (I) or (II) of this subpart) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under T.C.A. §§ 69-3-101 et seq. (including wastewater at facilities which have eliminated the discharge of wastewater) and:

I. One or more of the following spent solvents listed in subparagraph (4)(b) of this rule--benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents - -provided that (1) the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million or (2) the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to

an enforceable limit in a federal or state operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

- II. One or more of the following spent solvents listed in subparagraph (4)(b) of this rule --methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents- - provided that (1) the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million or (2) the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or the Tennessee Air Quality Act and Rule Division 1200-03 or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions) does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the

facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

- III. One of the following wastes listed in subparagraph (4)(c) of this rule, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry (Hazardous Waste Code K050), crude oil storage tanks sediment from petroleum refining operations (Hazardous Waste Code K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (Hazardous Waste Code K170), spent hydrotreating catalyst (Hazardous Waste Code K171), and spent hydrorefining catalyst (Hazardous Waste Code K172); or
- IV. A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in subparagraphs (4)(b) through (4)(d) of this rule, arising from de minimis losses of these materials. For purposes of this subitem, de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e. g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in subparagraphs (4)(b) through (4)(c) of this rule or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in paragraph (4) of this rule must either have eliminated the discharge of wastewaters or have included in its Clean Water Act [or Tennessee Water Quality Control Act](#) permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Appendix VII of paragraph (5) of this rule; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Rule 0400-12-01-.10(3)(a) for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act [or Tennessee Water Quality Control Act](#) permit application or the pretreatment control authority submission. A copy of the Clean Water Act [or Tennessee Water Quality Control Act](#) permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or
- V. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in paragraph (4) of this rule, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average

concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

- VI. One or more of the following wastes listed in subparagraph (4)(c) of this rule -- wastewaters from the production of carbamates and carbamoyl oximes (Hazardous Waste Code No. K157)- - provided that (1) the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or (2) the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, [or the Tennessee Air Quality Act and Rule Division 1200-03](#) or at facilities subject to an enforceable limit in a federal [or state](#) operating permit that minimizes fugitive emissions) does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or
- VII. Wastewaters derived-from the treatment of one or more of the following wastes listed in subparagraph (4)(c) of this rule -- organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Hazardous Waste Code No. K156)—provided that (1) the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or (2) the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, [or the Tennessee Air Quality Act and Rule Division 1200-03](#)

or at facilities subject to an enforceable limit in a federal or state operating permit that minimizes fugitive emissions) does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Division Director, as defined in Rule 0400-12-01-.01(2)(a). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

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

Subitem III of item (II) of subpart (ii) of part 3 of subparagraph (c) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- III. A. Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in items (vi), (vii) and (xiii) of the definition for "Industrial furnace" in Rule 0400-12-01-.01(2)(a) that are disposed in ~~nonhazardous solid waste (Subtitle D) units~~ a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

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Generic exclusion levels for F006 nonwastewater HTMR residues

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Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

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- B. A one-time notification and certification must be placed in the facility's files and sent to the Division Director for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to ~~nonhazardous solid waste (Subtitle D) units~~ a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the ~~nonhazardous solid waste (Subtitle D) units~~ Class I or

Class II Disposal Facility receiving the waste changes. However, the generator or treater need only notify the Division Director ~~or an authorized state~~ on an annual basis if such changes occur. Such notification and certification should be sent to the Division Director by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the ~~nonhazardous solid waste (Subtitle D) unit~~ Class I or Class II Disposal Facility receiving the waste shipments; the Hazardous Waste Code(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."

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

Subpart (ii) 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 it in its entirety and substituting instead the following:

- (ii) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended or under the Water Quality Control Act.

(Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)

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

Subpart (xviii) 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 it in its entirety and substituting instead the following:

- (xviii) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of ~~subparagraph (4)(i)~~ paragraph (6) of this rule.

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 it in its entirety and substituting instead the following:

- (IV) The Commissioner may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the spent material into the

environment. Pads must provide the same degree of containment afforded by the ~~non-RCRA~~ tanks, containers and buildings eligible for exclusion as provided in item (III) of the subpart.

- I. The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.
- II. Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run-on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.
- 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 shall be accomplished by the owner or operator placing a notice 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 within ten days following conclusion of the public notice procedures.

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

Part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by adding a new subpart, as subpart (xxv), to read as follows:

(xxv) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

- (I) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
- (II) The solvent-contaminated wipes are accumulated by the generator for no more than 180 days from the start date of accumulation for each container prior to being sent for cleaning;

- (III) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in paragraph (2) of Rule 0400-12-01-.01;
- (IV) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules 0400-12-01-.01 through 0400-12-01-.12;
- (V) Generators shall maintain at their site the following documentation:
  - I. Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;
  - II. Documentation that the 180-day accumulation time limit in item (II) of this subpart is being met;
  - III. Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning; and
- (VI) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under T.C.A. §§ 69-3-101 et seq., or sections 301 and 402 or section 307 of the Clean Water Act

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

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

- (IV) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under section 402 of the Clean Water Act, as amended or under the Water Quality Control Act; and

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 adding a new subpart, as subpart (xvii), to read as follows:

- (xvii) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:
  - (I) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

- (II) The solvent-contaminated wipes are accumulated by the generator for no more than 180 days from the start date of accumulation for each container prior to being sent for disposal;
- (III) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in paragraph (2) of Rule 0400-12-01-.01;
- (IV) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules 0400-12-01-.01 through 0400-12-01-.12;
- (V) Generators shall maintain at their site the following documentation:
  - I. Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;
  - II. Documentation that the 180 day accumulation time limit in item (II) of this subpart is being met;
  - III. Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal; and
- (VI) The solvent-contaminated wipes are sent for disposal:
  - I. To a municipal solid waste landfill regulated under Chapter 0400-11-01, including Rule 0400-11-01-.04 regarding a Class I disposal facility, or to a hazardous waste landfill regulated under Rules 0400-12-01-.05 or 0400-12-01-.06; or
  - II. To a municipal waste combustor or other combustion facility regulated under T.C.A. §§ 68-201-101 et seq. or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rules 0400-12-01-.05 or 0400-12-01-.06 or paragraph (8) of Rule 0400-12-01-.09.

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

Subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by adding a new part, as part 8, to read as follows:

- 8. Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in 40 CFR Parts 144 and 146 of the Underground Injection Control Program of the Safe Drinking Water Act and Chapter 0400-45-06 Underground Injection Control, are not a hazardous waste, provided the following conditions are met:
  - (i) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable;
  - (ii) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the

applicable requirements in 40 CFR Parts 144 and 146 and Tennessee Chapter 0400-45-06;

(iii) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(iv) (I) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under this part, shall have an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) sign a certification statement worded as follows:

"I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under part (1)(d)8 of Rule 0400-12-01-.02 has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of the Safe Drinking Water Act and Tennessee Chapter 0400-45-06. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."

(II) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under this part, shall have an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) sign a certification statement worded as follows:

"I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under part (1)(d)8 of Rule 0400-12-01-.02 has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in 40 CFR Parts 144 and 146 and Tennessee Chapter 0400-45-06. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."

(III) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Commissioner. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in subparagraph (2)(a) of Rule 0400-12-01-.01) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available website (if such website exists) as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

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

Part 10 of subparagraph (e) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

10. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the

mixture is subject to Rule 0400-12-01-.11, provided the resultant mixture does not exhibit the characteristic of ignitability, corrosivity or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of this rule.

(i) Any material produced derived from such a non-hazardous mixture by processing, blending, or other treatment is also so regulated under part (2)(a)5 of Rule 0400-12-01-.11; and

(ii) If the resultant mixture exhibits the characteristic of ignitability, corrosivity or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of this rule, and if the resultant hazardous waste mixture exceeds the quantity limitations identified in this subparagraph, then the mixture is no longer conditionally exempt under this subparagraph and is subject to regulation under Rules 0400-12-01-.03 through .10.

(NOTE: Any used oil that is not recycled is a solid waste subject to a hazardous waste determination per Rule 0400-12-01-.03(1)(b).)

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

The listing description for F019 of part 1 of subparagraph (b) of paragraph (4) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

F019

Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit, or a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01, that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in 40 CFR 258.40 or the state equivalent, or, if in Tennessee, Chapter 0400-11-01, Rule ~~1200-01-11-.06~~ 0400-12-01-.06(14)(b) or Rule ~~1200-01-11-.05~~ 0400-12-01-.05(14)(b). For the purposes of this listing, motor vehicle manufacturing is defined in item 2(iv)(I) of this subparagraph and item 2(iv)(II) of this subparagraph describes the recordkeeping requirements for motor vehicle manufacturing facilities.

(T)

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

The listing description for K174 of part 1 of subparagraph (c) of paragraph (4) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

K174	<p>Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a Subtitle C or non-hazardous landfill licensed or permitted by the state or federal government, <u>or, if in Tennessee, in accordance with Rules 0400-12-01-.06 or 0400-12-01-.05, or Chapter 0400-11-01</u>; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of Subtitle C <u>or the Tennessee Hazardous Waste Management Act</u> must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.</p>	(T)
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Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

The listing description for K181 of part 1 of subparagraph (c) of paragraph (4) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

K181	<p>Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in part 3 of this subparagraph that are equal to or greater than the corresponding part 3 levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in 40 CFR 258.40, <u>or, if in Tennessee, disposed in a Class I or Class II Disposal Facility subject to a permit issued in accordance with Chapter 0400-11-01</u>, (ii) disposed in a Subtitle C landfill unit subject to either <u>40 CFR 264.301 or 40 CFR 265.301, or, if in Tennessee, subject to either Rule 0400-12-01-.06(14)(b) or Rule 0400-12-01-.05(14)(b)</u>; (iii) disposed in other Subtitle D landfill units that meet the design criteria in 40 CFR 258.40, <u>§ 40 CFR 264.301 or § 40 CFR 265.301, or, if in Tennessee, the design criteria in Rule 0400-11-01-.04, Rule 0400-12-01-.06(14)(b), or Rule 0400-12-01-.05(14)(b)</u>; or (iv) treated in a combustion unit that is permitted under Subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act, <u>or, if in Tennessee, treated in a combustion unit that is permitted under the Hazardous Waste Management Act, or an onsite combustion unit that is permitted under the Tennessee Air Quality Act</u>. For the purposes of this listing, dyes and/or pigments production is defined in subpart 2(i) of this subparagraph. Part 4 of this subparagraph describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under subparagraphs (b) through (e) of paragraph (3) of this rule and subparagraphs (b) through (d) of paragraph (4) of this rule at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.</p>	(T)
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Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

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

(v) Waste holding and handling

During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the ~~Subtitle C~~ requirements of this Chapter during the interim period, the generator could be subject to an enforcement action for improper management.

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

Subitem VI of item (l) of subpart (v) of part 1 of subparagraph (b) of paragraph (6) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- VI. The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

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

Subpart (v) of part 1 of subparagraph (b) of paragraph (6) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by adding items (X) and (XI) to read as follows:

(X) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

I. The name, EPA ID number (if applicable), and mailing and site address of the exporter;

II. The calendar year covered by the report; and

III. A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(XI) Annual reports must be submitted to the office specified in item (II) of this subpart. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

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-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (d) Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse [40 CFR 261.41]

[Note: The implementation of this subparagraph remains the responsibility of EPA.]

1. ~~Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person. CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period.~~

~~(i) The notification must be in writing, signed by the exporter, and include the following information:~~

~~(I) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;~~

~~(II) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;~~

~~(III) The estimated total quantity of used, intact CRTs specified in kilograms;~~

~~(IV) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;~~

~~(V) A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));~~

~~(VI) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;~~

~~(VII) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and~~

~~(VIII) A certification signed by the CRT exporter that states:~~

~~"I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~

~~(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and~~

Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

2. Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

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

Part 4 of subparagraph (a) of paragraph (1) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

4. Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in subparagraph (7)(i) subpart (7)(i)1(i) of this rule for recovery must comply with 40 CFR Part 262, Subpart H paragraph (9) of this rule. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 subparagraph (1)(c) of Rule 0400-12-01-.02 and is subject to either the Federal RCRA manifesting requirements at 40 CFR Part 262, Subpart B paragraph (3) of this rule, the universal waste management standards of 40 CFR Part 273 or Rule 0400-12-01-.12 Rule 0400-12-01-.12, or the export requirements in the spent lead-acid battery management standards of 40 CFR Part 266, Subpart G, or part (7)(a)1 of Rule 0400-12-01-.09.

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

Part 1 of subparagraph (a) of paragraph (3) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by adding a new subpart (iii) to read as follows:

(iii) Electronic manifest.

In lieu of using the manifest form specified in subpart (i) of this part, a person required to prepare a manifest under subpart (i) of this part may prepare and use an electronic manifest, provided that the person:

(I) Complies with the requirements in subparagraph (e) of this paragraph for use of electronic manifests, and

(II) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

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

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

- (e) (RESERVED) Use of the electronic manifest [40 CFR 262.24]

1. Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with subpart (a)1(iii) of this paragraph, and used in accordance with this subparagraph in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.
  - (i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25(a).
  - (ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.
  - (iii) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA inspector or the Commissioner.
  - (iv) No generator may be held liable for the inability to produce an electronic manifest for inspection under this subparagraph if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.
2. A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.
3. Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.
4. Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.
5. Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in paragraph (13) of this rule, and use these paper forms from this point forward in accordance with the requirements of subparagraph (d) of this paragraph.
6. Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the

generator/offerer certification on the printed copy of the manifest provided under part 4 of this subparagraph.

7. Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest.

(Note: In accordance with 40 CFR 262.24, EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.)

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

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

- (f) (RESERVED) Electronic manifest signatures [40 CFR 262.25]

Electronic signature methods for the e-Manifest system shall:

1. Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and
2. Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

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-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (i) International Agreements [40 CFR 262.58]

1. Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in subpart (i) of ~~the this~~ part for purposes of recovery is subject to ~~40 CFR Part 262, Subpart H paragraph (9) of this rule~~. The requirements of this paragraph and paragraph (8) of this rule do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the ~~Federal~~ definition of hazardous waste in ~~40 CFR 261.3 subparagraph (1)(c) of Rule 0400-12-01-.02~~ and is subject to either the ~~Federal RCRA~~ manifesting requirements at ~~40 CFR Part 262, Subpart B paragraph (3) of this rule~~, the universal waste management standards of ~~40 CFR Part 273 (Rule 0400-12-01-.12)~~, or the export requirements in the spent lead-acid battery management standards of ~~40 CFR Part 266, Subpart G (part (7)(a)1 of Rule 0400-12-01-.09)~~.
  - (i) For the purpose of ~~40 CFR Part 262, Subpart H paragraph (9) of this rule~~, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.
  - (ii) For the purpose of ~~40 CFR 262, Subpart H paragraph (9) of this rule~~, Canada and Mexico are considered OECD Member countries only for the purpose of transit.
2. Any person who exports hazardous waste to or imports hazardous waste from: A a designated OECD Member country for purposes other than recovery (e.g., incineration,

disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of this paragraph and paragraph (8) of this rule, and is not subject to the requirements of 40 CFR Part 262, Subpart H paragraph (9) of this rule.

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

Paragraph (9) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (9) ~~(Reserved)~~ Transboundary Movements of Hazardous Waste for Recovery within the OECD [40 CFR 262 Subpart H]

(Note: ~~Subpart H is administered by~~ The implementation of this paragraph remains the responsibility of EPA.)

(a) Applicability

1. The requirements of this paragraph apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in subpart (7)(i)1(i) of this rule. A waste is considered hazardous under U.S. national procedures if the waste:
  - (i) Meets the definition of hazardous waste in subparagraph (1)(c) of Rule 0400-12-01-.02; and
  - (ii) Is subject to either the manifesting requirements at paragraph (3) of this rule, the universal waste management standards of Rule 0400-12-01-.12, or the export requirements in the spent lead-acid battery management standards of part (7)(a)1 of Rule 0400-12-01-.09
2. Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this paragraph.

(b) Definitions

The following definitions apply to this paragraph.

"Competent authority" means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

"Countries concerned" means the OECD Member countries of export or import and any OECD Member countries of transit.

"Country of export" means any designated OECD Member country listed in subpart (7)(i)1(i) of this rule from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

"Country of import" means any designated OECD Member country listed in subpart (7)(i)1(i) of this rule to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

"Country of transit" means any designated OECD Member country listed in subparts (7)(i)1(i) and (ii) of this rule other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

"Exporter" means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

"Importer" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

"OECD area" means all land or marine areas under the national jurisdiction of any OECD Member country listed in subparagraph (7)(i) of this rule. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

"OECD" means the Organization for Economic Cooperation and Development.

"Recognized trader" means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

"Recovery facility" means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

"Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

"Transboundary movement" means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

(c) General conditions

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in part (a)1 of this paragraph. The OECD Green and Amber lists are incorporated by reference in (j)4 of this paragraph.

(i) Listed wastes subject to the Green control procedures.

(I) Green wastes that are not considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph are subject to existing controls normally applied to commercial transactions.

(II) Green wastes that are considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph are subject to the Amber control procedures set forth in this paragraph.

(ii) Listed wastes subject to the Amber control procedures.

(I) Amber wastes that are considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph are subject to the Amber control procedures set forth in this paragraph.

(II) Amber wastes that are considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph, are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in subpart (7)(i)1(i) of this rule that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

I. For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

II. For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(III) Amber wastes that are not considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph, but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

(Note: Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this paragraph. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this paragraph.)

(iii) Procedures for mixtures of wastes.

(I) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph shall be

subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

(Note: The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.)

- (II) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

(Note: The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.)

- (iv) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(I) If such wastes are considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph, such wastes are subject to the Amber control procedures.

(II) If such wastes are not considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph, such wastes are subject to the Green control procedures.

2. General conditions applicable to transboundary movements of hazardous waste:

(i) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(ii) The transboundary movement must be in compliance with applicable international transport agreements; and

(Note: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).)

(iii) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

3. Provisions relating to re-export for recovery to a third country:

(i) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in subpart (7)(i)1(i) of this rule may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in subparagraph (d) of this paragraph for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

- (I) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.
    - (II) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.
  - (ii) In the case of re-export of Amber wastes to a country other than those listed in subpart (7)(i)1(i) of this rule, notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in subpart (i) of this part, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.
4. Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of part 3 of this subparagraph apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:
- (i) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in item (d)2(i)(I) of this paragraph of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.
  - (ii) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with part (h)2 of this paragraph.
5. Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:
- (i) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in item (d)2(i)(I) of this paragraph of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

- (ii) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with part (h)2 of this paragraph.
6. Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in subparagraph (d) of this paragraph and for the movement document as set forth in subparagraph (e) of this paragraph. Additional responsibilities of R12/R13 facilities include:
- (i) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.
- (ii) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.
- (iii) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.
- (iv) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.
- (v) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:
- (I) In the initial country of export, Amber control procedures apply, including a new notification;
- (II) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.
7. Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

(d) Notification and consent.

1. Applicability. Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this paragraph. Hazardous wastes subject to the Amber control procedures are subject to the requirements of part 2 of this subparagraph; and wastes not identified on any list are subject to the requirements of part 3 of this subparagraph.

2. Amber wastes. Exports of hazardous wastes from the United States as described in part (a)1 of this paragraph that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of subpart (i) or (ii) of this part are met.

(i) Transactions requiring specific consent:

(I) Notification. At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in part 4 of this subparagraph. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to subparagraph (e) of this paragraph.

(II) Tacit consent. If no objection has been lodged by any countries concerned (i.e., exporting, importing, or transit) to a notification provided pursuant to item (I) of this subpart within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(III) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(ii) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(I) Notification. The exporter must provide EPA a notification that contains all the information identified in part 4 of this subparagraph in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to

multiple shipments as described in item (i)(1) of this part. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in item (i)(1) of this part may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to subparagraph (e) of this paragraph.

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

3. Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in part (j)4 of this paragraph, but which are considered hazardous under U.S. national procedures as defined in part (a)1 of this paragraph, are subject to the notification and consent requirements established for the Amber control procedures in accordance with part 2 of this subparagraph. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in part (j)4 of this paragraph, and are not considered hazardous under U.S. national procedures as defined by part (a)1 of this paragraph are subject to the Green control procedures.

4. Notifications submitted under this section must include the information specified in subparts (i) through (xiv) of this part:

(i) Serial number or other accepted identifier of the notification document;

(ii) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and e-mail address;

(iii) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(iv) Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(v) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(vi) Country of export and relevant competent authority, and point of departure;

(vii) Countries of transit and relevant competent authorities and points of entry and departure;

(viii) Country of import and relevant competent authority, and point of entry;

(ix) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(x) Date(s) foreseen for commencement of transboundary movement(s);

- (xi) Means of transport envisaged;
- (xii) Designation of waste type(s) from the appropriate OECD list incorporated by reference in part (j)4 of this paragraph, description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;
- (xiii) Specification of the recovery operation(s) as defined in subparagraph (b) of this paragraph.
- (xiv) Certification/Declaration signed by the exporter that states:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement."

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

(Note: The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.)

- 5. Certificate of Recovery. As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under subparagraph (f) of this paragraph.

(e) Movement document.

- 1. All U.S. parties subject to the contract provisions of subparagraph (f) of this paragraph must ensure that a movement document meeting the conditions of part 2 of this subparagraph accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in subparts (i) and (ii) of this part.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at part (3)(d)3 of this rule.

(ii) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in part (3)(d)4 of this rule to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The movement document must include all information required under subparagraph (d) of this paragraph (for notification), as well as the following subparts (i) through (vii) of this part:

(i) Date movement commenced;

(ii) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter;

(iii) Company name and EPA ID number of all transporters;

(iv) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(v) Any special precautions to be taken by transporter(s);

(vi) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

(I) All necessary consents have been received; OR

(II) The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR

(III) The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned."

(Delete sentences that are not applicable)

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

(vii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

3. Exporters also must comply with the special manifest requirements of parts (7)(e)1, 2, 3, 5, and 9 of this rule and importers must comply with the import requirements of paragraph (8) of this rule.

4. Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

5. Within three (3) working days of the receipt of imports subject to this paragraph, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C.

20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under subparagraph (b) of this paragraph, the facility shall retain the original of the movement document for three (3) years.

(f) Contracts.

1. Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this subparagraph only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.
2. Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of subparts (i) through (iv) of this part:
  - (i) The generator of each type of waste;
  - (ii) Each person who will have physical custody of the wastes;
  - (iii) Each person who will have legal control of the wastes; and
  - (iv) The recovery facility.
3. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:
  - (i) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and
  - (ii) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.
4. Contracts must specify that the importer will provide the notification required in part (c)3 of this paragraph prior to the re-export of controlled wastes to a third country.
5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

(Note: Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.)

6. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this paragraph.
7. Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(Note: Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.)

(g) Provisions relating to recognized traders.

1. A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.
2. A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this paragraph associated with being an exporter or importer.

(h) Reporting and recordkeeping.

1. Annual reports. For all waste movements subject to this paragraph, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in subparagraph (7)(b) of this rule or who initiate the movement documentation under subparagraph (e) of this paragraph shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under subparagraph (e) of this paragraph is required to file an annual report for waste exports that are not covered under this paragraph, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following subparts (i) through (vi) of this part specified as follows:
  - (i) The EPA identification number, name, and mailing and site address of the exporter filing the report;
  - (ii) The calendar year covered by the report;
  - (iii) The name and site address of each final recovery facility;
  - (iv) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from paragraphs (3) or (4) of Rule 0400-12-01-.02), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in part (j)4 of this paragraph, DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of

hazardous waste shipped pursuant to this paragraph, and number of shipments pursuant to each notification;

(v) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to subparagraph (5)(b) of this rule:

(I) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(II) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(vi) A certification signed by the person acting as primary exporter or initiator of the movement document under subparagraph (e) of this paragraph that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

2. Exception reports. Any person who meets the definition of primary exporter in subparagraph (7)(b) of this rule or who initiates the movement document under subparagraph (e) of this paragraph must file an exception report in lieu of the requirements of subparagraph (5)(c) of this rule (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, if any of the following occurs:

(i) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(ii) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(iii) The waste is returned to the United States.

3. Recordkeeping.

(i) Persons who meet the definition of primary exporter in subparagraph (7)(b) of this rule or who initiate the movement document under subparagraph (e) of this paragraph shall keep the following records in items (I) through (IV) of this subpart:

(I) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(II) A copy of each annual report for a period of at least three (3) years from the due date of the report;

- (III) A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and
- (IV) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.
- (ii) The periods of retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.
- (i) Pre-approval for U.S. recovery facilities [Reserved]
- (i) OECD waste lists.
  - 1. General. For the purposes of this paragraph, a waste is considered hazardous under U.S. national procedures, and hence subject to this paragraph, if the waste:
    - (i) Meets the definition of hazardous waste in subparagraph (1)(c) of Rule 0400-12-01-.02; and
    - (ii) Is subject to either the manifesting requirements at paragraph (3) of this rule, the universal waste management standards of Rule 0400-12-01-.12, or the export requirements in the spent lead-acid battery management standards of paragraph (7) of Rule 0400-12-.01-.09.
  - 2. If a waste is hazardous under part 1 of this subparagraph, it is subject to the Amber control procedures, regardless of whether it appears in the OECD Amber List, incorporated by reference in part 4 of this subparagraph.
  - 3. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in subparagraph (c) of this paragraph.
  - 4. The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue N.W., Washington, D.C. 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

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

Subpart (i) of part 5 of subparagraph (l) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

5. (i) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acute hazardous waste listed in Rule 0400-12-01-.02(4)(b) or (4)(d)5, in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with part 2 or 6 of this subparagraph provided he:
  - (I) Complies with Rule 0400-12-01-.05(9)(b), (c), and (d)1; and
  - (II) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

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

Subpart (i) of part 5 of subparagraph (I) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (i) Write the words "hazardous waste" on the container label that is affixed or attached to the container, within four (4) calendar days of arriving at the on-site ~~interim status or permitted treatment, storage or disposal facility~~ central accumulation area and before the hazardous waste may be removed from the on-site ~~interim status or permitted treatment, storage or disposal facility~~ central accumulation area; and

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

Part 5 of subparagraph (a) 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 it in its entirety and substituting instead the following:

5. A transporter of hazardous waste subject to the ~~Federal~~ manifesting requirements of ~~40 CFR Part 262 Rule 0400-12-01-.03~~, or subject to the waste management standards of ~~40 CFR Part 273 or Rule 0400-12-01-.12~~ that ~~are~~ is being imported from or exported to any of the countries listed in subpart (7)(i)1(i) of Rule 0400-12-01-.03 for the purposes of recovery is subject to this paragraph and to all relevant requirements of ~~40 CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-.03~~, including, but not limited to, ~~40 CFR 262.84 for movement documents subparagraph (9)(e) of Rule 0400-12-01-.03~~.

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

Subparagraph (a) of paragraph (3) 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 it in its entirety and substituting instead the following:

- (a) The Manifest System [40 CFR 263.20]

1. ~~(i)~~ (i) Manifest ~~Requirements requirement~~.

A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest form (EPA Form 8700-22, and if necessary, EPA Form 8700-22A) signed in accordance with the requirements of subparagraph (3)(d) of Rule 0400-12-01-.03, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, and signed with a valid and enforceable electronic signature as described in subparagraph (3)(f) of Rule 0400-12-01-.03.

- ~~2-(ii)~~ Exports.

In the case of exports other than those subject to ~~Subpart H of 40 CFR 262~~

paragraph (9) of Rule 0400-12-01-.03, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and unless, in addition to a manifest signed by the generator ~~as provided~~ in accordance with this paragraph, the transporter shall also be provided with an EPA Acknowledgement of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of ~~Subpart H of 40 CFR 262~~ paragraph (9) of Rule 0400-12-01-.03, a transporter may not accept hazardous waste without a tracking document that includes all information required by ~~40 CFR 262.84~~ subparagraph (9)(e) of Rule 0400-12-01-.03.

3.(iii) Compliance ~~date~~ date for ~~Form Revisions~~ form revisions.

The revised Manifest form and procedures in subparagraph (2)(a) of Rule 0400-12-01-.01, subparagraph (1)(g) of Rule 0400-12-01-.02, ~~and subparagraphs (3)(a) this subparagraph and (3) subparagraph~~ (b) of ~~Rule 0400-12-01-.04 this paragraph shall not apply until~~ had an effective date of September 5, 2006. ~~The Manifest form and procedures in subparagraph (2)(a) of Rule 0400-12-01-.01, subparagraph (1)(g) of Rule 0400-12-01-.02, this subparagraph and subparagraph (b) of this paragraph, contained in the Rules 0400-12-01-.01 through 0400-12-01-.06, in effect as of July 1, 2004, were applicable until September 5, 2006.~~

(iv) Use of electronic manifest--legal equivalence to paper forms for participating transporters.

Electronic manifests that are obtained, completed, and transmitted in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, and used in accordance with this subpart in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(I) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of part (3)(f)1 of Rule 0400-12-01-.03.

(II) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(III) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(IV) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA inspector or the Commissioner.

(V) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this paragraph if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(v) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(vi) Special procedures when electronic manifest is not available.

If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(I) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to item (iv)(III) of this part, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(II) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(III) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(IV) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(vii) Special procedures for electronic signature methods undergoing tests.

If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with item (iv)(III) of this part. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner or operator of the designated facility has signed this printed manifest copy with its

ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(viii) Imposition of user fee for electronic manifest use.

A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest.

(Note: In accordance with 40 CFR 263.20(a)(8), EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.)

2. Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property
3. The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgement of Consent also accompanies the hazardous waste.
4. A transporter who delivers a hazardous waste to another transporter or to the designated facility must:
  - (i) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and
  - (ii) Retain one copy of the manifest in accordance with subparagraph (c) of this paragraph; and
  - (iii) Give the remaining copies of the manifest to the accepting transporter or designated facility.
5. The requirements of parts 3, 4, and 6 of this subparagraph do not apply to water (bulk shipment) transporters if:
  - (i) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and
  - (ii) A shipping paper containing all the information required on the manifest (excluding the Installation Identification Numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and
  - (iii) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and
  - (iv) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and
  - (v) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with subparagraph (c) of this paragraph.
6. For shipments involving rail transportation, the requirements of parts 3, 4, and 5 do not apply and the following requirements do apply:

- (i) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:
    - (I) Sign and date the manifest acknowledging acceptance of the hazardous waste;
    - (II) Return a signed copy of the manifest to the non-rail transporter;
    - (III) Forward at least three copies of the manifest to:
      - I. The next non-rail transporter, if any; or
      - II. The designated facility, if the shipment is delivered to that facility by rail; or
      - III. The last rail transporter designated to handle the waste in the United States;
    - (IV) Retain one copy of the manifest and rail shipping paper in accordance with subparagraph (c) of this paragraph.
  - (ii) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the Installation Identification Numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

(Note: Intermediate rail transporters are not required to sign either the manifest or shipping paper.)
  - (iii) When delivering hazardous waste to the designated facility, a rail transporter must:
    - (I) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and
    - (II) Retain a copy of the manifest or signed shipping paper in accordance with subparagraph (c) of this paragraph.
  - (iv) When delivering hazardous waste to a non-rail transporter a rail transporter must:
    - (I) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and
    - (II) Retain a copy of the manifest in accordance with subparagraph (c) of this paragraph.
  - (v) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.
7. Transporters who transport hazardous waste out of the United States must:
- (i) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States; and
  - (ii) Retain one copy in accordance with part (c)4 of this subparagraph; and
  - (iii) Return a signed copy of the manifest to the generator; and
  - (iv) Give a copy of the manifest to a U.S. Customs official at the point of departure

from the United States.

8. A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this subparagraph or those of subparagraph (c) of this paragraph provided that:
- (i) The waste is being transported pursuant to a reclamation agreement as provided for in Rule 0400-12-01-.03(3)(a)5;
  - (ii) The transporter records, on a log or shipping paper, the following information for each shipment:
    - (I) The name, address, and U.S. Installation Identification Number of the generator of the waste;
    - (II) The quantity of waste accepted;
    - (III) All DOT-required shipping information;
    - (IV) The date the waste is accepted; and
  - (iii) The transporter carries this record when transporting waste to the reclamation facility; and
  - (iv) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

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

Paragraph (3) 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 adding subparagraphs (d), (e) and (f) to read as follows:

(d) Reserved

(e) Reserved

(f) Electronic manifest signatures [40 CFR 263.25]

1. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25(a).

2. Reserved

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 (2) 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 it in its entirety and substituting instead the following:

- (ii) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to ~~40 CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-.03~~ must provide a copy of the movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, ~~NW~~, N.W., Washington, ~~DC~~ D.C., 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such

owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

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

Subpart (ii) of part 1 of subparagraph (b) 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 it in its entirety and substituting instead the following:

(ii) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(I) Sign and date, by hand, each copy of the manifest;

(II) Note any discrepancies (as defined in part (c)1 of this paragraph) on each copy of the manifest;

(Comment: The Department does not intend that the owner or operator of a facility whose procedures under part (2)(d)3 of this rule include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Part ~~(c)2~~ (c)3 of this paragraph, however, requires reporting an unreconciled discrepancy discovered during later analysis.)

(III) Immediately give the transporter at least one copy of the manifest;

(IV) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator; ~~and;~~

(V) Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to EPA an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this item must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system; and

(VI) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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

Part 4 of subparagraph (b) 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 it in its entirety and substituting instead the following:

4. Within three (3) working days of the receipt of a shipment subject to ~~40-CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-.03~~, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, ~~NW~~, N.W., Washington, ~~DC~~ D.C. 20460, and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

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-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by adding new parts 6 through 11 to read as follows:

6. Legal equivalence to paper manifests.

Electronic manifests that are obtained, completed, and transmitted in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, and used in accordance with this part in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

- (i) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of part (3)(f)1 of Rule 0400-12-01-.03.
- (ii) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.
- (iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.
- (iv) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA inspector or the Commissioner.
- (v) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this paragraph if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

7. An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

8. Special procedures applicable to replacement manifests.

If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

- (i) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the replacement manifest.

- (ii) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,
- (iii) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the EPA e-Manifest system, and
- (iv) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

9. Special procedures applicable to electronic signature methods undergoing tests.

If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

10. Imposition of user fee for electronic manifest use.

An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest.

(Note: In accordance with 40 CFR 265.71(j), an owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under item I(ii)(V) of this subparagraph. EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.)

11. Electronic manifest signatures.

- (i) Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25(a).
- (ii) Reserved

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

- (ii) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to ~~40 CFR Part 262, Subpart H~~ paragraph (9) of Rule ~~0400-12-01-.03~~ must provide a copy of the movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, ~~NW,~~ N.W., Washington, ~~DC~~ D.C. 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such

owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

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

Subpart (ii) of part 1 of subparagraph (b) 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 it in its entirety and substituting instead the following:

(ii) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(I) Sign and date, by hand, each copy of the manifest;

(II) Note any discrepancies (as defined in part (c)1 of this paragraph) on each copy of the manifest;

(Comment: The Department does not intend that the owner or operator of a facility whose procedures under part (2)(d)3 of this rule include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Part (c)2 of this paragraph, however, requires reporting an unreconciled discrepancy discovered during later analysis.)

(III) Immediately give the transporter at least one copy of the manifest;

(IV) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator; ~~and;~~

(V) Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this item must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system; and

(VI) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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

Part 4 of subparagraph (b) 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 it in its entirety and substituting instead the following:

4. Within three (3) working days of the receipt of a shipment subject to 40-CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-.03, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, ~~NW~~, N.W., Washington, ~~DC~~ D.C. 20460, and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from

the date of signature.

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-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by adding new parts 6 through 11 to read as follows:

6. Legal equivalence to paper manifests.

Electronic manifests that are obtained, completed, and transmitted in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, and used in accordance with this part in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

- (i) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of part (3)(f)1 of Rule 0400-12-01-.03.
- (ii) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.
- (iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.
- (iv) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.
- (v) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this paragraph if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

7. An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

8. Special procedures applicable to replacement manifests.

If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

- (i) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the replacement manifest.

- (ii) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest.
- (iii) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the EPA e-Manifest system, and
- (iv) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

9. Special procedures applicable to electronic signature methods undergoing tests.

If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

10. Imposition of user fee for electronic manifest use.

An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest.

(Note: In accordance with 40 CFR 264.71(j), an owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under item 1(ii)(V) of this subparagraph. EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.)

11. Electronic manifest signatures.

- (i) Electronic manifest signatures shall meet the criteria described in part (3)(f)1 of Rule 0400-12-01-.03.
- (ii) Reserved

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

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

- 10. Changes to RCRA permit provisions needed to support transition to 40 CFR 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Rule 0400-12-01-.07(9)(c)5(xi) are followed.

11

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

Part 1 of subparagraph (a) of paragraph (7) of Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities is amended by deleting it in its entirety and substituting instead the following:

1. Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or regenerate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the "Universal Waste" rule in Rule 0400-12-01-.12.

<u>If your batteries ***</u> <u>If your batteries . . .</u>	<u>And if you ***</u> <u>And if you . . .</u>	<u>Then you ***</u> <u>Then you . . .</u>	<u>And you ***</u> <u>And you . . .</u>
(i) Will be reclaimed through regeneration (such as by electrolyte replacement).		are exempt from Rules 0400-12-01-.03 (except for .03(1)(b)) through .07, .09, and .10 including the notification requirement of Rule 0400-12-01-.03(2).	are subject to Rules 0400-12-01-.02 and .03(1)(b).
(ii) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from Rules 0400-12-01-.03 (except for .03(1)(b)) through .07 and .09, including the notification requirement of Rule 0400-12-01-.03(2).	are subject to Rules 0400-12-01-.02 and .03(1)(b), and applicable provisions under Rule 0400-12-01-.10.
(iii) Will be reclaimed other than through regeneration.	store these batteries but you aren't the reclaimer.	are exempt from Rules 0400-12-01-.03 (except for .03(1)(b)) through .07 and .09, including the notification requirement of Rule 0400-12-01-.03(2).	are subject to Rules 0400-12-01-.02, .03(1)(b), and applicable provisions under Rule 0400-12-01-.10.
(iv) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with part 2 of this subparagraph and as appropriate other regulator provisions described in part 2 of this subparagraph.	are subject to Rules 0400-12-01-.02, .03(1)(b), and applicable provisions under Rule 0400-12-01-.10.
(v) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from Rules 0400-12-01-.03 (except for .03(1)(b)) through .07 and .09, including the notification requirement of Rule 0400-12-01-.03(2).	are subject to Rules 0400-12-01-.02, .03(1)(b), and applicable provisions under Rule 0400-12-01-.10.
(vi) Will be reclaimed through regeneration or any other means.	Export these batteries for reclamation in a foreign country.	are exempt from Rules 0400-12-01-.04 through .07, .09 and .10, including the notification requirement of Rule 0400-12-01-.03(2). You are also exempt from 0400-12-01-.03 (except for .03(1)(b)), and except for the	are subject to Rules 0400-12-01-.02 and .03(1)(b), and either must comply with <b>40 CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-.03</b> (if shipping to one of the OECD countries specified in subpart (7)(i)1(j) of

		<p>applicable requirements in either (I) <del>40 CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-03</del>; or (II) subparagraph (7)(d) of Rule 0400-12-01-03 "Notification of Intent to Export", subparts (7)(g)1(i) through (iv) and (vi) and part (7)(g)2 of Rule 0400-12-01-03 "Annual Reports", and subparagraph (7)(h) of Rule 0400-12-01-03 "Recordkeeping".</p>	<p>Rule 0400-12-01-03, or must:  (I) Comply with the requirements applicable to a primary exporter in subparagraph (7)(d), subparts (7)(g)1(i) through (iv) and (vi), part (7)(g)2, and subparagraph (7)(h) of Rule 0400-12-01-03; and  (II) Export these batteries only upon consent of the receiving country and in conformance with the EPA  Acknowledgement of Consent as defined in paragraph (7) of Rule 0400-12-01-03; and  (III) Provide a copy of the EPA  Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.</p>
(vii) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	<p>are exempt from Rules <del>0400-12-01-03 through -07 and -09, 0400-12-01-04 through -07, -09 and -10</del> including the notification requirements of Rule 0400-12-01-03(2).</p>	<p>must comply with applicable requirements in <del>40 CFR Part 262, Subpart H paragraph (9) of Rule 0400-12-01-03</del> (if shipping to one of the OECD countries specified in subpart (7)(i)1(i) of Rule 0400-12-01-03, or must comply with the following:  (I) you may not accept a shipment if you know the shipment does not conform to the EPA  Acknowledgement of Consent;  (II) you must ensure that a copy of the EPA acknowledgement of Consent accompanies the shipment; and  (III) you must ensure that the shipment is delivered to the facility designated by the</p>

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

Appendix IX of paragraph (30) of Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities is amended by deleting it in its entirety and substituting instead the following:

Appendix IX - Methods Manual for Compliance With the BIF Regulations

The Methods Manual for Compliance with the BIF Regulations presents required methods for demonstrating compliance with Tennessee's Hazardous Waste Regulations for boilers and industrial furnaces (BIFs) burning hazardous waste.

(Note: A copy of this Methods Manual may be obtained by contacting the Division Director at the following address:

Division Director  
 Division of Solid Waste Management  
 Tennessee Department of Environment and Conservation  
~~L & C Tower, 5th Floor~~ William R. Snodgrass TN Tower  
~~401 Church Street~~ 312 Rosa L. Parks Avenue, 14th Floor  
 Nashville, Tennessee 37243-~~4535~~

or calling 615-532-0780. The "Methods Manual for Compliance With the BIF Regulations" may also be found at 40 CFR 266 Appendix IX or by searching the U.S. Government Printing Office's website [http://www.gpo.gov/fdsys/.](http://www.gpo.gov/fdsys/))

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

Waste code K157 of the Table "Treatment Standards for Hazardous Wastes" following part 10 of subparagraph (a) of paragraph (3) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting the last sentence in the second column so that, as amended, it reads as follows:

K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. <del>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propylnly n-butylcarbamate.)</del>	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl <sup>10</sup>	16752-77-5	0.028; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST

	Methylene chloride	75-09-2	0.089	30
	Methyl ethyl ketone	78-93-3	0.28	36
	Pyridine	110-86-1	0.014	16
	Triethylamine	121-44-8	0.081; or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST

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)
<b>Marty Calloway</b> (Petroleum Business with at least 15 Underground Storage Tanks)	X				
<b>Stacey Cothran</b> (Solid/Hazardous Waste Management Industry)	X				
<b>Kenneth L. Donaldson</b> (Municipal Government)	X				
<b>Dr. George Hyfantis, Jr.</b> (Institution of Higher Learning)	X				
<b>Bhag Kanwar</b> (Single Facility with less than 5 Underground Storage Tanks)				X	
<b>Alan Leiserson</b> Environmental Interests	X				
<b>Jared L. Lynn</b> (Manufacturing experienced with Solid/Hazardous Waste)	X				
<b>David Martin</b> (Working in a field related to Agriculture)	X				
<b>Beverly Philpot</b> (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
<b>DeAnne Redman</b> (Petroleum Management Business)	X				
<b>Mayor A. Franklin Smith, III</b> (County Government)				X	
<b>Mark Williams</b> (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	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 02/04/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/11/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/02/15



Date: February 4, 2015

Signature: Stacey Cothran

Name of Officer: Stacey Cothran

Title of Officer: Board Chair

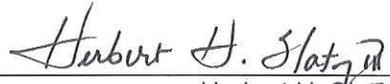
Subscribed and sworn to before me on: February 4, 2015

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

- Rules of the Underground Storage Tanks and Solid Waste Disposal Control Board
- Rule 0400-12-01-.01 Hazardous Waste Management System: General
- Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste
- Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste
- Rule 0400-12-01-.04 Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste
- Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
- Rule 0400-12-01-.09 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
- Rule 0400-12-01-.10 Land Disposal Restrictions

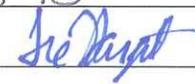
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
 \_\_\_\_\_  
 Herbert H. Slatery III  
 Attorney General and Reporter  
 \_\_\_\_\_  
 7/1/2015  
 \_\_\_\_\_  
 Date

**Department of State Use Only**

Filed with the Department of State on: 07-10-15

Effective on: 10-08-15

  
 \_\_\_\_\_  
 Tre Hargett  
 Secretary of State

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

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: Workers' compensation appeals

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 50-6-217 and 50-6-233(c)

EFFECTIVE DATES: September 20, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rule revises and clarifies the process for filing appeals in workers' compensation cases.

## Public Hearing Comments

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

### PUBLIC COMMENTS AND RESPONSES

Comment: Three business days from the time that the appeal is filed is not enough time, in my opinion, to get a transcript and prepare an adequate brief regarding an interlocutory appeal. In fact, most of the time periods in here are too short, and, therefore, unrealistic.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: I understood that the Division was going to tape-record the hearings (or at least provide the judges a tape recorder). I agree 3 days is quite short for an adequate statement, even for interlocutory issues. I assume the Division thinks this is a step up from the old RFA admin review, where there was no transcript and no separate appellant/appellee briefing deadlines. Any reason why these couldn't be extended to submit interlocutory briefs after the transcript is in?

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: It's interesting that the position statement has to be filed in 3 business days of the filing of the notice of appeal but the transcript doesn't have to be filed until within 10 calendar days of the filing of the notice of appeal. No attorney wants to submit a position statement without a reference to the transcript. To meet these deadlines an attorney would have to order a transcript in every case before the order is even entered just to make sure they're ready to appeal.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

### **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 amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
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 is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Division's Appeals Board which would be counter-productive.

### **Impact on Local Governments**

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

These proposed rules will have little, if any, impact on local governments.

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**For Department of State Use Only**

Sequence Number: 06-17-15  
 Rule ID(s): 59107  
 File Date: 6/22/15  
*Effective 9/20/15*

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Labor and Workforce Development
<b>Division:</b>	Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive, 1-B, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	<a href="mailto:troy.haley@tn.gov">troy.haley@tn.gov</a>

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

- Amendment  
 New  
 Repeal

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

**Repeal**

Chapter Number	Chapter Title
0800-02-22	Board of Workers' Compensation Appeals
Rule Number	Rule Title
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeal of Workers' Compensation Cases Filed Against the State

**New**

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Appeal of an Interlocutory Order
0800-02-22-.03	Appeal of a Compensation Order
0800-02-22-.04	Oral Argument; Costs on Appeal; Settlement During Appeal
0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

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

Chapter 0800-02-22  
Board of Workers' Compensation Appeals/Workers' Compensation Appeals Board

Chapter 0800-02-22 Board of Workers' Compensation Appeals is repealed by deleting Rules 0800-02-22-.01, 0800-02-22-.02, and 0800-02-22-.03 in their entirety and by replacing them with new rules that shall read as follows:

~~CHAPTER 0800-02-22  
BOARD OF WORKERS' COMPENSATION APPEALS~~

~~0800-02-22-.01 FILING THE REQUEST FOR APPEAL.~~

~~(1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:~~

~~(a) Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or~~

~~(b) Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.~~

~~(2) A copy of the request for appeal must be served upon the opposing party.~~

~~(3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming or reversing the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.~~

~~(4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:~~

~~(a) Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.~~

~~(b) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.~~

~~(c) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.~~

(5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.

(6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106.  
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

~~Rule 0800-02-22-.02 DOCKETING APPEAL, FILING BRIEFS AND RENDERING DECISION.~~

~~(1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.~~

~~(2) After the record is received by the board, the appeal shall be docketed and assigned to an appeals board judge for review. A docketing notice shall be sent to all parties.~~

~~(3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.~~

~~(4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:~~

~~(a) Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or~~

~~(b) Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).~~

~~(5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.~~

~~(6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.~~

~~(7) Interlocutory orders.~~

~~(a) If the board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the opinion affirming the order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to T.C.A. § 50-6-118.~~

~~(b) Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.~~

~~(8) Compensation orders.~~

~~(a) If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.~~

~~(b) If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.~~

~~Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106.  
Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

~~Rule 0800-02-22-.03 APPEAL OF WORKERS' COMPENSATION CASES FILED AGAINST THE STATE.~~

~~The board of workers' compensation appeals is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.~~

~~Authority: T.C.A. §§ 4-3-1409, 9-8-307, and 9-8-402. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

Chapter 0800-02-22  
Workers' Compensation Appeals Board

Rule 0800-02-22-.01 Filing of Notice of Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Division, with the clerk of the court of workers' compensation claims, in accordance with Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed:
  - (a) Within seven (7) business days of the date an interlocutory order was entered by the workers' compensation judge; or
  - (b) Within thirty (30) calendar days of the date a compensation order was entered by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the Notice of Appeal upon the opposing party or parties by any means as set forth in Rule 0800-02-21-.09.
- (3) Any notice of appeal that is not received by the clerk within the time provided by paragraph (1) shall be dismissed.
- (4) A notice of appeal of a compensation order that is not timely filed will not toll the time limit for filing an appeal to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a)(1) and Rule 4(a) of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.02 Appeal of an Interlocutory Order

- (1) If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the clerk of the court of workers' compensation claims within five (5) business days of the expiration of the time to file a transcript or statement of the evidence, specifying the issues presented for review and including any argument in support thereof. A party opposing the appeal shall file a response, if any, with the clerk of the court of workers' compensation claims within five (5) business days of the filing of the appellant's position statement.
- (2) The parties, having the responsibility to ensure a complete record on appeal, may have a transcript prepared by a licensed court reporter and file it with the clerk of the court of workers'

compensation claims within ten (10) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten (10) calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the clerk of the appeals board. The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.

- (3) Within seven (7) business days of the receipt of the record on appeal by the clerk of the workers' compensation appeals board, the appeals board shall review the record and enter an order affirming, reversing, or modifying and remanding the interlocutory order of the workers' compensation judge. The order of the workers' compensation appeals board shall not be subject to further appeal.
  - (a) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the order affirming the interlocutory order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118.
  - (b) Following the issuance of a decision affirming, reversing, or modifying and remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. § 4-3-1409; T.C.A. §50-6-118; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.03 Appeal of a Compensation Order

- (1) Upon the filing of a notice of appeal of a compensation order, within fifteen (15) calendar days, the party that filed the notice of appeal shall file with the clerk of the court of workers' compensation claims a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. The appealing party shall serve a copy of this transcript or notice upon the opposing party or parties. The party may file a statement of the evidence in lieu of a transcript.
- (2) Upon receipt of the transcript of the proceedings, statement of the evidence, or notice that no transcript will be filed, the clerk of the court of workers' compensation claims shall forward a copy of the notice of appeal and the transcript or statement of the evidence, if any, or notice that no transcript will be filed, to the workers' compensation judge that issued the order.
- (3) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript, or statement of the evidence, if any, or the notice that no transcript will be provided, the workers' compensation judge shall review the record in its entirety to ensure that it is complete and that it accurately reflects the proceedings at the hearing, and shall compile the contents of the record and forward the record to the clerk of the court of workers' compensation claims.
- (4) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record or proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge shall issue an order compelling the party who filed the notice of appeal to file a transcript, a statement of the evidence, or take such other action as is necessary for the trial judge to certify the record.
- (5) Upon receipt of the record, the clerk of the workers' compensation appeals board shall docket the appeal and shall send a docketing notice to all parties. The clerk of the appeals board shall forward the record to the appeals board for review.
- (6) The party who filed the notice of appeal shall have fifteen (15) calendar days after the issuance of the docketing notice provided in paragraph (5) to submit a brief to the appeals board for

consideration. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief to file a brief in response. No reply briefs shall be filed. Briefs shall comply with the Practice and Procedure Guidelines of the Workers' Compensation Appeals Board.

- (7) Within forty-five (45) calendar days after the period for the filing of briefs ends, the board shall issue its decision affirming, reversing or modifying the order of the workers' compensation judge and shall remand the case for further proceedings.
  - (a) If the appeals board reverses or modifies and remands the case following an appeal of a compensation order, the clerk of the court of workers' compensation claims shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling any hearing, if necessary. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.
  - (b) If the appeals board affirms and certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to Tennessee Code Annotated section 50-6-225 shall begin to run on the date the order is certified as final by the appeals board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days after the decision of the appeals board is filed and any benefits provided through the compensation order shall be paid within five (5) business days after the compensation order becomes final.
- (8) Immediately upon the issuance of a decision on any appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

#### Rule 0800-02-22-.04 Oral Argument, Costs on Appeal, Settlement During Appeal

- (1) The appeals board shall base its decision on a review of the record and the briefs or responses of the parties, if any. Evidence not contained in the record submitted to the clerk of the workers' compensation appeals board shall not be considered on appeal. No oral argument shall be allowed unless otherwise directed by the workers' compensation appeals board either upon its own motion or upon motion of a party. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument. Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board.
- (2) No request to rehear or reconsider the decision of the appeals board may be filed by any party.
- (3) Costs on appeal may be assessed as ordered by the appeals board.
- (4) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.
- (5) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue. The clerk of the appeals board may not accept for filing any motion or other paper sought to be filed by any party following the filing of a notice of appeal to the state supreme court, unless and until the case is remanded to the workers' compensation trial court.

- (6) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.05 Appeal of Workers' Compensation Cases Filed Against the State

The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402; T.C.A. § 50-6-217; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

\* 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 4/22/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 4/22/15

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: April 22, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 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. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
6/11/2015  
Date

**Department of State Use Only**

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Filed with the Department of State on: 6/22/15

Effective on: 9/20/15

Tre Hargett  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Optometry

SUBJECT: Licensure Fees and Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-1-402 and 63-8-112

EFFECTIVE DATES: October 27, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule 1045-02-.01 (1)(a): licensure application fee changed from \$300 to \$250.

Rule 1045-02-.01 (1)(d): biennial licensure renewal fee changed from \$330 to \$275.

Rule 1045-02-.05 (1 ): adds new language after the period in the last sentence of paragraph one (1) “, effective until December 31, 2015.” Next, a new paragraph with the following language: “Effective January 1, 2016, an optometrist with a renewal date in the year 2016 and beyond must complete thirty (30) hours of Board-approved continuing education during the twenty-four (24) months which precede the licensure renewal month.”

Rule 1045-02-.05(1)(c): adds new subparagraph (c) for compliance with T.C.A. § 63-1-402.

## **Public Hearing Comments**

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

There were no public comments, either written or oral.

### **Regulatory Flexibility Addendum**

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

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

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment establishes clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

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

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

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

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Board of Optometry

**Rulemaking hearing date:** 04/02/2015

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

Licensed optometrists, applicants to the practice of optometry, and businesses offering optometric services will be affected by these proposed rule amendments. These groups will benefit from the reduction in costs from a reduced initial application fee and renewal fee. Also, the aforementioned groups will benefit from a simplification of reporting by the amendment which would create a continuing education cycle to run concurrent with the licensure renewal cycle. The addition of prescribing hours in continuing education will be cost neutral as they do not increase the total required hours of continuing education.

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

These proposed rule amendments will not require additional reporting, recordkeeping or other administrative costs.

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

These proposed rules amendments would most likely reduce costs for small businesses offering optometric services which pay for the licensure costs of employees. Consumers should also be positively impacted by these amendments as optometrists who prescribe controlled substances to patients will have increased competency relating to the prescribing of controlled substances and to better monitor the patient's use of such drugs.

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

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

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

**Federal:** None.

**State:** Several Health-Related Boards have adopted rule amendments to make continuing education cycles run concurrent with the licensure renewal cycles.

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

These proposed rule amendments do not create exemptions for small businesses.

## **Impact on Local Governments**

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

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

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 07-23-15  
Rule ID(s): 5994  
File Date: 07/29/15  
Effective Date: 10/27/15

## Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Board of Optometry
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Gibbs
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Matthew.Gibbs@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
1045-02	General Rules Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.01	Fees
1045-02-.05	Continuing Education

**RULES  
OF  
TENNESSEE BOARD OF OPTOMETRY**

**CHAPTER 1045-02  
GENERAL RULES GOVERNING THE PRACTICE OF OPTOMETRY**

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1045-02-.05	Continuing Education	1045-02-.14	Optometric Records
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1045-02-.09	Ocular and Contact Lens Prescriptions and Office Equipment		

**1045-02-.01 FEES.**

- (1) The fees authorized by the Optometry Practice Act (T.C.A. §63-8-101, et seq.) and other applicable statutes to be established in amount by the Board are established as follows:

~~(a) Application Fee — A non-refundable fee to be paid each time an application for initial licensure is filed. \$300.00~~

(a) Application Fee - A non-refundable fee to be paid each time an application for initial licensure is filed. \$250.00

(b) Reinstatement Fee - A non-refundable fee to be paid each time an application for reinstating an expired license is filed. \$200.00

(c) Duplicate Licensure \$25.00

~~(d) Licensure Renewal Fee — A non-refundable fee to be paid biennially by all licensees except Inactive Volunteers. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$330.00~~

(d) Licensure Renewal Fee – A non-refundable fee to be paid biennially by all licensees except Inactive Volunteers. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$275.00

(e) Biennial State Regulatory Fee \$10.00

(f) Inactive Volunteer Licensure Renewal Fee \$0.00

- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Optometry.

(Rule 1045-02-.02, continued)

**Authority:** T.C.A. §§4-3-1011(b), 4-5-202, 4-5-204, 63-8-111, 63-8-112, 63-8-112(1), 63-8-115, 63-8-119, and 63-8-133. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed October 13, 1983; effective November 14, 1983. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed December 11, 1998; effective February 23, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed June 10, 2004; effective August 24, 2004. Amendment filed October 18, 2004; effective January 1, 2005.

(Rule 1045-02-.04, continued)

- (c) Retirees may be allowed to practice temporarily pursuant to T.C.A. §63-8-119(h) upon a written request showing a satisfactory need for re-entry into practice. Board approval must be received and may be granted for only a limited period of time.

**Authority:** T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120.

**Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed April 4, 2003; effective June 18, 2003.

#### 1045-02-.05 CONTINUING EDUCATION.

~~(1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.~~

(1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year, effective until December 31, 2015.

Effective January 1, 2016, an Optometrist with a renewal date in the year 2016 and beyond must complete thirty (30) hours of Board approved continuing education during the twenty-four (24) months that precede the licensure renewal month.

(a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in courses pertaining to ocular disease and related systemic disease, as described in subparagraph (2)(c). At least one (1) of these twenty (20) hours shall be a course designed specifically to address prescribing practices.

(b) For those therapeutically certified optometrists who have received approval to use pharmaceutical agents by injection pursuant to subparagraph 1045-02-.07 (3)(d), current certification in cardiopulmonary resuscitation (CPR) is required.

(c) All licensees holding a current Tennessee license shall complete a minimum of two (2) of the thirty (30) required hours of continuing education related to controlled substance prescribing, which must include instruction in the Department's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol and may include topics such as medicine addiction, risk management tools, and other topics approved by the Board.

(d)(e) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.

(e)(d) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.

(2) Approval of Continuing Education

(Rule 1045-02-.05, continued)

- (a) For those courses requiring Board approval, the information required by subparagraph (2)(d) must be submitted to the Board at least thirty (30) days prior to the actual date of the course. However, no prior approval is required for the following:
  1. Educational courses approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education.
  2. Educational courses sponsored by an organization listed on the Board's website with the Tennessee Department of Health.
- (b) Grand rounds of clinical optometric education (grand clinical rounds) performed in clinical treatment facilities shall be credited as follows:
  1. One (1) hour of credit is received for two (2) hours of attendance.
  2. No more than six (6) hours of continuing education credit during the two (2) year period described in paragraph (1) shall be granted to a licensee for attending grand clinical rounds.
  3. Grand clinical rounds must be submitted to the Board for pre-approval.
- (c) The one (1) hour course designed specifically to address prescribing practices must be pre-approved by the Board.
- (d) All courses submitted for approval must contain the following information:
  1. a course description or outline;
  2. names of all lecturers;
  3. brief resume of all lecturers;
  4. number of hours of educational credit requested;
  5. category of approval requested; and
  6. date of course.
- (e) Courses will be classified by the Board as one (1) of the following categories:
  1. Clinical Optometry – These courses shall pertain to general optometry, functional vision/pediatrics, and contact lenses.
  2. Ocular Disease – These courses shall pertain to the treatment and management of ocular disease (anterior and posterior), refractive surgery management, peri-operative management of ophthalmic surgery, and glaucoma.
  3. Related Systemic Disease – These courses shall pertain to systemic/ocular disease, principles of diagnosis, pharmacology, and neuro-optometry.
  4. (Optometric) Business Management – These courses shall pertain to practice management and/or ethics/jurisprudence. The total number of (Optometric) Business Management hours that will be accepted is six (6) hours of the thirty (30) hour requirement.
- (f) Continuing education courses may include:

(Rule 1045-02-.05, continued)

1. Lecture type courses;
2. Twelve (12) hours of the thirty (30) hour requirement may be completed in any of the following multi-media formats:
  - (i) The Internet
  - (ii) Closed circuit television
  - (iii) Satellite broadcasts
  - (iv) Correspondence courses
  - (v) Videotapes
  - (vi) CD-ROM
  - (vii) DVD
  - (viii) Teleconferencing
  - (ix) Videoconferencing
  - (x) Distance learning

(g) Proof of attendance -

1. Proof of attendance must be given to each optometrist attending an approved course by the providers of the course;
2. It is the responsibility of the optometrist attending the continuing education program to ascertain whether the program is approved by the Board and the category of approval.
3. The Board shall notify all providers requiring course approval of its denial or approval. If a course is denied credit for continuing education, the provider of the course may petition the board for a hearing on the merits of the matter. The appeal may be heard by the Board at a regularly scheduled meeting.
4. Waiver of continuing education requirements or extension of the deadline to complete such requirements may be made by the Board on an individual basis as provided in Rule 1045-02-.04 (3).

(3) Continuing Education Tracking System

- (a) Each licensee shall submit to the Selected Contractor proof of completion for each continuing education course taken. The proof of completion shall be submitted to the Selected Contractor within thirty (30) days of receipt.
- (b) Each licensee is responsible for reviewing the information contained in the system to ensure its accuracy.
- (c) Continuing education providers will submit to the Selected Contractor a roster of those Tennessee licensed optometrists who attended the continuing education course. The

(Rule 1045-02-.05, continued)

roster shall be submitted to the Selected Contractor within thirty (30) days after the course date.

- (4) A licensee is exempt from the Continuing Education requirements for the calendar year that he/she graduated from an accredited college or school of optometry.
- (5) Continuing education course approval decisions pursuant to this rule may be preliminarily made upon review by any Board member or a Board designee.
- (6) Violations
  - (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
  - (b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
  - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5)(b) above may be subject to disciplinary action.
  - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed November 12, 1982; effective December 13, 1982. Amendment by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed February 14, 1994; effective April 30, 1994. Amendment filed December 11, 1998; effective February 23, 1999. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 4, 2003; effective June 18, 2003. Amendment filed June 10, 2004; effective August 24, 2004. Amendments filed February 26, 2009; effective May 12, 2009. Amendment filed March 2, 2009; effective May 16, 2009; however, stay of the effective date filed by the Tennessee Board of Optometry; new effective date July 13, 2009. Amendments filed August 9, 2012; effective November 7, 2012.

#### **1045-02-.06 BOARD MEETINGS, MEMBERS' AUTHORITY AND RECORDS.**

- (1) The board shall meet annually and elect officers.
- (2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the administrative offices of the Board.
- (3) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the administrative office of the Board. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled board meeting and will be retained in the administrative office and presented to the Board at the next scheduled Board meeting.

\* 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)
David Talley, O.D.	X				
Jeff Foster, O.D.	X				
John Gentry, O.D.				X	
Richard Orgain, O.D.	X				
Dennis Mathews, O.D.	X				
Eddie Clemons				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Optometry (board/commission/ other authority) on 04/02/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/16/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 04/02/15 (mm/dd/yy)

Date: July 13, 2015

Signature: [Handwritten Signature]

Name of Officer: Matthew Gibbs

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: [Handwritten Signature]

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



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

7-24-15  
Date

**Department of State Use Only**

Filed with the Department of State on: 07/29/15

Effective on: 10/27/15

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Tre Hargett  
Secretary of State

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

**DEPARTMENT:** Board of Optometry

**SUBJECT:** Licensing Requirements

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 63-8-112

**EFFECTIVE DATES:** October 27, 2015 through June 30, 2016

**FISCAL IMPACT:** None

**STAFF RULE ABSTRACT:** This rule amendment will require all licensees to obtain certification in CPR (cardiopulmonary resuscitation). It will also require that CPR education and certification be obtained from a course approved or offered by the American Heart Association, the American Red Cross, or any other entity approved by the Board. For those who are therapeutically certified, this amendment will increase the required number of continuing education hours in courses designed specifically to address prescribing practices from one (1) to two (2).

## **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.

John Williams, a representative of the Tennessee Association of Optometric Physicians (TAOP), addressed the Board in support of the rule amendments and urged the Board to adopt the rules as contained in the Notice of Rulemaking Hearing.

The Board voted to adopt the rules as contain in the Notice of Rulemaking Hearing.

### **Regulatory Flexibility Addendum**

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

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

These proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

These proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

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

These proposed rule amendments establish flexible compliance and/or reporting requirements for small businesses.

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

These proposed rule amendments do not establish schedules or deadlines for compliance.

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

These proposed rule amendments do not consolidate compliance or reporting requirements for small businesses.

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

These proposed rule amendments do not establish performance standards for small businesses.

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

These proposed rule amendments do not create any barriers or other effects that stifle entrepreneurial activity.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Board of Optometry

**Rulemaking hearing date:** February 26, 2013

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

These proposed rule amendments will affect those licensees engaged in the practice of optometry. These licensees will bear the cost of, and/or directly benefit from the proposed rule.

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

There should be no reporting, recordkeeping or other administrative costs required for compliance with these proposed rule amendments. The costs of compliance will be left relatively unchanged as the total number of required education hours has not changed.

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

These proposed rule amendments should have no effect or impact on small businesses and consumers.

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

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

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

**Federal:** None

**State:** Almost all health related boards have some type of continuing education requirements and all such boards will be amending requirements to comply with Public Chapter 430.

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

These rule amendments may not provide exemptions for small businesses as the rule amendments are required to comply with state law.

### **Impact on Local Governments**

Pursuant to T.C.A. § 4-5-228(a), “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected financial impact on local governments.”

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

**Department of State**  
**Division of Publications**  
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**For Department of State Use Only**

Sequence Number: 07-24-15  
 Rule ID(s): 5995  
 File Date: 07/29/15  
 Effective Date: 10/27/15

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Board of Optometry
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Gibbs
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37234
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Matthew.Gibbs@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
1045-02	General Rules Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.05	Continuing Education
1045-02-.07	Diagnostic and Therapeutic Certification

(Rule 1045-02-.04, continued)

5. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the reinstatement fee, past due renewal fees, and state regulatory fees as provided in Rule 1045-02-.01; and
- (c) Retirees may be allowed to practice temporarily pursuant to T.C.A. §63-8-119(h) upon a written request showing a satisfactory need for re-entry into practice. Board approval must be received and may be granted for only a limited period of time.

**Authority:** T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120.  
**Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed April 4, 2003; effective June 18, 2003.

#### 1045-02-.05 CONTINUING EDUCATION.

- (1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.
  - ~~(a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in courses pertaining to ocular disease and related systemic disease, as described in subparagraph (2)(c). At least one (1) of these twenty (20) hours shall be a course designed specifically to address prescribing practices.~~
  - (a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in courses pertaining to ocular disease and related systemic disease, as described in subparagraph (2)(c). At least two (2) of these twenty (20) hours shall be a course or courses designed specifically to address prescribing practices.
  - ~~(b) For those therapeutically certified optometrists who have received approval to use pharmaceutical agents by injection pursuant to subparagraph 1045-02-.07 (3)(d), current certification in cardiopulmonary resuscitation (CPR) is required.~~
  - (b) Each licensee shall maintain current certification in cardiopulmonary resuscitation (CPR). Such certification shall be obtained from a course approved or offered by the American Heart Association, the American Red Cross, or any other entity approved by the board.
  - (c) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.
  - (d) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.
- (2) Approval of Continuing Education:

(Rule 1045-02-.05, continued)

- (a) For those courses requiring Board approval, the information required by subparagraph (2)(d) must be submitted to the Board at least thirty (30) days prior to the actual date of the course. However, no prior approval is required for the following:
1. Educational courses approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education.
  2. Educational courses sponsored by an organization listed on the Board's website with the Tennessee Department of Health.
- (b) Grand rounds of clinical optometric education (grand clinical rounds) performed in clinical treatment facilities shall be credited as follows:
1. One (1) hour of credit is received for two (2) hours of attendance.
  2. No more than six (6) hours of continuing education credit during the two (2) year period described in paragraph (1) shall be granted to a licensee for attending grand clinical rounds.
  3. Grand clinical rounds must be submitted to the Board for pre-approval.
- ~~(c) The one (1) hour course designed specifically to address prescribing practices must be pre-approved by the Board.~~
- (c) Any one (1) or two (2) hour course designed specifically to address prescribing practices must be pre-approved by the Board.
- (d) All courses submitted for approval must contain the following information:
1. a course description or outline;
  2. names of all lecturers;
  3. brief resume of all lecturers;
  4. number of hours of educational credit requested;
  5. category of approval requested; and
  6. date of course.
- (e) Courses will be classified by the Board as one (1) of the following categories:
1. Clinical Optometry – These courses shall pertain to general optometry, functional vision/pediatrics, and contact lenses.
  2. Ocular Disease – These courses shall pertain to the treatment and management of ocular disease (anterior and posterior), refractive surgery management, peri-operative management of ophthalmic surgery, and glaucoma.
  3. Related Systemic Disease – These courses shall pertain to systemic/ocular disease, principles of diagnosis, pharmacology, and neuro-optometry.
  4. (Optometric) Business Management – These courses shall pertain to practice management and/or ethics/jurisprudence. The total number of (Optometric)

(Rule 1045-02-.05, continued)

Business Management hours that will be accepted is six (6) hours of the thirty (30) hour requirement.

- (f) Continuing education courses may include:
1. Lecture type courses;
  2. Twelve (12) hours of the thirty (30) hour requirement may be completed in any of the following multi-media formats:
    - (i) The Internet
    - (ii) Closed circuit television
    - (iii) Satellite broadcasts
    - (iv) Correspondence courses
    - (v) Videotapes
    - (vi) CD-ROM
    - (vii) DVD
    - (viii) Teleconferencing
    - (ix) Videoconferencing
    - (x) Distance learning
- (g) Proof of attendance -
1. Proof of attendance must be given to each optometrist attending an approved course by the providers of the course;
  2. It is the responsibility of the optometrist attending the continuing education program to ascertain whether the program is approved by the Board and the category of approval.
  3. The Board shall notify all providers requiring course approval of its denial or approval. If a course is denied credit for continuing education, the provider of the course may petition the board for a hearing on the merits of the matter. The appeal may be heard by the Board at a regularly scheduled meeting.
  4. Waiver of continuing education requirements or extension of the deadline to complete such requirements may be made by the Board on an individual basis as provided in Rule 1045-02-.04 (3).
- (3) Continuing Education Tracking System
- (a) Each licensee shall submit to the Selected Contractor proof of completion for each continuing education course taken. The proof of completion shall be submitted to the Selected Contractor within thirty (30) days of receipt.
  - (b) Each licensee is responsible for reviewing the information contained in the system to ensure its accuracy.

(Rule 1045-02-.05, continued)

- (c) Continuing education providers will submit to the Selected Contractor a roster of those Tennessee licensed optometrists who attended the continuing education course. The roster shall be submitted to the Selected Contractor within thirty (30) days after the course date.
- (4) A licensee is exempt from the Continuing Education requirements for the calendar year that he/she graduated from an accredited college or school of optometry.
- (5) Continuing education course approval decisions pursuant to this rule may be preliminarily made upon review by any Board member or a Board designee.
- (6) Violations
  - (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
  - (b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
  - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5)(b) above may be subject to disciplinary action.
  - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed November 12, 1982; effective December 13, 1982. Amendment by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed February 14, 1994; effective April 30, 1994. Amendment filed December 11, 1998; effective February 23, 1999. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 4, 2003; effective June 18, 2003. Amendment filed June 10, 2004; effective August 24, 2004. Amendments filed February 26, 2009; effective May 12, 2009. Amendment filed March 2, 2009; effective May 16, 2009; however, stay of the effective date filed by the Tennessee Board of Optometry; new effective date July 13, 2009.

#### **1045-02-.06 BOARD MEETINGS, MEMBERS' AUTHORITY AND RECORDS.**

- (1) The board shall meet annually and elect officers.
- (2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the administrative offices of the Board.
- (3) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the administrative office of the Board. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions,

(Rule 1045-02-.06, continued)

declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled board meeting and will be retained in the administrative office and presented to the Board at the next scheduled Board meeting.

- (4) Any member of the Board or a Board designee is vested with the authority to review and preliminarily approve licensure applications and continuing education courses. All such approvals shall be subsequently submitted to the full Board for its consideration for ratification.
- (5) The Board shall elect one member to serve as consultant to the Division of Health Related Boards to make determinations for the board in the following areas:
  - (a) Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
  - (b) Whether and under what terms a disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently considered by the full Board and either adopted or rejected.
  - (c) Whether sufficient cause exists for the execution of waivers pursuant to Rule 1045-02-.04(3). Any such decision must be subsequently considered by the full Board and either adopted or rejected.
  - (d) Whether and under what conditions a licensee who has failed to timely renew pursuant to Rule 1045-02-.04(4) may be allowed to renew. All such actions must be subsequently considered by the full Board and either adopted, rejected or modified.
  - (e) Whether and under what circumstances a retired license may be reinstated. All such decisions must be subsequently considered by the full Board and either, approved, rejected or modified.
- (6) Reconsiderations and Stays – The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (7) Requests for written verification of a licensee's current status or a Certificate of Identification (Certificate of Fitness in Division Law) must be made in writing to the Board administrative office.
- (8) Requests for duplicate or replacement licenses must be made in writing to the Board administrative office and contain the information required by T.C.A. §63-8-112(9) and be accompanied by the fee provided in Rule 1045-02-.01(1)(c).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-142, 63-8-111, 63-8-112, 63-8-112(1), 63-8-112(8), 63-8-112(9), 63-8-107(a), 63-8-107(b), 63-8-115, 63-8-119, 63-8-120, 63-8-120(b), 63-8-120(d), 63-8-121, and Public Chapter 295, Acts of 1993. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed February 26, 2009; effective May 12, 2009.

#### **1045-02-.07 DIAGNOSTIC AND THERAPEUTIC CERTIFICATION.**

- (1) It is the intent of the Board that all applicants for licensure as optometrists attain the highest level of licensure available under the law including diagnostic and therapeutic certification as provided in T.C.A. §§63-8-102(12)(E) and 63-8-112(4). Attaining therapeutic certification must include attaining certification to use pharmaceutical agents by injection.

(Rule 1045-02-.07, continued)

- (2) **Diagnosis Certification.** Any applicant who submits or has submitted a transcript which contains at least six (6) quarter hours in the courses provided in T.C.A. §63-8-102(12)(E) and becomes or became licensed to practice Optometry in Tennessee shall be diagnostically certified.
- (3) **Therapeutic Certification:**
  - (a) To certify optometrists to administer and prescribe pharmaceutical agents for treatment, perform primary eye care procedures, the performance or ordering of procedures and laboratory tests rational to the diagnosis of conditions or diseases of the eye or eyelid. No optometrist shall be certified to prescribe or use pharmaceutical agents for treatment purposes in the practice of optometry unless and until he meets all of the following:
    1. Show evidence to the Board by providing a certified transcript of ninety (90) classroom hours in pharmacology and sixty (60) classroom hours in ocular disease from a college or university which is accredited by an agency approved by the Council on Post Secondary Education of the U.S. Department of Education.
    2. Show evidence to the Board by providing a certified transcript from a college or university which is accredited by an agency approved by the Council on Post Secondary Education of the U.S. Department of Education, of forty (40) hours of clinical experience acquired on or after April 22, 1987. The clinical experience is to include diagnosis and treatment of ocular disease including the use of pharmaceutical agents.
    3. Be diagnostically certified, as provided in T.C.A. §63-8-102(12)(E) and paragraph (2) of this rule.
    4. Has taken and successfully passed the examination administered or approved by the board.
  - (b) All optometrists licensed to practice in Tennessee who are therapeutically certified by the board must show the board by proof of completion of the following clinical review courses by 7/1/94, or their equivalent obtained from the experience of current practice and licensure in a state with a similar scope of practice act. The clinical review courses are:
    1. A 24 hour board approved transcript quality credit clinical course as it relates to the diagnosis, treatment, and management of glaucoma.
    2. A 6 hour board approved transcript quality credit course as it related to the clinical application of oral medication necessary for the treatment of diseases of the eye/eyelid including the use of controlled substances.
  - (c) These courses may count toward meeting the annual continuing education requirements as determined by the Board. Any optometrist not completing these requirements will be subject to therapeutic privilege suspension until such time as the clinical review is complete. Any optometrist aggrieved by the Board's written decision suspending his or her therapeutic certification privileges shall have 30 days from the date such decision is received to request a contested case hearing under the provisions of the Uniform Administrative Procedures Act. The board will extend the July 1, 1994 deadline date only in cases of hardship as determined by the board.

(Rule 1045-02-.07, continued)

Graduates of accredited schools of optometry after May 5, 1993 are excluded from these requirements. In order to obtain therapeutic certification, any optometrist graduating before May 5, 1993 must meet the requirements of Rule 1045-02-.03 and must complete the clinical review courses prior to licensure.

~~(d) No therapeutically certified optometrist shall use pharmaceutical agents by injection except to counter anaphylaxis until they have received approval from the board. The board will not approve the use of injections until the optometrist demonstrates to the board's satisfaction sufficient educational training and/or clinical training, and submits proof of current certification in cardiopulmonary resuscitation (CPR). The education must be obtained from board approved courses.~~

(d) No therapeutically certified optometrist shall use pharmaceutical agents by injection except to counter anaphylaxis until they have received approval from the board. The board will not approve the use of injections until the optometrist demonstrates to the board's satisfaction sufficient educational training and/or clinical training, and submits proof of current certification in cardiopulmonary resuscitation (CPR). The education must be obtained from a course approved or offered by the American Heart Association, the American Red Cross, or any other entity approved by the board.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-8-102, 63-8-112, and 63-8-115. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed February 14, 1994; effective April 30, 1994. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed March 22, 2007; effective June 9, 2007.

#### 1045-02-.08 CORPORATE OR BUSINESS NAMES AND ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many members of the public concerning optometric services, the importance of the interests affected by the choice of an optometrist and the foreseeable consequences of unrestricted advertising by optometrists, require that special care be taken by optometrists to avoid misleading the public. The optometrist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by optometrists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions.
  - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an optometrist who is licensed to practice in Tennessee.
  - (b) Licensee. Any person holding a license to practice optometry in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
  - (c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon making an informed decision concerning the choice of practitioners to serve his or particular optometric needs.
  - (d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something usually at a higher fee or on a basis more advantageous to the advertiser.

\* 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)
David Talley				X	
Jeff Foster	X				
John Gentry	X				
Richard Orgain	X				
Dennis Matthews	X				
Kimberly Button				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Optometry (board/commission/ other authority) on 06/11/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/09/14(mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/11/14 (mm/dd/yy)

Date: July 14, 2015

Signature: [Handwritten Signature]

Name of Officer: Matthew Gibbs

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 7-14-15

Notary Public Signature: [Handwritten Signature]

My commission expires on: APRIL 19, 2017



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

[Handwritten Signature]  
Herbert H. Slatery III

Attorney General and Reporter

7-24-15

Date

**Department of State Use Only**

Filed with the Department of State on: 07/29/15

SECRETARY OF STATE PUBLICATIONS

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[Handwritten Signature]

Tre Hargett  
Secretary of State

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

**DEPARTMENT:** Department of Finance and Administration

**BUREAU:** Bureau of TennCare

**SUBJECTS:** Annual Coverage Assessment

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Sections 4-5-208, 71-5-105, 71-5-109, and Chapter No. 276 of the Public Acts of 2015.

**EFFECTIVE DATES:** July 1, 2015 through December 28, 2015

**FISCAL IMPACT:** None

**STAFF RULE ABSTRACT:** This emergency rulemaking seeks to provide TennCare with rules for the Annual Coverage Assessment imposed on covered hospitals in accordance with Chapter No. 276 of the Public Acts of 2015.

Public Chapter 276 requires the Bureau of TennCare to promulgate emergency rules to the extent necessary to ensure full implementation of hospital payment rate valuation corridors as set out in subdivision (b)(3) of the public chapter, established by the state's actuary and approved by the Bureau for payments by managed care organizations (MCOs) to hospitals for services provided to TennCare enrollees. These rules define the specific activities required of the TennCare MCOs and the hospitals participating in TennCare to fully implement the rate variation corridors no later than September 20, 2015, as required by law.

### **Impact on Local Governments**

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

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

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Sequence Number: 07-01-15  
Rule ID(s): 5979  
File Date (effective date): 7/1/15  
End Effective Date: 12/28/15

# Emergency Rule Filing Form

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

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

**Rule Type:**

Emergency Rule

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

Amendment  
 New  
 Repeal

**Statement of Necessity:**

The Annual Coverage Assessment Act of 2015, Public Chapter 276, codified as T.C.A. §§ 71-5-2801, et seq., was signed into law on April 28, 2015, with an effective date of July 1, 2015. This law requires the Bureau of TennCare to promulgate emergency rules to the extent necessary to ensure full implementation of hospital payment rate variation corridors as set out in subdivision (b)(3) of the Public Chapter, established by the State's actuary and approved by the Bureau for payments by managed care organizations to hospitals for services provided to TennCare enrollees. These rules define the specific activities required of the TennCare MCOs and the hospitals participating in TennCare to fully implement the rate variation corridors no later than September 30, 2015, as required by law.

T.C.A. § 4-5-208(a)(5) permits an agency to adopt an emergency rule when it is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for the promulgation of permanent rules.

  
Wendy J. Long, M.D., M.P.H.  
Deputy Director/ Chief of Staff, 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/RuleTitle per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-5	Hospitalization Program
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-5-.01	Definitions
1200-13-5-.02	Determination of Reimbursable Cost
1200-13-5-.03	Approval of the Department Required for Participants Cost Report Required
1200-13-5-.04	Cost Report Required
1200-13-5-.05	Billing Procedure
1200-13-5-.06	Application of Prospective Payment Method
1200-13-5-.07	Provider Exempted from Prospective Payment System
1200-13-5-.08	Prospective Payment Methodology
1200-13-5-.09	Minimum Occupancy Adjustment
1200-13-5-.10	Resident and Intern Adjustment
1200-13-5-.11	High Medicaid Volume Incentive
1200-13-5-.12	Other Adjustment to the Prospective Rate
1200-13-5-.13	New Providers
1200-13-5-.14	Lower of Cost or Charges Limit
1200-13-5-.15	Rate Notification and Effective Date
1200-13-5-.16	Method for Paying Providers which are Exempt from Prospective System
1200-13-5-.17	Audit
1200-13-5-.18	Termination of Medicaid Hospitalization Program

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

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT  
DIVISION OF MEDICAID**

**CHAPTER 1200-13-5  
HOSPITALIZATION PROGRAM**

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1200-13-5-.01	Definitions	1200-13-5-.10	Resident and Intern Adjustment
1200-13-5-.02	Determination of Reimbursable Cost	1200-13-5-.11	High-Medicare Volume Incentive
1200-13-5-.03	Approval of the Department Required for Participants Cost Report Required	1200-13-5-.12	Other Adjustment to the Prospective Rate
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1200-13-5-.08	Prospective Payment Methodology	1200-13-5-.17	Audit
1200-13-5-.09	Minimum Occupancy Adjustment	1200-13-5-.18	Termination of Medicaid Hospitalization Program

**1200-13-5-.01 DEFINITIONS.** The following definitions shall apply to rules 1200-13-5-.02 through 1200-13-5-.15 inclusive, unless otherwise indicated.

- (1) *Capital Costs* means those costs which are required or allowed by Title XVIII principles to be included in all depreciation columns on line 72 of worksheet B of HCFA form 2552-81(11-81). Capital costs shall not include costs associated with non-reimbursable cost centers.
- (2) *Medical Education Costs* means those costs associated with a nursing school or intern resident services in an approved residency program which are required or allowed by Title XVIII principles to be included in columns 18 and 19 of line 72 on worksheet B of HCFA form 2552-81(11-81). Medical education costs shall not include costs associated with non-reimbursable cost centers, nor shall they include costs for routine in-service training.
- (3) *Hospital Based Physician Costs* means physician costs applicable to Medicaid beneficiaries which are required or allowed by Title XVIII principles to be included on line 12 of Column 5f of Part 1 of worksheet D-3 of HCFA form 2552-81(11-81). Such costs shall not be allowable for services provided on or after October 1, 1983.
- (4) *Utilization Ratio* means the ratio of inpatient days attributable to patients determined eligible for Medicaid by the State of Tennessee to total inpatient days.
- (5) *Medicaid Day* means any part of a day including the day of admission in which a person determined eligible for Medicaid by the State of Tennessee is admitted as an inpatient with the intention of remaining overnight. The day of discharge is not counted as a day. If admission and discharge occur on the same day, the day is considered one inpatient day.
- (6) *Approved Residency Program* means: (1) intern or resident in training teaching program approved by the Council on Medical Education of the American Medical Association, or in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association; or, (2) in the case of a hospital or osteopathic hospital with an intern or resident in training program in the field of dentistry, under a teaching program approved by the Council on Dental Education of the American Dental Association.
- (7) *Operating Component* means those costs, applicable to inpatient services only, which are required or allowed by Title XVIII principles to be included on line 10 of Part 1 of schedule E-5 of HCFA form 2552-81(11-81).

~~less the portion, which is attributable to patients determined eligible for Medicaid by the State of Tennessee, of depreciation, medical education costs, and hospital-based physician costs, plus an allowance for the inpatient routine nursing salary differential which was repealed by Medicare on October 1, 1982.~~

~~(8) *Pass Through Component* means the share which is attributable to patients determined eligible for Medicaid by the State of Tennessee of actual capital costs and actual medical education costs. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass through component.~~

~~(9) *Title XVIII principles* means, except where indicated otherwise, those Medicare principles which are applicable to hospitals, which were in effect on October 1, 1982, and which are described at 42 CFR, 405.~~

~~(10) *Base Year Cost Report* means the cost report for the next to the last 12 month cost reporting period preceding the first cost reporting period subject to prospective payment.~~

~~EXAMPLE:~~

<del><i>Ist Year Subject to Prospective Payment</i></del>	<del><i>Base Year</i></del>
<del>1/1/84 to 12/31/84</del>	<del>1/1/82 to 12/31/82</del>
<del>7/1/84 to 6/30/85</del>	<del>7/1/82 to 6/30/83</del>

~~If a hospital's cost reporting period ending on or after September 30, 1982 was for less than 12 months, the cost report for the most recent 12 month cost reporting period ending before September 30, 1982 will be used. The Commissioner of the Department of Health and Environment reserve the right to rebase the reimbursement system described in Chapter 12 13 5 of the Rules of the Department of Health and Environment at such time deemed necessary.~~

~~(11) *Department* means the Tennessee Department of Health and Environment.~~

~~*Authority:* T.C.A. § §4 5 202, 12 4 301, 71 5 105 and 71 5 109, Public Chapter 913 of the Acts of 1992.~~

~~*Administrative History:* Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed January 13, 1987; effective February 27, 1987. Amendment filed September 25, 1992; effective November 9, 1992.~~

~~**1200-13-5-.02 DETERMINATION OF REIMBURSABLE COST.** The Comptroller of the Treasury in accordance with the Department's rules and regulations shall make the determination of reimbursable per diem cost for hospitals.~~

~~*Authority:* T.C.A. §§14 23 105 and 14 23 109. *Administrative History:* Original rule filed June 26, 1985, effective July 26, 1985.~~

~~**1200-13-5-.03 APPROVAL OF THE DEPARTMENT REQUIRED FOR PARTICIPANTS.** Only those institutions or distinct parts thereof certified by the Department in accordance with the General Rule 1200-13-1-.05(2) as rendering hospital care and contracting with Medicaid may participate and be reimbursed as providers under these provisions. The Department shall notify the Comptroller of the Treasury when a provider enters the program and when its participation terminates.~~

~~*Authority:* T.C.A. §§14 23 105 and 14 23 109. *Administrative History:* Original rule filed June 26, 1985; effective July 26, 1985.~~

~~**1200-13-5-.04 COST REPORTS REQUIRED.**~~

~~(1) In order to be eligible for payment by the Medicaid program for hospital services provided to Tennessee Medicaid beneficiaries, providers, including those paid by a prospective method, are required at each provider's fiscal year end, upon termination of provider status, change in ownership, or enrollment as a new provider, as per rule 1200-13-5-.13, to submit to the Comptroller of the Treasury an annual cost report on forms designated by the Department. This report shall be submitted not later than three months from the end of each provider's fiscal year. Such cost reports must be completed in accordance with the Medicare principles of cost reimbursement set out in the Medicare Provider Reimbursement Manual, in effect on October 1, 1982, except where the Department may specify otherwise by these~~

~~rules. All covered services are to be in accordance with the Medicaid Program definition of covered services.~~

~~(2) Providers which fail to submit cost reports which comply with Title XVIII principles in effect on October 1, 1992 and described at 42 CFR 405 shall be subject to the sanctions specified in T.C.A. §71-5-130.~~

~~(3) To be eligible to receive payment, contracting hospitals shall use uniform hospital statistics and classification of accounts as published by the American Hospital Association for all accounting records, or any other acceptable accounting methods approved by the Department of Health in consultation with the Comptroller and the Tennessee Hospital Association. Any contracting hospital that does not adopt the uniform classification of accounts, or that does not submit certified statements when required by the Department of Health will be subject to the sanctions specified in T.C.A. §71-5-130.~~

~~(4) After a period of five years following the implementation of the TennCare Program on January 1, 1994, amended or corrected hospital cost reports with claims for reimbursement for services prior to January 1, 1994 shall not be accepted.~~

~~Authority: T.C.A. §§14-23-105, 14-23-109, 71-5-105, 71-5-109 and 4-5-202. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed January 30, 1989; effective March 16, 1989. Amendment filed April 14, 1989; effective May 8, 1989. Amendment filed October 14, 1998; effective December 28, 1998.~~

~~1200-13-5-.05 BILLING PROCEDURE. Institutions or distinct parts thereof rendering hospital care shall bill the Department or other agency or organization designated by the Department on the forms and in the manner designated. No provider shall charge for Medicaid patients more than is charged for private paying patients for equivalent accommodations and services.~~

~~Authority: T.C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985.~~

~~1200-13-5-.06 APPLICATION OF PROSPECTIVE PAYMENT METHOD. With respect to cost reporting periods on or after the effective date of this rule, all Medicaid providers of hospital care, except those exempted by the provisions of rule 1200-13-5-.07 shall be paid for inpatient services by a prospective method as set out in rules 1200-13-5-.08 through 1200-13-5-.15 inclusive.~~

~~Authority: T.C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985.~~

~~1200-13-5-.07 PROVIDERS EXEMPTED FROM PROSPECTIVE PAYMENT SYSTEM. The prospective payment system shall not apply to:~~

~~(1) Long term care facilities (hospitals which have an average length of stay of more than 25 days).~~

~~(2) Hospitals which elect not to submit a cost report which have less than \$100,000 annually, based on the State of Tennessee's fiscal year, in total charges to patients determined eligible for Medicaid by the State of Tennessee; the annual total charges does not include charges associated with transplants covered by Tennessee Medicaid and are reimbursed in accordance with rule 1200-13-1-.06(18)(f)2.~~

~~Such providers shall be reimbursed an amount not to exceed 80% of reasonable charges for covered item billed by the provider. Reasonable charges are those which are charged by comparable providers for similar services. In the event that providers exceed \$100,000 in total Tennessee Medicaid charges annually:~~

~~(a) In state hospitals or out of state hospitals in contiguous medical marketing areas, will be treated as new providers as specified in rule 1200-13-5-.13.~~

~~(b) All other hospitals will be reimbursed as specified in rule 1200-13-5-16(6).~~

~~(3) Outpatient services~~

~~Authority: T.C.A. §§12-4-301, 14-23-105, 14-23-109, 71-5-105, 71-5-109, and 4-5-202. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed November 10, 1988; effective December 25, 1988. Amendment filed May 8, 1991; effective June 22, 1991.~~

**1200-13-5-.08 PROSPECTIVE PAYMENT METHODOLOGY.**

~~(1) The prospective payment will be made as a rate per inpatient day. Each facility's reimbursable inpatient costs will be determined in accordance with Title XVIII principles, from a base year cost reporting period. Costs will be separated into an operating component and a pass through component. A trending factor will be applied to the operating rate component only. The prospective rate will be the sum of the trended operating component and the untrended pass through component, plus or minus adjustments for minimum occupancy, (effective October 1, 1989, Tennessee Medicaid will not impose a minimum occupancy penalty), resident and intern costs, Medicaid disproportionate share and other adjustments as provided in rule 1200-13-5-12. Tennessee Medicaid costs will be determined by a computed utilization ratio from form HCFA-2552.~~

~~(a) Except for inpatient hospital days involving approved organ transplants, the first twenty (20) days per fiscal year will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only), and Medicaid disproportionate share adjustment (MDSA) components. For medically necessary days in excess of twenty (20) per fiscal year, reimbursement will be made at 60 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Approved inpatient days involving organ transplants will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Admission and stays involving organ transplants that span fiscal years will be reimbursed as if the entire stay had occurred during the first fiscal year.~~

~~(2) Adjustments to Base Period Costs. It may be necessary to adjust base year cost reports to make the base period costs comparable to inpatient costs incurred in the prospective period, such as costs to be incurred by hospitals required to enter the Social Security system beginning January 1, 1984. Therefore, hospitals submitting form HCFA-1008 to their Medicare intermediary should send a copy of this form to the Comptroller of the Treasury. For hospitals which do not submit form HCFA-1008, appropriate adjustments will be made based on the best available information.~~

~~(3) Pass Through Component.~~

~~(a) Each facility's initial prospective rate will be based on the base year cost report and will include a pass through component consisting of the portion of capital costs and medical education costs which is attributable to patients determined eligible for Medicaid by the State of Tennessee. The pass through component may vary from year to year depending on each facility's actual capital costs and medical education costs and will not be computed until the facility's cost report is received. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass through component.~~

~~(b) Additional capital costs due to revalued assets will be recognized only when an existing provider is purchased by another provider in a bona fide sale (arms length transaction). The new value for reimbursement purposes shall be the lesser of (1) the purchase price of the asset at the time of the sale, (2) the fair market value of the asset at the time of the sale (as determined by an MAI appraisal), (3) current reproduction cost of the asset depreciated on a straight line basis over its useful life to the time of the sale, or (4) for facilities undergoing a change of ownership on or after July 18, 1984, the acquisition cost to the first owner of record on or after July 18, 1994. The cost basis of depreciable assets in a sale not considered bona fide is additionally limited to (5) the seller's cost basis less accumulated depreciation. The~~

— purchaser has the burden of proving that the transaction is a bona fide sale should the issue arise. Gains realized from the disposal of depreciable assets while a provider is participating in the program are to be a deduction from allowable capital costs.

- (e) — The payment of return on equity will be determined by Medicare principles of cost reimbursement, 42 CFR 405, in effect on August 1, 1983 providing that, effective April 20, 1983, return on equity shall be adjusted to reflect 100% of the average rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

EXAMPLE

Base Year:	12/31/82
Base Year Cost Report Received	05/01/83
Initial Prospective Rate Determined	06/01/83
Beginning of Prospective Payment	01/01/84
12/31/83 Cost Report Received	05/01/84
12/31/83 Cost Report Rate	
Adjustment Completed	06/01/84

— In this example, the initial prospective rate continues until June 1, 1984. On June 1, 1984, the rate is adjusted (for service dates on or after June 1, 1984) for the Tennessee Medicaid share of the actual capital costs, medical education costs, hospital based physician costs, and return on equity (for proprietary providers only) reported on the December 31, 1983, cost report.

- (d) — Beginning with fiscal years beginning July 1, 1987, and later, capital costs will be reduced by 3.5% for dates of services July 1, 1987 through September 30, 1987, by 7% for dates of service October 1, 1987 through December 31, 1987, by 12% for dates of service January 1, 1988 through September 30, 1988, and by 15% for dates of service October 1, 1988 through September 30, 1989, by 0% for dates of service October 1, 1989 through December 31, 1989, and by 15% for dates of service January 1, 1990 and later. Reduction will be figured into year end final settlements. Hospitals designated as Sole Community Hospitals are exempt from percentage reduction in capital costs. Upon the effective date of these rules, hospitals will be reimbursed 100% of their capital costs.

- (4) — Operating Component. Each facility's initial prospective rate shall include an operating component which is computed from the base year cost report. The operating component will be trended forward each year. Trending to the new rebased year, (1988 cost reports or if not available the prior cost report) will be computed by utilizing the indexing rate recommended by the Prospective Payment Assessment Commission, applied from the end of the hospital's fiscal year to October 1, 1989.

— Thereafter the trending index shall be that rate of increase on prospective payments as recommended by the Prospective Payment Assessment Commission and as published in the *Tennessee Administrative Register*. The trending indexes above shall be applied from October 1, 1989, to the midpoint of the state's fiscal year, no earlier than December 31, 1990, and shall be effective the first of the state's fiscal year, no earlier than July 1, 1990. When necessary, indexes will be prorated to correspond to a provider's year end. Each provider will be notified of its new operating rate due to indexing within 30 days of the beginning of the state's fiscal year.

*Authority: T.C.A. §§4-5-202, 12-4-301, 71-5-105 and 71-5-109; Public Chapter 913 of the Acts of 1992. Administrative History. Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed February 21, 1986; effective March 23, 1986. Amendment filed September 12, 1986, effective October 27, 1986. Amendment filed May 29, 1987, effective July 13, 1987. Amendment filed June 2, 1988, effective July 17, 1988. Amendment filed August 8, 1990, effective September 22, 1990. Amendment filed October 21, 1991; effective December 5, 1991. Amendment filed September 25, 1992; effective November 9, 1992.*

**1200-13-5-.09 MINIMUM OCCUPANCY ADJUSTMENT.** Capital costs shall be adjusted each year, using the formula set out below, if a facility's occupancy rate, based on staffed beds during the year, is below a minimum level. If a hospital exceeds its minimum occupancy rate, the formula is not applied. The minimum level is as follows:

- ~~\_\_\_\_\_ Hospitals over 100 beds - 70%~~
- ~~\_\_\_\_\_ Hospitals with 100 beds or fewer - 60%~~

~~The adjustments will be computed as follows and will be made at the same time as the pass through adjustment as set out in rule 1200-13-5-.15:~~

~~\_\_\_\_\_ 
$$ACC = TCC \times \frac{TBD}{ABD(Y)}$$~~

- ~~\_\_\_\_\_ ACC = allowable capital costs~~
- ~~\_\_\_\_\_ TCC = total capital costs~~
- ~~\_\_\_\_\_ TBD = total bed days used during the period~~
- ~~\_\_\_\_\_ ABD = total bed days available during the period~~
- ~~\_\_\_\_\_ Y = .6 for hospitals with 100 beds or fewer~~
- ~~\_\_\_\_\_ .7 for hospitals over 100 beds~~

~~All references to beds means staffed beds. Staffed beds mean those beds which are equipped and available for patient use. Any beds or hospital wing which is unavailable for patient use, such as being closed for reasons including but not limited to, painting, maintenance, or insufficient nursing staff will not be considered staffed beds. It shall be the responsibility of the provider to determine, at least monthly, its number of staffed beds. A schedule showing the number of staffed and unstaffed beds, along with the reasons for being unstaffed, must be submitted with the cost report. This schedule is subject to audit in accordance with rule 1200-13-5-.17. If no schedule of staffed beds is received, staffed beds will be the number of beds at the end of cost report period. Effective October 1, 1989 Tennessee Medicaid will not impose a minimum occupancy penalty.~~

~~*Authority: T.C.A. §§4-5-202, 12-4-301, 14-23-105, 14-23-109, 71-5-105, and 71-5-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed August 8, 1990; effective September 22, 1990.*~~

~~**1200-13-5-.10 RESIDENT AND INTERN COST ADJUSTMENT.**~~

- ~~(1) On the basis of the ratio of full time equivalent residents and interns to total beds, a resident and intern cost adjustment shall be granted to teaching facilities having an approved residency program. Such facilities will be given this adjustment independent of the Medicaid disproportionate share adjustment. The resident and intern cost adjustment shall not be subject to trending. The cost adjustment shall be calculated using the following formula but shall not exceed 10%, and will be made at the same time as the pass through adjustment.~~

~~\_\_\_\_\_ 
$$RI = 1.89 \times \left[ \left( 1 + \frac{\text{interns and residents}}{\text{beds}} \right) - 1 \right]$$~~

- ~~(2) For purposes of this adjustment, hospitals are to report only full-time equivalent interns and residents on form HCFA 1008, Part 1. For years when form 1008 is no longer in effect, hospitals must submit their number of full time equivalent interns and residents with their cost report. The number of full time equivalent interns and residents is the sum of: (a) interns and residents employed 35 hours or more per week, and (b) one half of the total number of interns and residents working less than 35 hours per week regardless of the number of hours worked.~~

~~**EXAMPLE** assuming no high Medicaid volume incentive or minimum occupancy adjustment.~~

	Year 1	Year 2	Year 3
1. Operating Component Prior to Trending	\$250.00	\$277.50	\$299.70
2. Pass Through Component	25.00	30.00	35.00
3. Basis for RI adjustment	275.00	307.50	334.70
4. RI Adjustment at 8% (line 3 x .08)	22.00	24.60	26.78
5. Trend Factor for Operating Component	11%	8%	7%
6. Trended Operating Component (line 1 x line 5 + 100%)	277.50	299.70	320.69

7. ~~Prospective Rate (line 2 + line 4 + line 6)~~ ~~\$324.50~~ ~~\$354.30~~ ~~\$382.46~~

*Authority. T.C.A. §§4-5-202, 14-23-10, 5, 14-23-109, 71-5-105 and 71-5-109. Administrative History. Original rule filed June 26, 1985, effective July 26, 1985. Amendment filed April 29, 1986, effective May 29, 1986. Amendment filed December 30, 1986, effective February 13, 1987. Amendment filed December 8, 1989, effective January 22, 1990.*

**~~1200-13-5-11 MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT (MDSA).~~**

~~(1) In accordance with the Medicaid State Plan, hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio over 8% will be provided a payment incentive. The Medicaid disproportionate share adjustment shall not be subject to trending and shall be based on cost reports with fiscal year ending 6/30/86 and later. The incentive will be the higher of (a) or (b) but shall not exceed 17% and (a) + (c) or (b) + (c) shall not exceed 22%:~~

~~(a) The prospective rate will be adjusted upward by 3% for each 1% increment in the utilization rate above 8%.~~

~~(b) The prospective rate will be adjusted upward by 3% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000.~~

~~(c) The prospective rate will be adjusted upward by 5% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non-Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this incentive.~~

~~Also, in order to receive incentive (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(2) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid, or a utilization ratio over 14% will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%:~~

~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14%;~~

~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~

~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non-Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~

~~Also, in order to receive adjustment (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. If no inpatient charity care is reported there will be no disproportionate share payment. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

- ~~(c) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a quarterly basis established in June of each year. The quarterly payment will be prospective based on the disproportionate share adjustment established on the most recent cost report multiplied by the actual number of Medicaid days of the prior year established on paid claims from June-May fiscal year plus expected improvement based on a historical basis for the upcoming fiscal year July-June.~~
- ~~(3) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio of 14% or one standard deviation above the mean utilization ratio for all hospitals, whichever is lower, will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%.~~
- ~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14% or one standard deviation above the mean, whichever is lower.~~
- ~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient reported Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~
- ~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non-Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~
- ~~Also, in order to receive this adjustment (c) the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~
- ~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~
- ~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the state Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer nonemergency obstetric services as of December 21, 1987.~~
- ~~(4) In accordance with the Medicaid State Plan, acute care hospitals that do not qualify under the criteria in (3) but have a low income inpatient utilization rate exceeding 25% will receive the following payment incentive:~~
- ~~(a) The prospective rate will be adjusted upward by 2% for each percentage above 25% up to a cap of 10%.~~
- ~~(b) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

- ~~(c) Low income utilization rate will be calculated as follows from information obtained from the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~
- ~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and,~~
  - ~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for Medical assistance under an approved Medicaid State Plan) that is, reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~
- ~~(d) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~
- (5) Any hospital designated as a perinatal center by statute or regulation and with a service plan approved by the Department of Health Maternal and Child Health Section or any hospital providing without charge services to high risk, multi-handicapped persons under age 21 who are enrolled in the Department's Children's Special Services program shall, because of the extraordinary risk and expertise involved in treatment of these individuals, be eligible to receive an adjustment not to exceed the uncompensated cost for perinatal services and services to handicapped children at each hospital for the state fiscal year. The total uncompensated care for each of the qualified providers will be divided by the total anticipated Medicaid days for the same period in order to determine the amount to be added to the disproportionate share adjustment calculated in paragraphs (3) and (4) above. This new adjustment will be multiplied by the total anticipated Medicaid days for the period. This adjustment will be added to and not subject to any limits that are included in paragraphs (3) and (4) above.
- (6) Beginning July 1, 1991, any acute care hospital qualifying for a disproportionate share adjustment under the qualifying criteria listed in paragraphs (3) and (4) above and having at least 1,000 projected Medicaid days and having a Medicaid utilization ratio that exceeds the industry average utilization ratio which is computed by dividing the available hospital days by the Medicaid industry days will be eligible for an additional enhanced disproportionate share adjustment based on the following:
- (a) The prospective rate will be adjusted upward by an amount equal to the difference of the hospital's Medicaid utilization ratio and the industry average utilization ratio multiplied by a factor of 9.45.
  - (b) The enhanced MDSA payment will be based on the enhanced disproportionate share adjustment calculated in subparagraph (a) above multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July through June.
  - (c) The sum of the MDSA payment calculated in (3), (4), and the enhanced payment computed in this paragraph (6) cannot exceed the aggregate sum of inpatient and outpatient charity care and bad debt charges and Medicaid and Medicare contractual adjustments converted to cost based on the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.
- (7) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the

- ~~determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass-through adjustment.~~
- ~~(8) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis and established in June of each year. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July-June. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~
- ~~(9) Effective October 1, 1992, hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or a Medicaid utilization ratio over 7.94% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of (a), (b), or (c), and the sum of (a), (b), or (c), whichever is higher, plus (f) cannot exceed 40% of inpatient and outpatient charity charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purposes of this rule Medicaid days will not include days reimbursed by the Primary Care Network. For the purposes of this rule charity, unless otherwise specified, will be defined as inpatient and outpatient charity charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. Charity will include charges for both in-state and out-of-state services.~~
- ~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 7.94% utilization rate.~~
- ~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~
- ~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~
- ~~(d) Low income utilization rate will be calculated as follows from information obtained from the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~
- ~~1. Total Medical inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~
  - ~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan) that is reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~
- ~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~
- ~~(f) Any hospital whose charity exceeds 6% of the industry's total charity will receive an additional payment. This payment will be equal to their percentage of the industry's charity times a factor of 4.05 times the value of their charity.~~

- ~~(g) Any hospital that has a Medical utilization rate of 23% or greater and 23,000 Medicaid days or more will qualify for an additional MDSA payment. Hospitals qualifying will be allowed payment in excess of 40% of charity. Instead of a 40% limit these hospitals will receive up to a 75% limit. Any hospital qualifying for this enhancement whose ratio of charity to total revenues exceed 30% will be capped at a total MDSA payment of \$42,750,000. Any hospital whose ratio is less than or equal to 30%, will be capped at \$37,750,000.~~
- ~~(h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.~~
- ~~(i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~
- ~~(j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.~~
- (10) Effective July 1, 1993, only those hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or having a Medicaid utilization ratio over 8.55% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of the amount determined by subparagraphs (a), (b), or (c), whichever is higher, and added to subparagraph (f). That total cannot exceed 40% of inpatient and outpatient "charity" charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purpose of this rule Medicaid days Will not include days reimbursed by the Primary Care Network. For the purpose of this rule "charity", unless otherwise specified, will be defined as inpatient and outpatient "charity" charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. "Charity" will include charges for both in-state and out-of-state services.
  - ~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 8.55% utilization rate.~~
  - ~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~
  - ~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~
  - ~~(d) Low income Utilization rate will be calculated as follows from information obtained from the 1991 Hospital Joint Annual Report as submitted to the State Center of Health Statistics, The sum of:
 
    - ~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from either the state and local governments in a cost reporting period, divided by the total amount of revenues of the hospitals for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~
    - ~~2. The total amount of the hospital's charges for inpatient hospital services attributable to "charity care" (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to "charity care" shall not include contractual allowances and discounts (other than for indigent patient not eligible for Medical assistance under an approved Medicaid State Plan) that are reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~~~

- (e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.
- (f) Any hospital whose "Charity" exceeds 6% of the industry's total "charity" will receive an additional payment. This payment will be equal to their percentage of the industry's "charity" times a factor of 3.0 times the value of their "charity".
- (g) Any hospital that has Medicaid Utilization rate of 24% or greater and 25,000 Medicaid days or more will qualify for an additional MDSA payment. Qualifying hospitals will be allowed payment in excess of 40% "charity". Instead of a 40% limit these hospitals will receive up to a 91% limit. Any hospital qualifying for this enhancement whose ratio of "charity" to total revenues exceeds 30% will be capped at a total MDSA payment of \$60,000,000. Any hospital whose ratio is less than or equal to 30%, will be capped at \$50,000,000.
- (h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass-through adjustment.
- (i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the number of Medicaid days reported on the 1992 cost report. In cases where the 1992 report is still unavailable, the latest report on file will be used.
- (j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.

*Authority:* T.C.A. §§71-5-105, 71-5-109, 12-4-301, and 4-5-202; *Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (PL 102-234).* *Administrative History:* Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed December 31, 1986; effective February 14, 1987. Amendment filed October 30, 1990; effective December 14, 1990. Amendment filed June 12, 1991; effective July 27, 1991. Amendment filed September 18, 1991; effective November 2, 1991. Amendment filed January 20, 1993; effective March 6, 1993. Amendment filed October 22, 1993; effective January 5, 1994.

#### **1200-13-5-12 OTHER ADJUSTMENTS TO THE PROSPECTIVE RATE.**

- (1) Adjustments to the prospective rate shall be made for the following reasons:
  - (a) a mathematical mistake in computing the rate;
  - (b) additional individual capital expenditures for which there is an approved certificate of need such as the purchase of major equipment or addition of new beds, which would have an impact of 5% on the facility's total prospective rate, or a \$25,000 effect on Tennessee Medicaid reimbursement.
  - (c) a significant change in case mix resulting in a 5% change in the facility's total prospective rate, or a \$25,000 effect on Tennessee Medicaid reimbursement. Case mix, for this purpose, is a diagnostic or therapeutic related factor requiring either an increase or decrease in the professional staff per patient ratio.

- (2) — ~~Providers who are seeking a rate adjustment due to additional costs and who wish to have such an adjustment effective at the same time as the additional costs are actually incurred must submit request for such adjustment to the Medicaid agency at least 45 days prior to the time the additional costs will be incurred. The effective date of such rate adjustments shall be the first day of the month following 45 days from the date of receipt of the adjustment request.~~

~~Requests for adjustment must include detailed cost information identifying the appropriate operating and pass-through components.~~

~~*Authority: T. C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985.*~~

~~**1200-13-5-.13 NEW PROVIDERS, CHANGES IN OWNERSHIP, AND CHANGES IN FISCAL YEAR-END.** New providers entering the Program will be required to submit a budgeted cost report from which an interim prospective rate will be set. Each new provider must submit, in accordance with rule 1200-13-5-.04 an actual cost report covering the first full year of actual operations, at which point a final prospective rate, with a retroactive adjustment, will be set. A change of ownership does not constitute a new provider. Any change in ownership or fiscal year end should be reported to the Office of the Comptroller of the Treasury and the Department.~~

~~*Authority: T. C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed April 30, 1987, effective June 14, 1987.*~~

~~**1200-13-5-.14 LOWER OF COST OR CHARGES LIMIT.** In the base year, the lower of cost or charges limitation will be waived for prospective rate determination purposes only. The limitation will, however, be applied for settlement purposes for all periods prior to a facility's first fiscal year under prospective payment. Carry forwards of unreimbursed costs will not be recognized once a provider's initial fiscal year under the prospective payment method has begun.~~

~~*Authority: T. C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985.*~~

~~**1200-13-5-.15 RATE NOTIFICATION AND EFFECTIVE DATES.**~~

- (1) — ~~Beginning 30 days after the effective date of this regulation, each provider will be notified of their initial prospective rate at least 30 days prior to the beginning of their first fiscal year under prospective payment. For those providers whose first fiscal year under prospective payment begins earlier than 30 days after the effective date of this rule, every attempt will be made to provide for a reasonable notice to them. The initial prospective rate shall apply to services provided on or after the first day of the provider's first fiscal year subject to prospective payment. Payment for services rendered prior to the first day of the provider's first fiscal year subject to prospective payment and submitted for payment after such date shall be paid at the rate in effect during the period the service was rendered. Providers must split bill for services spanning their first prospective year and the prior year.~~
- (2) — ~~Within 30 days after the receipt of each provider's cost report, each provider will be notified of their new prospective rate due to the normal pass-through adjustment. This rate shall be effective by the first day of the next month one month subsequent to the date of receipt of the provider's cost report. Providers must split bill for services spanning the effective date of the rate change.~~
- (3) — ~~Within 30 days before the beginning of each fiscal year subsequent to the initial prospective year, each provider will be notified of their new prospective rate due to the normal operating rate adjustment. This rate shall apply to services provided on or after the beginning of the new fiscal year. Providers must split bill for services spanning the effective date of the rate change.~~
- (4) — ~~Providers will be notified of special rate adjustment described in rule 1200-13-5-.12 no later than 45 days after the receipt of the appropriate data. Such rate change shall be effective as specified in rule 1200-13-5-.12(2). Provider must split bill for services spanning the effective date of the rate change.~~

(5) Subsequent years' adjustments for high Medicaid volume, minimum occupancy, and resident and intern costs shall be completed at the same time and become effective at the same time as the pass-through adjustment described in rule 1200-13-5.14(2).

(6) Delays in setting rates may be encountered if it becomes necessary to request additional information from a provider due to errors or omissions on cost reports. Cost reports are due as specified by Medicare regulations in effect on October 1, 1982.

(7) In cases of a change in ownership or fiscal year end, the operating component will be adjusted when the next trend is due under the old fiscal year end in order to avoid overlap or duplication of the period trended. This trend will be to the midpoint of the time between the old fiscal year end and the new fiscal year end and will be effective for dates of service beginning on the day after the old fiscal year end. The next trend will be from the midpoint of that period to the midpoint of the new fiscal year and will be effective for dates of service beginning on the first day of the new fiscal year. The rates should be computed at least 30 days prior to the effective date of the rate. Examples are found at subparagraphs (a) and (b) below:

(a) Assume that a provider has a former fiscal year end of June 30 and changes to a December 31 year end. The provider notifies us of the change before June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1983 to June 30, 1984, that midpoint being January 1, 1984. That rate was effective for services on or after July 1, 1983. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1984, to the midpoint of the time between the provider's former year end of June 30, 1984, and the new fiscal year end of December 31, 1984, that midpoint being October 1, 1984. The effective date of this rate will be for services on or after July 1, 1984. Next, we will trend from the point where we left off (October 1, 1984) to the midpoint of the provider's new fiscal year end of December 31, 1985, that midpoint being July 1, 1985, with a corresponding effective date of services on or after January 1, 1985. Normal annual indexing takes place thereafter.

(b) Notification made subsequent to Comptroller's indexing based on the former fiscal year end. Assume the same facts in the first example except that the provider notifies us of their fiscal year end change sometime after June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1984 to June 30, 1985, that midpoint being January 1, 1985. That rate was effective for services on or after July 1, 1984. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1985, to the midpoint of the time between the provider's former year end of June 30, 1985, and the new fiscal year end of December 31, 1985, that midpoint being October 1, 1985. The effective date of this rate will be for services on or after July 1, 1985. Next, we will trend from the point where we left off (October 1, 1985) to the midpoint of being July 1, 1986, with a corresponding effective date of service on or after January 1, 1985. Normal annual indexing takes place thereafter. This procedure will be followed to avoid overlapping of the periods trended even if the provider changed fiscal year end in 1984.

*Authority: T.C.A. §§14-23-105, 14-23-109 and 4-5-202. Administrative History. Original rule filed June 26, 1995, effective July 26, 1985. Amendment filed March 25, 1987, effective May 9, 1987.*

#### **1200-13-5.16 METHOD FOR PAYING PROVIDERS WHICH ARE EXEMPT FROM PROSPECTIVE SYSTEM.**

(1) The Comptroller of the Treasury, will determine, in accordance with Medicare principles of cost reimbursement in effect on October 1, 1982, and described at 42 CFR 405, per diem reimbursable costs for those Medicaid providers of hospital services exempted from the prospective system set out in rules 1200-13-5.06 through 1200-13-5.15 inclusive, except those hospitals described in item (3) of rule 1200-13-5.07 which shall be reimbursed as described in that item. The maximum limit of such reimbursable costs shall be the lesser of: (a) the reasonable cost of covered services; or (b) the customary charges to the general public for such services. Provided, however, that such providers which are public hospitals rendering services free or at nominal charge shall not be subject to the lower of cost or charges limitation but shall be paid fair compensation for services in

accord with provisions of 42 CFR 405 in effect on October 1, 1983. Covered services means covered services as defined by the Department. Each provider's per diem reimbursable cost will be based on the provider's cost report which is to be filled out and submitted in accordance with rule 1200-13-5-04.

~~(2) *Interim Rate.* The Comptroller of the Treasury, will establish interim per diem reimbursable rates for providers exempted from the prospective payment system. The interim rate remains in effect until the provider's actual reimbursable cost based on the provider's cost report, is established. Interim rates shall be based on prior cost report data and shall be subject to revision upon further review, audit, and/or subsequent finding of the Comptroller of the Treasury. For new facilities, budgeted information supplied by the provider may be used to establish an interim rate.~~

~~(3) *Approval of Initial Settlement.* When a provider's cost report is received, it is reviewed and compared with:~~

~~(a) The amount of charges for covered services provided to Medicaid beneficiaries by the provider during the provider's fiscal period.~~

~~(b) The amount of interim payments paid by the Department to the provider for the provider's fiscal period.~~

~~(c) The number of inpatient days approved for the provider by the Department during the provider's fiscal period.~~

~~On the basis of the comparison and review, the Comptroller of the Treasury will make an initial determination of the cost settlement due to the provider or the state for the designated period. Approval of the initial settlement will be subject to further review, audit and/or subsequent finding of the Comptroller of the Treasury. On the basis of the initial settlement, the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(4) *Approval of Final Cost Settlement.* After the necessary final review and/or auditing has been performed by the Comptroller of the Treasury, the Comptroller will advise the Department of the final cost settlement approved. On the basis of the approved final settlement the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(5) *Inpatient Routine Operating Per Diem Cost Limitation.* In the event that data is not available to compute the inpatient routine operating per diem cost limitation for all or any part of a provider's fiscal year, the Comptroller of the Treasury will use each provider's per diem cost limitation in effect prior to the provider's first fiscal year subject to prospective payment which will be appropriately trended by the actual hospital market index as published by the Health Care Financing Administration in the Federal Register or by Data Resources, Inc., or their successors.~~

~~(6) *Out of State Reimbursement Rate.* Hospitals which meet the criteria as set forth in rule 1200-13-5-.07(2), shall be reimbursed at the lesser of:~~

~~(a) the reasonable cost of covered services;~~

~~(b) the customary charges to the general public for such services, or~~

~~(c) the Medicaid reimbursement rate as established by the hospital's respective state. Covered services are those defined by the Tennessee Department of Health. Reimbursement by Tennessee Medicaid shall be considered as payment in full for covered services and no additional billings shall be made to the patient for these services.~~

*Authority: T.C.A. §§12-4-301, 71-5-105, 71-5-109 and 4-5-202. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed May 8, 1991; effective June 22, 1991*

**1200-13-5-17 AUDIT.**

- (1) All hospital cost reports are subject to audit at any time by the Comptroller of the Treasury and the Department or their designated representative. Cost report data must be based on and traceable to the provider's financial and statistical records and must be adequate, accurate, and in sufficient detail to support payment made for services rendered to beneficiaries. Retroactive adjustments to the prospective rate may be made for audit exceptions.
- (2) Hospitals will be subject to medical audits at any time. Medical audits include, but are not limited to, "medical necessity" or "length of stay." Medical audit exceptions may result in a direct recoupment rather than a rate change.
- (3) The Department will provide for all costs of auditing which may be required.

*Authority: T.C.A. §§14-23-105 and 14-23-109. Administrative History: Original rule filed June 26, 1985; effective July 26, 1985.*

**1200-13-5-18 TERMINATION OF MEDICAID HOSPITALIZATION PROGRAM.** For hospitalization services provided prior to January 1, 1994, the rules as set out at rule chapter 1200-13-5 shall apply. Effective January 1, 1994, the rules of TennCare as set out at rule chapter 1200-13-12 shall apply except that Tennessee Medicaid will continue to pay Medicare premiums, deductibles and copayments in accordance with the Medicaid rules in effect prior to January 1, 1994, and as may be amended.

*Authority: T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Public Chapter 358 of the Acts of 1993. Administrative History: Original rule filed March 18, 1994; effective June 1, 1994.*

Chapter 1200-13-05  
Hospital Annual Coverage Assessment

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1200-13-05-.01 Definitions.

- (1) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in these rules.
- (2) Existing Contracts. The contracts that were in place between a Tennessee hospital and a TennCare MCO as of July 1, 2013.
- (3) Hospital. A general or specialty acute care facility licensed as a hospital by the Tennessee Department of Health pursuant to T.C.A. § 68-11-206, excluding hospitals that are categorized as Rehabilitation, Research, Long Term Acute or Psychiatric on the 2013 Joint Annual Report of

Hospitals.

- (4) Inpatient Services. Routine, nonspecialized services that are provided at many or most hospitals in the state to patients admitted to the hospital as inpatients.
- (5) MCO (Managed Care Organization). An appropriately licensed Health Maintenance Organization (HMO) contracted with the Bureau of TennCare to manage the delivery, provide for access, contain the cost, and ensure the quality of specified covered medical and behavioral benefits to TennCare enrollee-members through a network of qualified providers.
- (6) Medicare. A hospital's fee-for-service reimbursement under Title XVIII including that hospital's adjustment for DSH, wage index, etc., and excluding only IME, pass through payments, and any Medicare payment adjustments for Sequestration, Value Based Purchasing, Readmissions and Hospital Acquired Conditions.
- (7) Medicare Severity Diagnosis Related Groups (MS-DRG). The Medicare statistical system of classifying any inpatient stay into groups for the purpose of payment.
- (8) New Contract. Any initial contract between an MCO and a hospital that did not exist on July 1, 2013. Contracts in place on July 1, 2013, that have been materially altered since July 1, 2013, are not new contracts.
- (9) Outpatient Services. Services that are provided by a hospital to patients in the outpatient department of the hospital and patients receiving outpatient observation services.
- (10) Rate Corridors. Upper and lower limits established by the state's actuary and approved by the Bureau, in consultation with the Tennessee Hospital Association (THA), for payments by MCOs to hospitals for services provided to TennCare enrollees. The Rate Corridors are based on a hospital's Medicare reimbursement that existed in FFY 2011 and used to determine the parameters of TennCare rates for contracts between Tennessee hospitals and TennCare MCOs after July 1, 2013. The determination of whether a hospital's TennCare rates are within the prescribed Rate Corridors shall be made on the basis of reimbursement from all TennCare MCOs with which the hospital has a contract. The Rate Corridors, which were calculated by the State's actuary as the budget neutral corridors, are as follows:

  - (a) For inpatient services, the minimum level is 53.8% and the maximum level is 80% of the hospital's Medicare for 2011.
  - (b) For outpatient services, the minimum level is 93.2% and the maximum level is 104% of the hospital's Medicare for 2011.
  - (c) For cardiac surgery, the minimum level is 32% and the maximum level is 83% of the hospital's Medicare for 2011.
  - (d) For specialized neonatal services the minimum is 4% and the maximum level is 174% of the hospital's Medicare for 2011.
  - (e) For other specialized services the minimum level is 49% and the maximum level is 164% of the hospital's Medicare for 2011.
- (11) Specialized Services. Services that are typically provided in a small subset of hospitals, such as transplants, neonatal intensive care and level 1 trauma.
- (12) TennCare. The TennCare waiver demonstration program(s) and/or Tennessee's traditional Medicaid program.
- (13) TennCare Actuary. The actuarial firm selected by the Bureau to assist the Bureau in establishing the capitation rates for TennCare MCOs each year.
- (14) Total TennCare Rates. Payment rates for each hospital in the aggregate from all MCOs with which the hospital has network contracts.

(15) Year 1 Corridors. The initial upper and lower limits established by the Bureau in consultation with THA based on a hospital's Medicare reimbursement that existed in FFY 2011 and that were used to implement rate variation limitations in contracts between Tennessee hospitals and TennCare MCOs from July 1, 2012 until July 1, 2013. The Year 1 Corridors are as follows:

- (a) For inpatient services, the minimum level was 40% and the maximum level was 90% of the hospital's Medicare for 2011.
- (b) For outpatient services, the minimum level was 90% and the maximum level was 125% of the hospital's Medicare for 2011.
- (c) For cardiac surgery, the minimum level was 30% and the maximum level was 80% of the hospital's Medicare for 2011.
- (d) For specialized neonatal services the minimum was 4% and the maximum level was 180% of the hospital's Medicare for 2011.
- (e) For other specialized services the minimum level was 30% and the maximum level was 160% of the hospital's Medicare for 2011.

1200-13-05-.02 Implementation of Contract Amendments for Existing Contracts between Hospitals and MCOs.

These contracts set rates for a period of two years effective July 1, 2013, and provided for rate amendments to be negotiated and implemented on July 1, 2015.

- (1) For hospitals that had existing contracts with MCOs in place on July 1, 2013, and the MCO and hospital had negotiated contract amendments to bring rates for total TennCare into the Rate Corridors and the rates in the contracts have not been adjusted since July 1, 2013, the MCOs will reissue those amendments with a new effective date of July 1, 2015.
- (2) In the case of a hospital that had contracts with MCOs in place on July 1, 2013, which contracts included amendments implementing rates within the Rate Corridors, and where the rates in the contracts have been adjusted since July 1, 2013, the Bureau shall evaluate the rates in the current contracts to determine if the total TennCare rates for the hospital are within the Rate Corridors. If the rate adjustments cause the total TennCare reimbursement for the hospital to be outside of the Rate Corridors, the affected MCOs shall implement contract amendments approved by the Bureau in consultation with the TennCare Actuary to bring the hospital rates into the Rate Corridors effective July 1, 2015.
- (3) In the case of a hospital with contracts in existence on July 1, 2013, which contracts include rates outside of the Rate Corridors, the affected MCOs shall implement contract amendments to bring total TennCare rates into the Rate Corridors with an effective date of July 1, 2015. The Bureau shall verify that the new contract rates in conjunction with contracts between the hospital and all other MCOs bring the hospital's total TennCare rates within the Rate Corridors.

1200-13-05-.03 Implementation of New Contracts between Hospitals and MCOs Entered into after July 1, 2013. These contracts have not yet been in effect for a period of time sufficient to negotiate rate amendments for a July 1, 2015, implementation date.

In the case of a hospital that entered into a contract with an MCO after July 1, 2013, including a hospital that entered into a contract with an MCO with rates within Year 1 Corridors effective January 1, 2015, the affected MCOs shall implement contract amendments that bring the hospital rates within the Rate Corridors no later than September 30, 2015.

1200-13-05-.04 Exclusion of Any Hospital from TennCare Networks.

A hospital that does not accept a contract amendment required by this Rule shall be excluded effective October 1, 2015, from participation in the TennCare MCO network to which the contract amendment applies.

1200-13-05-.05 Out-of-Network Reimbursement.

Out-of-Network payments to all hospitals shall be governed by TennCare Medicaid Rule 1200-13-13-.08(2)(a)-(c) and TennCare Standard Rule 1200-13-14-.08(2)(a)-(c).

1200-13-05-.06 Agreements between Hospitals and MCOs for Limited Services.

Rates for a single case agreement negotiated between the MCOs and hospitals that are not in network with the MCO to ensure access to services for TennCare enrollees may not exceed the ceiling or be below the floor of the Rate Corridors appropriate for those services.

1200-13-05.07 Changes to Hospital Rates Negotiated between MCOs and Hospitals after September 30, 2015.

To ensure that each hospital's total TennCare reimbursement remains within the Rate Corridors, proposed rate changes after September 30, 2015, shall be evaluated by the Bureau to determine if the proposed rate change will move the hospital's total TennCare rates outside of the Rate Corridors. If the evaluation indicates the change will put the hospital outside of the Rate Corridors, the Bureau shall provide the adjustments necessary to ensure that the contract is compliant with the limits of the Rate Corridors. TennCare rates between a hospital and an MCO may not be modified after September 30, 2015, without approval from the Bureau.

1200-13-05-.08 Categorization of New Services Added after July 1, 2015.

MS-DRG classifications serve as the basis for identifying services as inpatient or specialized. MS-DRG classifications may change and new MS-DRG classifications may be added from time to time. New or modified MS-DRG classifications shall be evaluated for assignment to appropriate inpatient or specialized categories by the Bureau in consultation with THA and the TennCare Actuary.

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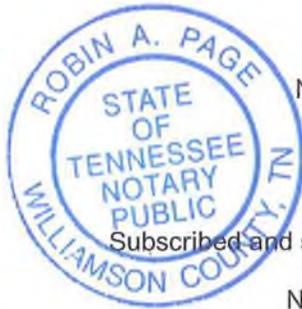
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 6-30-15

Signature: Wendy J Long MD

Name of Officer: Wendy J. Long, M.D., M.P.H

Title of Officer: Deputy Director/ Chief of Staff, Bureau of TennCare  
Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: June 30, 2015

Notary Public Signature: Rob A. Page

My commission expires on: October 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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
7/1/2015  
Date

Department of State Use Only

Filed with the Department of State on: 7/1/15

Effective for: 180 \*days

Effective through: 12/28/15

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

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Long-Term Care Programs; TennCare CHOICES Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-208, 71-5-105, and 71-5-109

EFFECTIVE DATES: July 27, 2015, through January 23, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These Emergency Rules are being promulgated to make assisted care living facilities services (ACLFs) available to persons in CHOICES 3. These rules adds Community Living Supports (CLS) and Community Living Supports – Family Model (CLS-FM) to the array of services available as community-based residential alternatives (CBRAs).

## **Impact on Local Governments**

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

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

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Sequence Number: 7-19-15  
 Rule ID(s): 5990  
 File Date (effective date): 7/27/15  
 End Effective Date: 1/23/16

# Emergency Rule Filing Form

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

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

**Rule Type:**

Emergency Rule

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

Amendments

New

Repeal

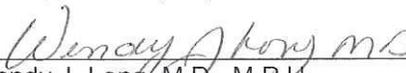
**Statement of Necessity:**

On June 24, 2015, TennCare received approval from the Centers for Medicare and Medicaid Services (CMS), for amendments 18 and 24 to the TennCare II Medicaid Section 1115 Demonstration Waiver (No. 11-W-00151/4). Amendment number 18 extends Assisted Care Living Facility (ACLF) services to individuals in CHOICES Group 3, which is comprised of individuals who are at risk for institutionalization and are either adults (age 21 and older) with a physical disability or seniors (age 65 and older). Amendment number 24 revised the definition of community-based residential alternatives (CBRA) to institutional care by including two new service definitions; Community Living Supports (CLS) and Community Living Supports – Family Model (CLS-FM). The amendments are effective June 23, 2015.

T.C.A. § 4-5-208(4) permits an agency to adopt an emergency rule when it is required by an agency of the federal government and the adoption of the rule through ordinary rulemaking procedure might jeopardize the loss of federal funds.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve implementation by July 1, 2015.

For a copy of this emergency rule 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.

  
 Wendy J. Long, M.D., M.P.H.  
 Deputy Director/ Chief of Staff, Bureau of TennCare  
 Tennessee Department of Finance and Administration

RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION  
BUREAU OF TENNCARE

CHAPTER 1200-13-01  
TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.02 DEFINITIONS.

- (28) Community-Based Residential Alternatives (CBRA) to institutional care. For purposes of CHOICES:
- (a) Residential services that offer a cost-effective, community-based alternative to NF care for individuals who are elderly and/or adults with Physical Disabilities, ~~and meet NF LOC.~~
  - (b) CBRAs include, but are not limited to:
    - 1. ~~CBRA facilities such as ACLFs and Adult Care Homes~~ Services provided in a licensed facility such as ACLFs and Critical Adult Care Homes, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports and Community Living Supports-Family Model; and
    - 2. Companion Care.
- (29) Community Living Supports (CLS) (For the purposes of CHOICES). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. and TDMHSAS Rule 0940-5-24, 0940-5-28 or 0940-5-32 as applicable that encompasses a continuum of residential support options for up to four individuals living in a home that supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and comports fully with standards applicable to HCBS settings detailed in 42 C.F.R. § 441.301(c)(4)-(5), including those requirements applicable to provider-owned or controlled homes, as applicable, including any exception as supported by the individual's specific assessed need and set forth in the person-centered plan of care. This service is available to CHOICES Group 2 and 3 Members as appropriate.
- CLS services are individualized based on the needs of each resident and specified in the person-centered plan of care. Services may include hands-on assistance, supervision, transportation, and other supports intended to help the individual exercise choices such as:
- (a) Selecting and moving into a home.
  - (b) Locating and choosing suitable housemates.
  - (c) Acquiring and maintaining household furnishings.
  - (d) Acquiring, retaining, or improving skills needed for activities of daily living or assistance with activities of daily living as needed, such as bathing, dressing, personal hygiene and grooming, eating, toileting, transfer, and mobility.

- (e) Acquiring, retaining, or improving skills needed for instrumental activities of daily living or assistance with instrumental activities of daily living as needed, such as household chores, meal planning, shopping, preparation and storage of food, and managing personal finances.
- (f) Building and maintaining interpersonal relationships with family and friends.
- (g) Pursuing educational goals and employment opportunities.
- (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
- (i) Scheduling and attending appropriate medical services.
- (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (k) Managing acute or chronic health conditions, including nurse oversight and monitoring, and skilled nursing services as needed for routine, ongoing health care tasks, such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc.
- (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
- (m) Asserting civil and statutory rights through self-advocacy.

(30) Community Living Supports Family Model (CLS-FM) (For the purposes of CHOICES). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. and TDMHSAS Rule 0940-5-26 that encompasses a continuum of residential support options for up to three individuals living in the home of trained family caregivers (other than the individual's own family) in an "adult foster care" arrangement. In this type of shared living arrangement, the provider allows the individual(s) to move into his or her existing home in order to integrate the individual into the shared experiences of a home and a family and provide the individualized services that supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and support each resident in a manner that comports fully with standards applicable to HCBS settings detailed in 42 C.F.R. § 441.301(c)(4)-(5), including those \_\_\_\_\_ requirements applicable to provider-owned or controlled homes, as applicable, including any exception as supported by the individual's specific assessed need and set forth in the person-centered plan of care. This service is available to CHOICES Group 2 and 3 Members as appropriate.

CLS-FM services are individualized based on the needs of each resident and specified in the person-centered plan of care. Services may include hands-on assistance, supervision, transportation, and other supports intended to help the individual exercise choices such as:

- (a) Selecting and moving into a home.
- (b) Locating and choosing suitable housemates.
- (c) Acquiring and maintaining household furnishings.

- (d) Acquiring, retaining, or improving skills needed for activities of daily living or assistance with activities of daily living as needed, such as bathing, dressing, personal hygiene and grooming, eating, toileting, transfer, and mobility.
  - (e) Acquiring, retaining, or improving skills needed for instrumental activities of daily living or assistance with instrumental activities of daily living as needed, such as household chores, meal planning, shopping, preparation and storage of food, and managing personal finances.
  - (f) Building and maintaining interpersonal relationships with family and friends.
  - (g) Pursuing educational goals and employment opportunities.
  - (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
  - (i) Scheduling and attending appropriate medical services.
  - (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
  - (k) Managing acute or chronic health conditions, including nurse oversight and monitoring, and skilled nursing services as needed for routine, ongoing health care tasks, such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc.
  - (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
  - (m) Asserting civil and statutory rights through self-advocacy.
- (2931) Companion Care. For purposes of CHOICES:
- (a) A consumer-directed residential model in which a CHOICES Member may choose to select, employ, supervise and pay, using the services of an FEA, a live-in companion who will be present in the Member's home and provide frequent intermittent assistance or continuous supervision and monitoring throughout the entire period of service duration.
  - (b) Such model shall be available only for a CHOICES Member who requires and does not have available through family or other caregiving supports frequent intermittent assistance with ADLs or supervision and monitoring for extended periods of time that cannot be accomplished more cost-effectively with other non-residential services.
  - (c) A CHOICES Member who requires assistance in order to direct his Companion Care may designate a Representative to assume CD of Companion Care services on his behalf, pursuant to requirements for Representatives otherwise applicable to CD.
  - (d) Regardless of payer, Companion Care shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF services or Adult Day Care services.
  - (e) Companion Care is only available through CD.
- (3032) Competent Adult. For purposes of Self-Direction of Health Care Tasks in CD, a person age twenty-one (21) or older who has the capability and capacity to evaluate

knowledgeably the options available and the risks attendant upon each and to make an informed decision acting in accordance with his own preferences and values. A person is presumed competent unless a decision to the contrary is made.

ETC.

(6264)Immediate Family Member. For purposes of employment as a Consumer-Directed Worker in CHOICES and in Community Living Supports-Family Model, a spouse, parent, grandparent, child, grandchild, sibling, mother-in-law, father-in-law, sister-in-law, brother in-law, daughter-in-law, and son-in-law. Adopted and step members are included in this definition.

(6365)Individual Acuity Score. The weighted value assigned by TennCare to:

- (a) The response to a specific ADL or related question in the PAE for NF LOC that is supported by the medical evidence submitted with the PAE; or
- (b) A specific skilled or rehabilitative service determined by TennCare to be needed by the applicant on a daily basis or at least five (5) days per week for rehabilitative services based on the medical evidence submitted with the PAE and for which TennCare would authorize level 2 or Enhanced Respiratory Care Reimbursement in a NF.

(6466)Individual Cost Neutrality Cap. See "Cost Neutrality Cap."

ETC.

#### 1200-13-01-.05 TENNCARE CHOICES PROGRAM.

- (8) Benefits in the TennCare CHOICES Program.
  - (l) CHOICES HCBS covered under TennCare CHOICES and applicable limits are specified below. The benefit limits are applied across all services received by the Member regardless of whether the services are received through CD and/or a traditional provider agency. Corresponding limitations regarding the scope of each service are defined in Rule 1200-13-01-.02 and in Subparagraphs (a) through (k) above.

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
9. Minor Home Modifications	<p>Covered with a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Not covered when the Member is receiving Short-Term NF Care, except when provided to facilitate transition from a NF to the community. See Rule 1200-13-01-.05(8)(h).</p>	No
10. Personal Care Visits	<p>Covered with a limit of 2 intermittent visits per day, per Member; visits limited to a maximum of 4 hours per visit and there shall be at least four (4) hours between intermittent visits.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA services (including Companion Care), or Short-Term NF Care.</p>	Yes
11. PERS	<p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
12. Pest Control	<p>Covered with a limit of 9 treatment visits per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF Care.</p>	No
13. Short-Term NF Care	<p>Covered with a limit of 90 days per stay, per Member.</p> <p>Approved PASRR required.</p> <p>Members receiving Short-Term NF Care are not eligible to receive any other HCBS except when permitted to facilitate transition to the community. See Rule 1200-13-01-.05(8)(h).</p>	No

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
1. Adult Day Care	Covered with a limit of 2080 hours per calendar year, per CHOICES Member.	No
2. Assistive Technology	Covered with a limit of \$900 per calendar year, per Member.	No
3. Attendant Care	<p>Covered only for persons who require hands-on assistance with ADLs when needed for more than 4 hours per occasion or visits at intervals of less than 4 hours between visits.</p> <p>For Members who do not require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1080 hours per calendar year, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1240 hours for calendar year 2012, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, beginning January 1, 2013, covered with a limit of 1400 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA services (including Companion Care), or Short-Term NF Care.</p>	Yes

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
4. CBRA	<p><u>CBRA services (e.g., ACLFs, CLS, and CLS-FM as specified below).</u></p> <p><u>CBRAs available to individuals in Group 3 include only Assisted Care Living Facility services, CLS, and CLS-FM that can be provided within the limitations set forth in the expenditure cap as defined in Rule 1200-13-01-.02 and further specified in Rule 1200-13-01-.05(4)(f), when the cost of such services will not exceed the cost of CHOICES HCBS that would otherwise be needed by the Member to 1) safely transition from a nursing facility to the community; or 2) continue being safely served in the community and to delay or prevent nursing facility placement.</u></p>	No
45. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
56. Homemaker Services	<p>*Covered only for Members who also need hands-on assistance with ADLs and as a component of Attendant Care or Personal Care Visits as defined in these rules.</p> <p>Not covered as a stand-alone benefit.</p> <p>Not covered for persons who do not require hands-on assistance with ADLs.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	*

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
67. In-Home Respite Care	<p>Covered with a limit of 216 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	Yes
78. Inpatient Respite Care	<p>Covered with a limit of 9 days per calendar year, per Member.</p> <p>PASRR approval not required. NF LOC not required.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
89. Minor Home Modifications	<p>Covered with a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Not covered when the Member is receiving Short-Term NF Care, except when provided to facilitate transition from a NF to the community. See Rule 1200-13-01-.05(8)(h).</p>	No
910. Personal Care Visits	<p>Covered with a limit of 2 intermittent visits per day, per Member; visits limited to a maximum of 4 hours per visit and there shall be at least four (4) hours between intermittent visits.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA services (including Companion Care), or Short-Term NF Care.</p>	Yes

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
1. Adult Day Care	Covered with a limit of 2080 hours per calendar year, per CHOICES Member.	No
2. Assistive Technology	Covered with a limit of \$900 per calendar year, per Member.	No
3. Attendant Care	<p>Covered only for persons who require hands-on assistance with ADLs when needed for more than 4 hours per occasion or visits at intervals of less than 4 hours between visits.</p> <p>For Members who do not require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1080 hours per calendar year, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1240 hours for calendar year 2012, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, beginning January 1, 2013, covered with a limit of 1400 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA services (including Companion Care), or Short-Term NF Care.</p>	Yes
4. CBRA	<p>Companion Care.</p> <p><u>Companion Care.</u> Not covered (regardless of payer), when the Member is living in an ACLF, <u>Critical Adult Care Home</u>, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA facility services, or Short-Term NF Care.</p>	Yes
	CBRA facility services (e.g., ACLFs, <u>Critical Adult Care Homes</u> , CLS, and CLS-FM).	No

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction ("Eligible HCBS")
5. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
6. Homemaker Services	<p>*Covered only for Members who also need hands-on assistance with ADLs and as a component of Attendant Care or Personal Care Visits as defined in these rules.</p> <p>Not covered as a stand-alone benefit.</p> <p>Not covered for persons who do not require hands-on assistance with ADLs.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	*
7. In-Home Respite Care	<p>Covered with a limit of 216 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	Yes
8. Inpatient Respite Care	<p>Covered with a limit of 9 days per calendar year, per Member.</p> <p>PASRR approval not required.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
4011. PERS	Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.	No
4412. Pest Control	Covered with a limit of 9 treatment visits per calendar year, per Member.  Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF Care.	No
4213. Short-Term NF Care	Covered with a limit of 90 days per stay, per Member.  Approved PASRR required. Member must meet NF LOC.  Members receiving Short-Term NF Care are not eligible to receive any other HCBS except when permitted to facilitate transition to the community. See Rule 1200-13-01-.05(8)(h).	No

(m) Transportation.

1. Emergency and non-emergency transportation for TennCare covered services other than CHOICES services is provided by the MCOs in accordance with Rules 1200-13-13-.04 and 1200-13-14-.04.
2. Transportation is not provided to HCBS covered by CHOICES, except in the circumstance where a Member requires Adult Day Care that is not available within 30 miles of the Member's residence.

For CHOICES Members not participating in CD, provider agencies delivering CHOICES HCBS may permit staff to accompany a Member outside the home. In circumstances where the Member is unable to drive, assistance by provider agency staff in performing IADLs (e.g., grocery shopping, picking up prescriptions, banking) specified in the POC may include transporting the Member when such assistance would otherwise be performed for the Member by the provider staff, and subject to the provider agency's agreement and responsibility to ensure that the Worker has a valid driver's license and proof of insurance prior to transporting a Member. The decision of whether or not to accompany the Member outside the home (and in the circumstances described above, to transport the Member) is at the discretion of the agency/Worker, taking into account such issues as the ability to safely provide services outside the home setting, the cost involved, and the provider's willingness to accept and manage potential risk and/or liability. In no case will additional hours of service

and/or an increased rate of reimbursement be provided as a result of an agency/Worker decision to accompany or transport a Member outside the home.

3. For CHOICES Members participating in CD, the Member may elect to have his Consumer-Directed Workers (including Companion Care workers) to accompany and/or transport the Member if such an arrangement is agreed to by both the Member and the Workers and specified in the Service Agreement; however, no additional hours or reimbursement will be available. Consumer-Directed Worker(s) must provide to the FEA a valid driver's license and proof of insurance prior to transporting a Member.

(n) Freedom of Choice.

1. CHOICES Members who meet NF LOC as defined in Rule 1200-13-01-.10 shall be given freedom of choice of NF care or CHOICES HCBS, so long as the Member meets all criteria for enrollment into CHOICES Group 2, as specified in this Chapter and the Member may be enrolled into CHOICES Group 2 in accordance with requirements pertaining to the CHOICES Group 2 Enrollment Target as described in this Chapter.
2. CHOICES Members shall also be permitted to choose providers for CHOICES HCBS specified in the POC from the MCO's list of participating providers, if the participating provider selected is available and willing to initiate services timely and to deliver services in accordance with the POC. The Member is not entitled to receive services from a particular provider. A Member is not entitled to a fair hearing if he is not able to receive services from the provider of his choice.

(o) Transition Allowance. For CHOICES Members moving from CHOICES 1 to CHOICES 2 or CHOICES 3, the MCO may, at its sole discretion, provide a Transition Allowance not to exceed two thousand dollars (\$2,000) per lifetime as a CEA to facilitate transition of the Member from the NF to the community. An MCO shall not be required to provide a Transition Allowance, and Members transitioning out of a NF are not entitled to receive a Transition Allowance, which is not a covered benefit. Items that an MCO may elect to purchase or reimburse are limited to the following:

1. Those items which the Member has no other means to obtain and which are essential in order to establish a community residence when such residence is not already established and to facilitate the person's safe and timely transition;
2. Rent and/or utility deposits; and
3. Essential kitchen appliances, basic furniture, and essential basic household items, such as towels, linens, and dishes.

(p) Community Based Residential Alternatives (CBRAs).

1. Intent.

This subparagraph describes requirements for CBRAs in the CHOICES program and are necessary to ensure compliance with federal HCBS obligations, including those set forth in 42 C.F.R. §§ 441.301, et seq. These requirements supplement requirements set forth in the licensure rules applicable to the specific CBRA provider, requirements for Managed Care Organizations who administer CBRAs in the CHOICES program, requirements set forth in MCO provider agreements with CBRA providers, and other applicable state laws and

regulations, and program policies and protocols applicable to these services and/or providers of these services.

2. Requirements for CBRAs.

(i) Member Choice.

(I) A Member shall transition into a specific CBRA setting and receive CBRA services only when such services and setting:

I. Have been selected by the Member;

II. The Member has been given the opportunity to meet and to choose to reside with any housemates who will also live in the CBRA setting, as applicable; and

III. The setting has been determined to be appropriate for the Member based on the Member's needs, interests, and preferences. A CLS or CLS-FM provider shall not admit a Member and CLS or CLS-FM services shall not be authorized for a CHOICES Member unless the CLS or CLS-FM provider is able to safely meet the Member's needs and ensure the Member's health, safety and well-being.

(ii) Member Rights.

(I) Providers of CBRA services shall ensure that services are delivered in a manner that safeguards the following rights of persons receiving CBRA services:

I. To be treated with respect and dignity;

II. To have the same legal rights and responsibilities as any other person unless otherwise limited by law;

III. To receive services regardless of gender, race, creed, marital status, national origin, disability, sexual orientation, ethnicity or age;

IV. To be free from abuse, neglect and exploitation;

V. To receive appropriate, quality services and supports in accordance with a comprehensive, person-centered written plan of care;

VI. To receive services and supports in the most integrated and least restrictive setting that is appropriate based on the individualized needs of the Member;

VII. To have access to personal records and to have services, supports and personal records explained so that they are easily understood;

VIII. To have personal records maintained confidentially;

- IX. To own and have control over personal property, including personal funds, as specified in the plan of care;
- X. To have access to information and records pertaining to expenditures of funds for services provided;
- XI. To have choices and make decisions;
- XII. To have privacy;
- XIII. To be able to associate, publicly or privately, with friends, family and others;
- XIV. To practice the religion or faith of one's choosing;
- XV. To be free from inappropriate use of physical or chemical restraint;
- XVI. To have access to transportation and environments used by the general public; and
- XVII. To seek resolution of rights violations or quality of care issues without retaliation.

(iii) The rights to be safeguarded by providers described in this rule do not limit any other statutory and constitutional rights afforded to all CHOICES Members or their legally authorized representatives, including those rights provided by the HCBS Settings Rule and Person-Centered Planning Rule in 42 C.F.R. § 441.301, and all other rights afforded to residents of CBRAs specific to the licensure authority for that CBRA.

(iv) The Member shall have the right to manage personal finances as specified in the plan of care.

(v) A provider may serve as the Member's representative payee and assist the Member with personal funds management only as specified in the plan of care. Providers who assist the Member with personal funds management in accordance with the plan of care shall comply with all applicable policies and protocols pertaining to personal funds management, and shall ensure that the Member's bills have been paid timely and are not overdue, and that there are adequate funds remaining for food, utilities, and any other necessary expenses.

3. CLS Ombudsman.

TennCare shall arrange for all Members choosing to receive CLS or CLS-FM services, including Members identified for transition to CLS or CLS-FM, to have access to a CLS Ombudsman who will:

(i) Help to ensure Member choice in the selection of their CLS or CLS-FM benefit, provider, setting, and housemates;

(ii) Provide Member education, including rights and responsibilities of Members receiving CLS or CLS-FM, how to handle quality and other concerns, identifying and reporting abuse and neglect, and the role of the CLS Ombudsman and how to contact;

- (iii) Provide Member advocacy for individuals receiving CLS or CLS-FM services, including assisting individuals in understanding and exercising personal rights, assisting Members in the resolution of problems and complaints regarding CLS or CLS-FM services, and referral to APS of potential instances of abuse, neglect or financial exploitation; and
- (iv) Provide systems level advocacy, including recommendations regarding potential program changes or improvements regarding the CLS or CLS-FM benefit, and immediate notification to TennCare of significant quality concerns.

4. Person-centered Delivery of CLS and CLS-FM Services.

A CLS or CLS-FM provider shall be responsible for the following:

- (i) A copy of the plan of care for any Member receiving CLS or CLS-FM services shall be accessible in the home to all paid staff;
- (ii) Staff shall meet all applicable training requirements as specified in applicable licensure regulations, TennCare regulations, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol. Staff shall be trained on the delivery of person-centered service delivery, and on each Member's plan of care, including the risk assessment and risk agreement, as applicable, prior to being permitted to provide supports to that Member;
- (iii) The CLS or CLS-FM provider shall implement the Member's plan of care and shall ensure that services are delivered in a manner that is consistent with the Member's preferences and which supports the Member in achieving his or her goals and desired outcomes;
- (iv) The CLS or CLS-FM provider shall support the Member to make his or her own choices and to maintain control of his or her home and living environment;
- (v) The Member shall have access to all common living areas within the home with due regard to privacy and personal possessions;
- (vi) The Member shall be afforded the freedom to associate with persons of his/her choosing and have visitors at reasonable hours;
- (vii) The CLS or CLS-FM provider shall support the Member to participate fully in community life, including faith-based, social, and leisure activities selected by the Member; and
- (viii) There shall be an adequate food supply (at least 48 hours) for the Member that is consistent with the Member's dietary needs and preferences.

5. Requirements for Community Living Supports (CLS).

- (i) Providers of CLS services in the CHOICES program shall:
  - (l) Be contracted with the Member's MCO for the provision of CLS services, licensed by the DIDD in accordance with Title 33 of the

T.C.A. and TDMHSAS Rule 0940-5-24, 0940-5-28 or 0940-5-32 as applicable, and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver;

- (II) Maintain an adequate administrative structure necessary to support the provision of CLS services;
  - (III) Demonstrate financial solvency as it relates to daily operations, including sufficient resources and liquid assets to operate the facility;
  - (IV) Maintain adequate, trained staff to properly support each CLS resident; the provider must comply with minimum staffing standards specified in licensure regulations, and ensure an adequate number of trained staff to implement each resident's plan of care, and meet the needs and ensure the health and safety of each resident, including the availability of back-up and emergency staff when scheduled staff cannot report to work;
  - (V) Comply with all background check requirements specified in Title 33 of the T.C.A.;
  - (VI) Comply with all critical incident reporting and investigation requirements set forth in state law, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol; and
  - (VII) Cooperate with quality monitoring and oversight activities conducted by the DIDD under contract with TennCare to ensure compliance with requirements for the provision of CLS and to monitor the quality of CLS and CLS-FM services received.
- (ii) A home where CLS services are provided shall have no more than four (4) residents, or fewer as permitted by the applicable licensure requirements.
  - (iii) The Member or the Member's representative (legally authorized or designated by Member) shall have a contributing voice in choosing other individuals who reside in the home where CLS services are provided, and the staff who provide the Member's services and supports.
  - (iv) A CLS provider may deliver CLS services in a home where other CHOICES members receiving CLS reside. A CLS provider may also deliver CLS services in a home where CHOICES members receiving CLS reside along with individuals enrolled in a Section 1915(c) HCBS waiver program operated by the DIDD, when the provider is able and willing to provide supports in a blended residence, comply with all applicable program requirements, and meet the needs and ensure the health, safety and welfare of each resident.
  - (v) In instances when the CLS provider owns the Member's place of residence, the provider must sign a written lease/agreement pursuant to the Tennessee Uniform Landlord and Tenant Act (T.C.A. §§ 66-28-101, et seq.) as applicable per the county of residence. If the Tennessee Uniform Landlord Tenant Act is not applicable to the county of residence,

the provider must sign a written lease/agreement with the Member that provides the Member with the same protections as those afforded under the Tennessee Uniform Landlord and Tenant Act.

- (vi) Unless the residence is individually licensed or inspected by a public housing agency utilizing the HUD Section 8 safety checklist, the residence shall be inspected, as required by TennCare, prior to the Member's transition to CLS services; the home where CLS services are provided must have an operable smoke detector and a second means of egress, and all utilities must be working and in proper order.
- (vii) The provider shall be responsible for the provision of all assistance and supervision required by program participants. Services shall be provided pursuant to the Member's person-centered plan of care and may include assistance with the following:
  - (I) Hands-on assistance with ADLs such as bathing, dressing, personal hygiene, eating, toileting, transfers and ambulation;
  - (II) Assistance with instrumental activities of daily living necessary to support community living;
  - (III) Safety monitoring and supervision for Members requiring this type of support as outlined in their person-centered plan of care; and
  - (IV) Managing acute or chronic health conditions, including, nurse oversight and monitoring, administration of medications, and skilled nursing services as needed for routine, ongoing health care tasks such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc., by appropriately licensed nurses practicing within the scope of their licenses, except as delegated in accordance with state law.
- (viii) Medication administration shall be performed by appropriately licensed staff or by unlicensed staff who are currently certified in medication administration and employed by an HCBS waiver provider who is both licensed under Title 33 of the T.C.A. and contracted with DIDD to provide services through an HCBS waiver operated by DIDD, as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (ix) Services and supports for a Member receiving CLS shall be provided up to 24 hours per day based on the Member's assessed level of need as specified in the plan of care and approved level of CLS reimbursement. Members approved for 24 hours per day of CLS are not prohibited from engaging in independent activities.
- (x) Members approved for 24 hour support who are assessed to be capable of independent functioning may participate in activities of their choosing without the support of staff as specified in the plan of care and risk assessment and risk agreement.
- (xi) The CLS provider shall be responsible for community transportation needed by the Member. The CLS provider shall transport the Member into the community or assist the Member in identifying and arranging

transportation into the community to participate in activities of his choosing.

- (xii) The provider shall be responsible for assisting the Member in scheduling medical appointments and obtaining medical services, including accompanying the Member to medical appointments, as needed, and shall either provide transportation to medical services and appointments for the Member, as needed or assist the Member in arranging and utilizing NEMT, as covered under the TennCare program.

6. Requirements for Community Living Supports Family Model (CLS-FM) Services.

- (i) Providers of CLS-FM services in the CHOICES program shall:
- (I) Be contracted with the Member's MCO for the provision of CLS-FM services, licensed by the DIDD in accordance with Title 33 of the T.C.A. and TDMHSAS Rule 0940-5-26, and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver;
  - (II) Maintain an adequate administrative structure necessary to support the provision of CLS-FM services;
  - (III) Demonstrate financial solvency as it relates to daily operations, including sufficient resources and liquid assets to operate the facility;
  - (IV) Ensure CLS-FM family caregivers are adequately trained to properly support each CLS resident; the provider must comply with minimum staffing standards specified in licensure regulations, and ensure an adequate number of family caregivers and trained staff as needed to implement each resident's plan of care, and meet the needs and ensure the health and safety of each resident, including the availability of back-up and emergency staff when scheduled staff cannot report to work;
  - (V) Comply with all background check requirements specified in Title 33 of the T.C.A.;
  - (VI) Comply with all critical incident reporting and investigation requirements set forth in state law, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol; and
  - (VII) Cooperate with quality monitoring and oversight activities conducted by the DIDD under contract with TennCare to ensure compliance with requirements for the provision of CLS and to monitor the quality of CLS and CLS-FM services received.
- (ii) A home where CLS-FM services are provided shall serve no more than three (3) individuals, including individuals receiving CLS-FM services and individuals receiving Family Model Residential services, and must be physically adequate to allow each participant to have private bedroom and bathroom space unless otherwise agreed upon with

residents to share, in which case each participant must have equal domain over shared spaces.

- (iii) The Member or the Member's representative (legally authorized or designated by Member) shall have a contributing voice in choosing other individuals who reside in the home where CLS-FM services are provided, caregivers whose home the Member will move into, and any staff hired by the CLS-FM provider to assist in providing the Member's services and supports.
- (iv) A CLS-FM provider may deliver CLS-FM services in a home where other CHOICES Members receiving CLS-FM reside. A CLS-FM provider may also deliver CLS services in a home where CHOICES Members receiving CLS-FM reside along with individuals enrolled in a Section 1915(c) HCBS waiver program operated by the DIDD, when the provider is able and willing to provide supports in a blended residence, comply with all applicable program requirements, and meet the needs and ensure the health, safety and welfare of each resident. In instances of blended homes, there shall be no more than three (3) service recipients residing in the home, regardless of the program or funding source.
- (v) The family caregiver and Member must sign a written lease/agreement pursuant to the Tennessee Uniform Landlord and Tenant Act (T.C.A. §§ 66-28-101, et seq.) as applicable per the county of residence. If the Tennessee Uniform Landlord Tenant Act is not applicable to the county of residence, the provider must sign a written lease/agreement with the Member that provides the Member with the same protections as those afforded under the Tennessee Uniform Landlord and Tenant Act.
- (vi) Unless the residence is individually licensed or inspected by a public housing agency utilizing the HUD Section 8 safety checklist, the residence shall be inspected, as required by TennCare, prior to the Member's transition to CLS services; the home where CLS-FM services are provided must have an operable smoke detector and a second means of egress.
- (vii) The CLS-FM provider shall be responsible for the provision of all assistance and supervision required by program participants. Services shall be provided pursuant to the Member's person-centered plan of care and may include assistance with the following:
  - (I) Hands-on assistance with ADLs such as bathing, dressing, personal hygiene, eating, toileting, transfers and ambulation;
  - (II) Assistance with instrumental activities of daily living necessary to support community living;
  - (III) Safety monitoring and supervision for Members requiring this type of support as outlined in their person-centered plan of care; and
  - (IV) Managing acute or chronic health conditions, including, nurse oversight and monitoring, administration of medications, and skilled nursing services as needed for routine, ongoing health care tasks such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc., by appropriately

licensed nurses practicing within the scope of their licenses, except as delegated in accordance with state law.

- (viii) Medication administration shall be performed by appropriately licensed staff or by unlicensed staff who are currently certified in medication administration and employed by an HCBS waiver provider who is both licensed under Title 33 of the T.C.A. and contracted with DIDD to provide services through an HCBS waiver operated by DIDD, as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (ix) Services and supports for a Member receiving CLS-FM shall be provided up to 24 hours per day based on the Member's assessed level of need as specified in the plan of care and approved level of CLS reimbursement. Members approved for 24 hours per day of CLS-FM are not prohibited from engaging in independent activities.
- (x) Members approved for 24 hour support who are assessed to be capable of independent functioning may participate in activities of their choosing without the support of staff as specified in the plan of care and risk assessment and risk agreement.
- (xi) The CLS provider shall be responsible for community transportation needed by the Member. The CLS provider shall transport the Member into the community or assist the Member in identifying and arranging transportation into the community to participate in activities of his choosing.
- (xii) The provider shall be responsible for assisting the Member in scheduling medical appointments and obtaining medical services, including accompanying the Member to medical appointments, as needed, and shall either provide transportation to medical services and appointments for the Member, as needed or assist the Member in arranging and utilizing non-emergency transportation services (NEMT), as covered under the TennCare program.

#### 7. Reimbursement of CLS and CLS-FM Services

- (i) Reimbursement for CLS and CLS-FM services shall be made to a contracted CLS or CLS-FM provider by the Member's MCO in accordance with the Member's plan of care and service authorizations, and contingent upon the Member's eligibility for and enrollment in TennCare and CHOICES.
- (ii) Rates of reimbursement for CLS and CLS-FM services shall be established by TennCare.
- (iii) Rates of reimbursement for CLS and CLS-FM services may take into account the level of care the person qualifies to receive (Nursing Facility or At-Risk as determined by TennCare), and the person's support needs, including skilled nursing needs for ongoing health care tasks.
- (iv) The rate of reimbursement for CLS or CLS-FM, as applicable, shall not vary based on the number of people receiving CLS, CLS-FM or HCBS Waiver services who live in the home.

- (v) A licensed and contracted CLS or CLS-FM provider selected by a person to provide CLS or CLS-FM services shall determine whether the provider is able to safely provide the requested service and meet the person's needs, any may take into consideration the rate of reimbursement authorized.
- (vi) Neither a Member nor a CLS or CLS-FM provider may file a medical appeal or receive a fair hearing regarding the rate of reimbursement a provider will receive for CLS or CLS-FM services.
- (vii) The rate of reimbursement for CLS or CLS-FM services is inclusive of all applicable transportation services needed by the Member, except for transportation authorized and obtained under the TennCare NEMT benefit.
- (viii) Reimbursement for CLS or CLS-FM services shall not be made for room and board. Residential expenses (e.g., rent, utilities, phone, cable TV, food, etc.) shall be apportioned as appropriate between the Member and other residents in the home.
- (ix) Family members of the individual receiving services are not prohibited from helping pay a resident's Room and Board expenses.
- (x) Reimbursement for CLS or CLS-FM services shall not include the cost of maintenance of the dwelling.
- (xi) Reimbursement for CLS or CLS-FM services shall not include payment made to the Member's immediate family member as defined in Rule 1200-13-01-.02 or to the Member's conservator.
- (xii) Personal Care Visits, Attendant Care, and Home Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (xiii) In-home Respite shall not be authorized or reimbursed for a member receiving CLS services. In-home Respite shall only be reimbursed for a member receiving CLS-FM if CLS-FM services are not reimbursed for that day.
- (xiv) CLS and CLS-FM service shall not be provided or reimbursed in nursing facilities, ACLFs, hospitals or ICFs/IID.

GW10115180

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



Date: 7/24/15

Signature: Wendy J Long

Name of Officer: Wendy J. Long, M.D., M.P.H.

Deputy Director/ Chief of Staff, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 7/24/2015

Notary Public Signature: Cheryl D Kline

My commission expires on: AUG 23 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.

Herbert H. Slatery III

Herbert H. Slatery III

Attorney General and Reporter

7-24-15

Date

**Department of State Use Only**

Filed with the Department of State on: 7/27/15

Effective for: 180 \*days

Effective through: 1/23/16

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

Tre Hargett

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: Cover Kids Rules; Benefits and Cost Sharing

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-3-1104, and 71-3-1110

EFFECTIVE DATES: October 25, 2015, through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule is being promulgated to assure that the CoverKids rules are in conformity with the Mental Health Parity and Addiction Act (MHPAEA) of 2008 as it relates to “inpatient mental health treatment” and “inpatient substance abuse treatment”. The MHPAEA requires parity in treatment limitations and financial requirements for mental health benefits, as compared to medical/surgical benefits, and extends the parity requirements to substance use disorder 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.

There were no public comments received on this rule.

**Regulatory Flexibility Addendum**

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

The rule is not anticipated to have an effect on small businesses.

### **Impact on Local Governments**

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

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

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 7-20-15  
Rule ID(s): 5991  
File Date: 7/27/15  
Effective Date: 10/25/15

# Rulemaking Hearing Rule(s) Filing Form

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

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

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

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

- 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
0620-05-01	Cover Kids Rules
Rule Number	Rule Title
0620-05-01-.03	Benefits and Cost Sharing

(Rule 0620-05-01-.02, continued)

**0620-05-01-.03 BENEFITS AND COST SHARING.**

(4) Copays. The following copays are required, depending upon family income.

Service	Copays When Family Income is Less than 150% of Poverty	Copays When Family Income is 150%-250% of Poverty
<b>MEDICAL BENEFITS</b>		
Chiropractic care	\$5 per visit	\$15 per visit
Emergency room (emergency—waived if admitted)	\$5 per use	\$50 per use
Emergency room (non-emergency)	\$10 per use	\$50 per use
Home health	\$5 per visit	\$15 per visit
Hospital care	\$5 per admission; waived if readmitted within 48 hours for the same episode	\$100 per admission; waived if readmitted within 48 hours for the same episode
Inpatient mental health treatment	\$5 per admission; <u>waived if readmitted within 48 hours for the same episode</u>	\$100 per admission; <u>waived if readmitted within 48 hours for the same episode</u>
Inpatient substance abuse treatment	\$5 per admission; <u>waived if readmitted within 48 hours for the same episode</u>	\$100 per admission; <u>waived if readmitted within 48 hours for the same episode</u>
Maternity	\$5 OB or specialist, first visit only  \$5 hospital admission	\$15 OB or specialist, first visit only  \$20 per visit, specialist  \$100 hospital admission
Medical supplies	\$5 per 31-day supply	\$5 per 31-day supply
Outpatient mental health and substance abuse treatment	\$5 per session	\$20 per session
Physical, speech, and occupational therapy	\$5 per visit	\$15 per visit
Physician office visits	\$5 per visit, primary care physician or specialist  No copay for routine health assessments and immunizations rendered under the American Academy of Pediatrics guidelines	\$15 per visit, primary care physician  \$20 per visit, specialist  No copay for routine health assessments and immunizations rendered under the American Academy of Pediatrics guidelines
Prescription drugs	\$1, generics \$3, preferred brands \$5, non-preferred brands	\$5, generics \$20, preferred brands \$40, non-preferred brands
Rehabilitation hospital services	\$5 per admission	\$100 per admission
Vision services	\$5 for lenses; \$5 for frames (when lenses and frames are ordered at the same time, only one copay is charged)	\$15 for lenses; \$15 for frames (when lenses and frames are ordered at the same time, only one copay is charged)
<b>DENTAL BENEFITS</b>		
Dental	\$5 per visit	\$15 per visit

(Rule 0620-05-01-.02, continued)

Service	Copays When Family Income is Less than 150% of Poverty	Copays When Family Income is 150%-250% of Poverty
	No copay for routine preventive oral exam, X-rays, and fluoride application	No copay for routine preventive oral exam, X-rays, and fluoride application
Orthodontic services	\$5 per visit	\$15 per visit
<b>ANNUAL OUT-OF-POCKET MAXIMUM PER ENROLLEE</b>		
Annual out-of-pocket maximum per enrollee	5% of the family's annual income	

GW10115168redline

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 07/01/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 06/17/2015

Date: 7/1/15

Signature: Wendy J Long MD

Name of Officer: Wendy J. Long, M.D., M.P.H.

Deputy Director/ Chief of Staff, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: Kathy Crockarell

Notary Public Signature: Kathy Crockarell

My commission expires on: 04/8/2019

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

Herbert H. Slatery III

Herbert H. Slatery III  
Attorney General and Reporter

7-24-15

Date

**Department of State Use Only**

Filed with the Department of State on: 7/27/15

Effective on: 10/25/15

Tre Hargett

Tre Hargett  
Secretary of State

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