



TENNESSEE ADMINISTRATIVE REGISTER



January 13, 2006
Volume 32, Number 1

RILEY C. DARNELL
Secretary of State

Division of Publications
8th Floor, Snodgrass-Tennessee Tower
312 8th Avenue North
Nashville TN 37243 - 0310

DEPARTMENT OF STATE NONDISCRIMINATION POLICY STATEMENT

Pursuant to its policy of nondiscrimination, the Department of State does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services, or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Department of State, Bard G. Fisher, EEO/AA Coordinator, 7th Floor, Snodgrass/Tennessee Tower, 312 Eighth Avenue North, Nashville, TN, 37243-0311 or call (615) 741-2650, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. ADA inquiries or complaints should be directed to Mr. Fisher at the above mentioned location.

PUBLIC INSPECTION OF DOCUMENTS

A certified copy of each document filed with the Department of State, Division of Publications is available for public inspection from 8 A.M. to 4:30 P.M., Monday through Friday. Copies of documents may be made at a cost of 25 cents per page and \$2 for the certification page, payable in advance if requested. The Division of Publications is located on the Eighth Floor, Snodgrass/Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243 - 0310. Telephone inquiries may be made by calling (615) 741-0522, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. Individuals with disabilities who wish to inspect these filings should contact the Division of Publications to discuss any auxiliary aids or services needed to facilitate such inspection. Such contact may be made in person, by writing, telephonically or otherwise and should be made at least ten (10) days in advance of the date such party intends to make such inspection to allow time for the Division of Publications to provide such aid or service.

PREFACE

The Tennessee Administrative Register (T.A.R.) is an official publication of the Tennessee Department of State. The T.A.R. is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The T.A.R. contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the T.A.R. after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the T.A.R., the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the T.A.R. of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the T.A.R. Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the T.A.R., they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

TABLE OF CONTENTS

ANNOUNCEMENTS

Financial Institutions, Department of	
Announcement of Formula Rate of Interest	5
Maximum Effective Rate of Interest.....	5
Government Operations Committee	
Announcement of Public Hearing	6-14
Health Services and Development Agency	
Notice of Beginning of Review Cycle	15

EMERGENCY RULES

Emergency Rules Now in Effect	16
-------------------------------------	----

PROPOSED RULES

Education, Board of	17-31
Labor and Workforce Development, Department of	32-33
Treasury, Department of	34-35

PUBLIC NECESSITY RULES

Public Necessity Rules Now in Effect	36-37
Finance and Administration (TennCare), Department of	38-75
Tennessee Regulatory Authority	76-93

RULEMAKING HEARINGS

Environment and Conservation, Department of	94-155
Finance and Administration, Department of	156-189
Massage Licensure Board	190-191

CERTIFICATION	190-191
---------------------	---------

ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 11.25%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Kevin P. Lavender

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of February 2006 is 8.72 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.72 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Kevin P. Lavender

ANNOUNCEMENTS

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3072.

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-01	Dec 1, 2005	0400 Environment and Conservation Air Pollution	Rulemaking Hearing Rule	Amendment	<i>Chapter 1200-3-9</i> <i>Construction and Operating Permits</i> 1200-3-9-.01 Construction Permits	Lacey Hardin Air Pollution Control 9th FI L&C Annex 401 Church St Nashville TN 37243-1531 532-0554	Feb 14, 2006
12-02	Dec 2, 2005	1330 Respiratory Care	Rulemaking Hearing Rule	New Rule	<i>Chapter 1330-1</i> <i>General Rules Governing Respiratory Care Practitioners</i> 1330-1-.22 ABG Endorsement	Nicole Armstrong Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 (615) 741-1611.	Feb 15, 2006
12-03	Dec 2, 2005	0880 Medical Examiners Committee on Physician Assistants	Rulemaking Hearing Rules	New Rules	<i>Chapter 0880-3</i> <i>General Rules and Regulations Governing the Practice of a Physician Assistant</i> 0880-3-.18 Free Health Clinic and Volunteer Practice Requirements <i>Chapter 0880-10</i> <i>General Rules and Regulations Governing the Practice of an Orthopedic Physician Assistant</i> 0880-10-.18 Free Health Clinic and Volunteer Practice Requirements	Robert J. Kraemer, Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Feb 15, 2006
12-04	Dec 2, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-26</i> <i>Standards for Home Care Organizations Providing Home Health Services</i> 1200-8-26-.01 Definitions 1200-8-26-.12 Patient Rights 1200-8-26-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes, Jr. Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Feb 15, 2006
12-05	Dec 2, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-27</i> <i>Standards for Home Care Organizations Providing Hospice Services</i> 1200-8-27-.01 Definitions 1200-8-27-.12 Patient Rights 1200-8-27-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes, Jr. Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Feb 5, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-06	Dec 2, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-34</i> <i>Standards for Home Care Organizations Providing Professional Support Services</i> 1200-8-34-.01 Definitions 1200-8-34-.12 Consumer Rights 1200-8-34-.13 Policies and Procedures for Health Care Decision-Making	Ernest Sykes, Jr. Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Feb 15, 2006
12-07	Dec 5, 2005	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-1-2</i> <i>Family Assistance Unit</i> <i>Food Stamp Program</i> 1240-1-2-.02 Household Concept – Food Stamps Only <i>Chapter 1240-1-4</i> <i>Financial Eligibility Requirements</i> 1240-1-4-.27 Standard of Need/Income	Phyllis A. Simpson Human Services Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Feb 18, 2006
12-09	Dec 9, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rule	Amendments	<i>Chapter 1200-13-13</i> <i>Bureau of TennCare</i> 1200-13-13-.01 Definitions		Dec 9, 2005 through May 23, 2006
12-10	Dec 9, 2005	0765 Home Improvement Commission	Rulemaking Hearing Rule	Amendment	<i>Chapter 0765-1</i> <i>General Regulations</i> 0765-1-.01 Fees	Alison G. Cleaves Regulatory Boards Office of Legal Counsel 500 James Robertson Pkwy Davy Crockett Twr, 5th Fl Nashville, TN 37243 (615) 741-0915	Feb 22, 2006
12-11	Dec 9, 2005	0800 Labor and Workforce Development Division of Boiler and Elevator Inspection Elevator Safety Board	Proposed Rule	Amendment	<i>Chapter 0800-3-12</i> <i>Stairway Inclined and Vertical Wheelchair Lifts for Disabled Persons</i> 0800-3-12-.01 Safety Standards	Sydné Ewell Legal Counsel Labor and Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville Tennessee 37243 (615) 741-4356	April 28, 2006
12-12	Dec 9, 2005	1020 Nursing Home Administrators	Rulemaking Hearing Rules	Amendments	<i>Chapter 1020-1</i> <i>General Rules Governing Nursing Home Administrators</i> 1020-1-.01 Definitions 1020-1-.06 Preceptors, Administrators-In-Training and Administrator-In-Training Programs 1020-1-.13 Licensure Retirement and Reactivation	Juanita Presley OGC 26th Fl TN Twr, 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Feb 22, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-13	Dec 9, 2005	1365 Social Worker Certification and Licensure	Rulemaking Hearing Rule	Amendments	<i>Chapter 1365 1</i> <i>General Rules and Regulations</i> 1365-1-.22 Free Health Clinic and Volunteer Practice Requirements	Ernest Sykes, Jr., OGC 26th Fl TN Twr, 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Feb 22, 2006
12-14	Dec 15, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-28</i> <i>Standards for HIV Supportive Living Facilities</i> 1200-8-28-.01 Definitions 1200-8-28-.08 Building Standards 1200-8-28-.09 Life Safety 1200-8-28-.12 Resident Rights 1200-8-28-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Residents 1200-8-28-.14 Disaster Preparedness	Ernest Sykes, Jr., OGC 26th Fl TN Twr, 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Feb 28, 2006
12-15	Dec 15, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-32</i> <i>Standards for End Stage Renal Dialysis Clinics</i> 1200-8-32-.01 Definitions 1200-8-32-.06 Basic Services 1200-8-32-.08 Building Standards 1200-8-32-.09 Life Safety 1200-8-32-.12 Patient Rights 1200-8-32-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes, Jr., OGC 26th Fl TN Twr, 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Feb 28, 2006
12-16	Dec 16, 2005	1200 Health Bureau of Health Licensure and Regulation Division of Emergency Medical Services	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-12-1</i> <i>General Rules</i> 1200-12-1-.03 Emergency Medical Services Equipment and Supplies 1200-12-1-.04 Emergency Medical Technician (EMT) 1200-12-1-.06 Schedule of Fees 1200-12-1-.07 Insurance Coverage 1200-12-1-.16 Emergency Medical First Responders	Juanita Presley OGC TN Twr 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Mar 1, 2006
12-17	Dec 16, 2005	1200 Health Bureau of Health Licensure and Regulation Division of Emergency Medical Services	Rulemaking Hearing Rule	Amendments	<i>Chapter 1200-12-1</i> <i>General Rules</i> 1200-12-1-.15 Ambulance Service Records	Juanita Presley OGC TN Twr 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Mar 1, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-18	Dec 16, 2005	1180 Psychology	Rulemaking Hearing Rule	Amendments	<i>Chapter 1180 2 Rules Governing Psychologists</i> 1180-2-.02 Qualifications for Licensure	Nicole Armstrong, OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Mar 1, 2006
12-19	Dec 16, 2005	1050 Osteopathic Council of Certified Professional Midwifery	Rulemaking Hearing Rule	Amendments	<i>Chapter 1050-5 General Rules Governing Certified Professional Midwives</i> 1050-5-.15 Disciplinary Grounds, Actions, and Civil Penalties	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120. 615-741-1611	Mar 1, 2006
12-20	Dec 16, 2005	0870 Massage Licensure Board	Rulemaking Hearing Rule	Amendments	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.12 Continuing Education	Richard Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120. 615-741-1611	Mar 1, 2006
12-21	Dec 16, 2005	1000 Nursing	Rulemaking Hearing Rules	Amendments Repeal	<i>Chapter 1000-1 Rules and Regulations of Registered Nurses</i> 1000-1-.12 Fees 1000-1-.17 Interstate Nurse Licensure <i>Chapter 1000-2 Rules and Regulations of Licensed Practical Nurses</i> 1000-2-.16 Interstate Nurse Licensure <i>Chapter 1000-4 Advanced Practice Nurses & Certificates of Fitness to Prescribe</i> 1000-4-.03 Advanced Practice Nurse Certificate 1000-4-.06 Fees 1000-4-.05 Temporary Certificate of Fitness	Richard Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120. 615-741-1611	Mar 1, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-22	Dec 16, 2005	0460 Dentistry	Rulemaking Hearing Rules	Amendments	<i>Chapter 0460-1 General Rules</i> 0460-1-.02 Fees <i>Chapter 0460-2 Rules Governing the Practice of Dentistry</i> 0460-2-.01 Licensure Process – By Exam By Criteria (Reciprocity) and Inactive Volunteer 0460-2-.06 Specialty Certification New Rules 0460-2-.13 Free Health Clinic Inactive Pro Bono and Volunteer Practice Requirements <i>Chapter 0460-3 Rules Governing Practice of Dental Hygienists</i> 0460-3-.11 Free Health Clinic and Volunteer Practice Requirements Amendments <i>Chapter 0460-4 Rules Governing the Practice of Dental Assistants</i> 0460-4-.03 Examination	Mary J. Presley, OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Mar 1, 2006
12-23	Dec 20, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.03 Amount, Duration, and Scope of Assistance 1200-13-1-.06 Provider Reimbursement	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Mar 5, 2006
12-24	Dec 20, 2005	0540 Electrolysis Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0540-1 General Rules Governing Electrology, Electrologists, and Electrology Instructors</i> 0540-1-.02 Scope of Practice 0540-1-.04 Qualifications for Licensure	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Mar 5, 2006
12-25	Dec 22, 2005	1240 Human Services Medical Services Division	Rulemaking Hearing Rule	Amendments	<i>Chapter 1240-3-3 Technical And Financial Eligibility Requirements For Medicaid</i> 1240-3-3-.03 Resource Limitations For Categorically Needy	Phyllis Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Mar 7, 2006
12-26	Dec 20, 2005	1140 Board of Pharmacy Controlled Substance Monitoring Act Advisory Committee	Rulemaking Hearing Rules	New Rules	<i>Chapter 1140-11 Controlled Substance Monitoring Database</i> 1140-11-.01 Definitions 1140-11-.02 Access to Database 1140-11-.03 Alternative Identification of Patients 1140-11-.04 Submission of Information	Alison G. Cleaves 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Mar 7, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-29	Dec 28, 2005	0520 Board of Education	Proposed Rules	Amendments	<i>Chapter 0520-1-2 Administrative Rule and Regulations</i> 0520-1-2-.02 Salary Schedules <i>Chapter 0520-7-1 Non-Public Schools Administrative Rules</i> 0520-7-1-.03 Student Transfers <i>Chapter 0520-7-2 Non-Public School Approval Process</i> 0520-7-2-.01 Categories 0520-7-2-.08 Category VII: Special Purpose Schools	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	April 28, 2006
12-30	Dec 28, 2005	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.05 State Curriculum, Requirement D	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	April 28, 2006
12-32	Dec 28, 2005	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.01 General Information and Regulations	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	April 28, 2006
12-33	Dec 28, 2005	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.05 The Praxis Series: Professional Assessments for Beginning Teachers	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	April 28, 2006
12-34	Dec 28, 2005	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-14-1 Charter Schools</i> 0520-14-1-.02 Appeals	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	April 28, 2006
12-35	Dec 29, 2005	1700 Treasury Unclaimed Property	Proposed Rules	New Rules	<i>Chapter 1700-2-1 Regulations Governing the Uniform Disposition of Unclaimed Property Act</i> 1700-2-1-.38 Agreements Relative to Unreported Property. 1700-2-1-.39 Proxies	Mary Krause 10th Fl A Jackson Bldg Nashville, TN 37243 (615) 741-7063	April 28, 2006
				Amendments	1700-2-1-.08 Voluntary Reporting 1700-2-1-.37 Reports of Safe Deposit Box Contents		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-36	Dec 29, 2005	1220 TN Regulatory Authority	Public Necessity Rules	New Rules	<i>Chapter 1220-4-13 Wastewater Regulations</i> 1220-4-13-.01 Application and Purpose 1220-4-13-.02 Definitions 1220-4-13-.03 Retention of Records 1220-4-13-.04 Documents to be Filed with the Authority 1220-4-13-.05 Maps and Records 1220-4-13-.06 Adequacy of Facilities 1220-4-13-.07 Financial Security 1220-4-13-.08 Standard Forms for Filing Financial Security 1220-4-13-.09 Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security 1220-4-13-.10 Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment 1220-4-13-.11 Receiverships or Other Transfers of Operation or Ownership 1220-4-13-.12 Customer Relations 1220-4-13-.13 Customer Billing 1220-4-13-.14 Denying or Discontinuing Service 1220-4-13-.15 Reconnection	J. Richard Collier TN Regulatory Authority 460 J Robertson Pky Nashville TN 37243 (615) 741-2904, ext 170	Dec 29, 2005 through June 12, 2006
12-38	Dec 29, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.01 Definitions 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment 1200-13-13-.08 Providers 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-13-.13 Member Abuse and Overutilization of the TennCare Program	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Dec 29, 2005 through June 12, 2006
12-39	Dec 29, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rule	Amendments	1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Dec 29, 2005 through June 12, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-40	Dec 29, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.01 Definitions 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment 1200-13-14-.05 Enrollee Cost Sharing 1200-13-14-.08 Providers 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-14-.13 Member Abuse and Overutilization of the TennCare Program	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Dec 29 through June 12, 2006
12-41	Dec 29, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rule	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Dec 29, 2005 through June 12, 2006
12-46	Dec 29, 2006	0940 Mental Health and Developmental Disabilities Office of the Commissioner	Rulemaking Hearing Rules	New Rules	<i>Chapter 0940-1-6 Capacity to Make Decisions</i> 0940-1-6-.01 Purpose 0940-1-6-.02 Scope 0940-1-6-.03 Applicability 0940-1-6-.04 Definitions 0940-1-6-.05 Assessment 0904-1-6-.06 Duty of Department of Mental Health and Developmental Disabilities	Joseph Brenner, Jr., 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 741-4588 Janice Spillman (615) 532-6509 Becki Poling Hospital Services 3rd Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6729	Mar 14, 2006

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: <http://www.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

FOR TEXT OF EMERGENCY RULE SEE T.A.R. CITED

- 0400 - Department of Environment and Conservation - Division of Underground Storage Tanks - Emergency rules addressing nonmetallic underground piping connected to petroleum underground storage tanks, Chapter 1200-1-15 Underground Storage Tanks, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 28, 2005; effective through April 11, 2006. (10-37)
- 0800 - Department of Labor - Division of Boiler and Elevator Inspection - Emergency Rule regarding the standards for the emergency keyed lock box in elevators, Chapter 0800-3-15 Fire Safety for Elevators, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 11, 2005; effective through March 25, 2006. (10-12)
- 1240 - Department of Human Services - Child Support Services Division - Emergency rules dealing with Income Shares Guidelines methodology, Chapter 1240-2-4 Child Support Guidelines, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 14, 2005; effective through March 28, 2006. (10-16)
- 1360 - Department of State - Division of Charitable Solicitations - Emergency rules regarding procedure for filing applications, amendments, and financial accounting reports for organizations exempt from federal taxation, Chapter 1360-3-2 Procedures for Operating Charitable Gaming Events, 9 T.A.R., Volume 31 Number 9 (September 2005) Filed August 11, 2005; effective through January 23, 2006. (08-14)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-2 ADMINISTRATIVE RULE AND REGULATIONS

CHAPTER 0520-7-1 NON-PUBLIC SCHOOLS ADMINISTRATIVE RULES

CHAPTER 0520-7-2 NON-PUBLIC SCHOOL APPROVAL PROCESS

Presented herein are the proposed rule and amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the rule and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule or 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.

For a copy of the proposed rule and amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed rule and amendments is as follows:

NEW RULE

TABLE OF CONTENTS

0520-7-2-.08 Category VII: Special Purpose Schools

0520-7-2-.08 CATEGORY VII: SPECIAL PURPOSE SCHOOLS

- (1) A school may seek state approval by direct application to the State Department of Education. The criteria and procedures used in the evaluation of such schools are the same as for the public schools and schools recognized as Category I schools including, but not limited to:
 - (a) Teaching experience shall count towards years of experience on the Personnel Information Reporting System.

PROPOSED RULES

- (b) Teachers shall be evaluated by Tennessee Department of Education personnel or others trained in the use of the Frameworks for Evaluation (pursuant to 0520-1-3-.04) so that licensure advancement can occur.
 - (c) Schools may report attendance to the school where the student is officially enrolled where applicable.
 - (d) Schools may order and administer Gateway tests to current students to help them stay on track for graduation.
 - (e) Special Purpose Category VII schools shall be deemed appropriate training schools for those seeking specialized student teaching placements. Teacher candidates must satisfy the induction requirements in Rule 0520-2-3-.11.
- (2) Organizations seeking approval for Pre-K programs as Category VII schools shall, in addition to meeting the requirements of this rule, satisfy Pre-K program requirements outlined in Rule 0520-1-3-.05 and the State Board of Education Early Childhood Education Policy.
 - (3) Each school shall comply with the requirements of T.C.A. § 49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the school is located.
 - (4) Each school shall comply with all rules, regulations and codes of the city, county, and state regarding planning, construction, maintenance and operation of the school.
 - (5) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal.

Authority: T.C.A. §§ 49-1-302; 49-6-101; 49-6-3001.

AMENDMENTS

Part 1 of subparagraph (a) of paragraph (3) of Rule 0520-1-2-.02 Salary Schedules is amended by deleting the part in its entirety and substituting instead the following language so that as amended the part shall read:

- 1. Verified administrative, supervisory and teaching experience in public schools or in private schools approved by recognized accrediting agencies or approved by the Tennessee Department of Education or any Pre-K program funded by the Tennessee Department of Education.

Authority: T.C.A. §§ 49-1-302(a)(5), 49-3-306, 49-6-101.

Paragraph (1) of Rule 0520-7-1-.03 Student Transfers is amended by deleting the paragraph in its entirety and substituting the following so that as amended the paragraph shall read:

- (1) Students may transfer among public schools, or Category I, II, III, or VII non-public schools without loss of credit for completed work. See Chapter 0520-1-3. The school which the student leaves

PROPOSED RULES

must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned. However, this rule shall not be construed as to supersede any contractual obligation of parents with the non-public school (e.g. withholding of grades until all tuition/fees are paid).

Authority: T.C.A. § 49-1-302.

Paragraph (1) of Rule 0520-7-2-.01 Categories is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the paragraph shall read:

- (1) There shall be seven categories of non-public schools in Tennessee.
 - (a) Category I schools are those approved individually by the State Department of Education;
 - (b) Category II schools are those which belong to an agency whose accreditation process is approved by the State Board of Education;
 - (c) Category III schools are those which are members of the Southern Association of Colleges and Schools (SACS).
 - (d) Category IV schools are those schools which are "church related" and exempt from regulations according to T.C.A. §49-50-801;
 - (e) Category V schools include all other schools, except home schools, as defined in T.C.A. §49-6-3050.
 - (f) Category VI schools are international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education.
 - (g) Category VII schools are special purpose schools which address a student's education while receiving Pre-K program services or short term medical or transient care.

Authority: T.C.A. § 49-1-302.

The proposed amendments set out herein were properly filed in the Department of State on the 28th day of December, 2005, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-29)

PROPOSED RULES

STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-3 MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must 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.

For a copy of the proposed amendments, contact Art Fuller, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (3) of Rule 0520-1-3-.05 State Curriculum, Requirement D is amended by deleting the part in its entirety and substituting instead the following so that as amended the subparagraph shall read:

- (b) Local school systems shall develop and implement grading, promotion, and retention policies for grades K-8. The policies shall be communicated annually to students and parents.

Paragraph (3) of Rule 0520-1-3-.05 State Curriculum, Requirement D is further amended by adding new subparagraphs (c), (d) and (e) so that as amended the subparagraph shall read:

- (c) Local school systems shall use the following uniform grading system for students enrolled in grades nine through twelve (9-12). Students' grades shall be reported for the purposes of application for postsecondary financial assistance administered by the Tennessee Student Assistance Corporation using the uniform grading system.

PROPOSED RULES

Uniform Grading System				
Grade	Percentage Range		Weighting for Honors Courses and National Industry Certification	Weighting for Advanced Placement and International Baccalaureate Courses
A	93	100	May include the addition of 3 percentage points to the grades used to calculate the semester average.	May include the addition of 5 percentage points to the grades used to calculate the semester average.
B	85	92		
C	75	84		
D	70	74		
F	0	69		

Assigning additional quality points above 4.0 for honors courses, AP, IB, and National Industry Certification courses is not allowed for the purpose of determining eligibility for the lottery scholarships.

All course types, as defined below, shall be used for reporting student grades for the determination of eligibility for HOPE scholarships.

- (d) State approved courses. State approved courses shall meet all appropriate content standards, learning expectations, and performance indicators as approved by the State Board of Education and are eligible for the points listed above.
- (e) Honors Courses and National Industry Certification courses. Local education agencies may elect to offer honors courses and National Industry Certification (NIC) courses. Local educational agencies electing to offer honors courses will ensure that the approved honors courses substantially exceed the content standards, learning expectations, and performance indicators as approved by the State Board of Education. Further, each local education agency offering honors courses will ensure that additional rigor is being provided by implementing the framework of standards for honors courses listed below:

1. Framework of Standards for Honors Courses

Honors courses will substantially exceed the content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self-directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed-response prompts, performance-based tasks, open-ended questions, essays, original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five of the following components:

- (i) Extended reading assignments that connect with the specified curriculum.
- (ii) Research-based writing assignments that address and extend the course curriculum.

PROPOSED RULES

- (iii) Projects that apply course curriculum to relevant or real-world situations. These may include oral presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.
- (iv) Open-ended investigations in which the student selects the questions and designs the research.
- (v) Writing assignments that demonstrate a variety of modes, purposes, and styles.
 - (I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.
 - (II) Examples of purpose include to inform, entertain, and persuade.
 - (III) Examples of style include formal, informal, literary, analytical, and technical.
- (vi) Integration of appropriate technology into the course of study.
- (vii) Deeper exploration of the culture, values, and history of the discipline.
- (viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.
- (ix) Job shadowing experiences with presentations which connect class study to the world of work.

All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.

Technical courses that offer a National Industry Certification through a nationally recognized examination may be weighted by adding 3 points to all grades used to calculate the semester average.

If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.

Each local education agency shall adopt policies for honors courses and technical courses that offer national industry certification that may allow for the addition of 3 points to all grades used to calculate the semester average.

2. Advanced Placement Courses and International Baccalaureate Courses. Local education agencies may elect to offer Advanced Placement and International Baccalaureate courses. If Advanced Placement and International Baccalaureate courses are offered, the local education agency shall annually approve a list of such courses. This list of approved courses shall be made readily available to the public. Local education agencies will ensure that approved courses substantially incorporate the learning objectives and

PROPOSED RULES

course descriptions as defined by the College Board or International Baccalaureate Agency.

Each local education agency shall adopt policies for the approved Advanced Placement courses and International Baccalaureate courses that have end-of-course national examinations that may allow for the addition of 5 points to all grades used to calculate semester averages. Only Advanced Placement and International Baccalaureate courses that have end-of-course national examinations qualify for the addition of 5 points.

Authority: *T.C.A. §§ 49-1-302, 49-6-407.*

The proposed amendments set out herein were properly filed in the Department of State on the 28th day of December, 2005, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-30)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-2-4 LICENSURE

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule or 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.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (5) of Rule 0520-2-4-.05 The Praxis Series: Professional Assessments for Beginning Teachers is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the paragraph shall read:

(5) The examinations and corresponding required scores are as follows:

TENNESSEE EDUCATOR LICENSURE EXAMINATIONS				
Test Code	Endorsement Area	Test Title	Minimum Qualifying Score	Effective Date Sept. 1
0521	All Areas (See Note)	Principles of Learning and Teaching, Early Childhood	155	2005
0522		Principles of Learning and Teaching, K-6 or	155	1998
0523		Principles of Learning and Teaching, 5-9 or	154	1999
0524		Principles of Learning and Teaching, 7-12	159	1998
1010	Administrator	School Leader Licensure Assessment	156	2001
0700	Agricultural Education	Agriculture	530	1998
0133	Art	Art: Content Knowledge	150	1998

PROPOSED RULES

0132	Art	Choice of Art: Content, Traditions, Criticism & Aesthetics or	140	2001
0131	Art	Art: Art Making	155	2001
0235	Biology	Biology: Content Knowledge	148	2002
0233	Biology	Choice of Biology Content Essays or	146	1999
0433	Biology	General Science Content Essays	130	1999
0100	Business/Accounting	Business Education	570	1996
0245	Chemistry	Chemistry: Content Knowledge	152	2002
0431	Chemistry	General Science: Content Knowledge, Part 1	145	2005
0021	Early Childhood Education	Early Childhood Endorsement: Education Of Young Children	155	2005
0014	PreK-3, PreK-4	Elementary Education: Content Knowledge	140	2003
0201		Reading Across the Curriculum: Elementary	151	2006
0571	Earth Science	Earth Science: Content Knowledge	146	2002
0431	Earth Science	General Science: Content Knowledge, Part 1	145	2005
0910	Economics	Economics	530	2005
0011	Elementary Education K-8, K-6	Elementary Education: Curriculum, Instruction, and Assessment	159	1998
0014		Elementary Education: Content Knowledge	140	2003
0146		or	150	2001
0201		Middle School: Content Knowledge	151	2006
		Reading Across the Curriculum: Elementary		
0041	English	Language, Literature, Composition: Content Knowledge	157	1995
0043	English	Language, Literature, Comp.: Pedagogy	145	1999
0360	English as a Second Language	Teaching English as a Second Language	530	1999
0120	Family & Consumer Science	Family and Consumer Science	580	1996
0920	Geography	Geography	580	2005
0930	Government	Government/Political Science	600	2005
0550	Health	Health Education	570	1997

PROPOSED RULES

0941	History	World and U.S. History	136	2005
Languages:				
0173	French	French: Content Knowledge	160	2005
0171	French	French: Productive Language Skills	165	2005
0181	German	German: Content Knowledge	149	2005
0600	Latin	Latin	540	1996
0191	Spanish	Spanish: Content Knowledge	152	2005
0192	Spanish	Spanish: Productive Language Skills	154	2005
0310	Librarian	Library Media Specialist	600	2000
0560	Marketing	Marketing Education	640	1999
0061	Mathematics	Mathematics: Content Knowledge	136	1995
0065	Mathematics	Mathematics: Pedagogy	125	1999
0146	Middle Grades 5-8	Middle School: Content Knowledge	150	2000
0201	Middle Grades 5-8	Reading Across the Curriculum: Elementary	151	2006
0113	Music	Music: Content Knowledge	150	1998
0111	Music	Music: Concepts and Processes	145	2001
0091	Physical Education	Physical Education: Content Knowledge	152	1995
0092	Physical Education	Physical Education: Movement Forms – Analysis & Design	148	1999
0265	Physics	Physics: Content Knowledge	144	2002
0262	Physics	Choice of Physics: Content Essays or	135	1999
0433	Physics	General Science Content Essays	130	1999
0390	Psychology	Psychology	560	1997
0300	Reading Specialist	Reading Specialist	510	2005
0420	School Counselor	School Guidance and Counseling	580	1996
0400	School Psychologist	School Psychologist	590	1998
0950	Sociology	Sociology	540	1996
Special Education:				
0353	All Special Education Areas (See Note)	Education of Exceptional Children: Core Content Knowledge	144	2005
0201	All Special Education Areas (See Note)	Reading Across the Curriculum: Elementary	151	2006

PROPOSED RULES

0542	Modified	Education of Exceptional Students: Mild to Moderate Disabilities	164	2005
0544	Comprehensive	Education of Exceptional Students: Severe to Profound	155	2005
0690	Preschool/Early Childhood PreK-1, PreK-3	Education of Exceptional Students: Preschool/Early Childhood	560	2004
0271	Hearing	Special Education: Education of Deaf and Hard of Hearing Students	163	2001
0330	Speech/Language	Speech-Language Pathology	600	2000
0280	Vision	Special Education: Teaching Students with Visual Impairments	700	2001
0220	Speech	Speech Communications	570	1998
0050	Technology Education	Technology Education	580	1996
0640	Theatre	Theatre	610	1997

Note: "NMS" means score submission required without minimum score established.

Note: Candidates seeking licensure in early childhood education, PreK-3, or early childhood special education PreK-1 will take Principles of Learning and Teaching (PLT) early childhood or PLT K-6. Candidates seeking licensure in elementary education, K-8, may choose either PLT K-6 or PLT 5-9. Candidates seeking licensure in middle grades 5-8 will take PLT 5-9. Candidates seeking licensure in secondary education areas will take PLT 7-12. Candidates seeking licensure in K-12, or preK-12 areas may choose PLT K-6, PLT 5-9, or PLT 7-12.

Note: Two tests, (1) The Education of Exceptional Students: Core Content Knowledge, and (2) Reading Across Curriculum: Elementary, apply to the following special education areas: modified program, comprehensive program, hearing, vision and preschool/early childhood.

Note: Candidates in elementary education, K-8, may choose either Elementary School Content Knowledge or Middle School Content Knowledge.

Note: Candidates in biology and physics may choose either the general science content essay or the subject area (biology or physics) content essays. Candidates seeking an additional endorsement in biology, chemistry, earth science, or physics will be required to take only the content knowledge exam for endorsement in the additional science area.

Authority: T.C.A. §§ 49-1-302; 49-5-5605.

The proposed amendments set out herein were properly filed in the Department of State on the 28th day of December, 2005, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-23)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-2-4 LICENSURE

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must 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.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (9) of Rule 0520-2-4-.01 General Information and Regulations is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the rule shall read:

- (9) Denial, Suspension and Revocation of License.
 - (a) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. § 40-35-501(i)(2) or T.C.A. § 39-17-417 (including conviction on a plea of guilty or nolo contendere). The Board will notify persons whose licenses are subject to automatic revocation at least 30 days prior to the Board meeting at which such revocation shall occur.
 - (b) Denial, Suspension or Revocation of License. The State Board of Education may revoke, suspend or refuse to issue or renew a license for the following reasons:
 - 1. Conviction of a felony,
 - 2. Conviction of possession of narcotics,
 - 3. Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs,

PROPOSED RULES

4. Falsification or alteration of a license or documentation required for licensure,
5. Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule, or
6. Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for TCAP or successor tests pursuant to T.C.A. § 49-1-607, default on a student loan pursuant to T.C.A. § 49-5-108(d)(2) or failure to report under part (e).

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

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of the denial, suspension or revocation.

(c) Restoration of License.

1. A person whose license has been suspended shall have the license restored after the period of suspension has been completed, and, where applicable, the person has complied with any terms prescribed by the State Board. Suspended licenses are subject to expiration and renewal rules of the Board.
 2. A person whose license has been denied or revoked under parts (a) or (b) may apply to the Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Teacher Licensing and shall be voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.
- (d) Notice of Hearing. Any person whose license is to be denied, suspended or revoked under part (b) or who is refused a license or certificate under part (c) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.
- (e) Notification of Office of Teacher Licensing. It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Teacher Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (a) or (b). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within 30 days of receiving knowledge of the conviction.

Authority: T.C.A. §§ 49-1-302; 49-1-607; 49-5-108(d)(2).

PROPOSED RULES

The proposed amendments set out herein were properly filed in the Department of State on the 28th day of December, 2005, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-32)

RULEMAKING HEARINGS

STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-14-1 CHARTER SCHOOLS

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must 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.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (1) of Rule 0520-14-1-.02 Appeals is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the rule shall read:

(1) Appeals.

The sponsor may appeal a decision by the chartering authority to deny an amended application for a newly created public school to the state board of education within ten (10) days. The sponsor shall forward the amended application to the executive director of the state board of education. The state board of education may request additional documentation from the sponsor and the chartering authority.

Authority: T.C.A. §§ 49-13-106, 49-13-108, 49-13-126.

The proposed amendments set out herein were properly filed in the Department of State on the 28th day of December, 2005, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-34)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF BOILER AND ELEVATOR INSPECTION ELEVATOR SAFETY BOARD

CHAPTER 0800-3-12 STAIRWAY INCLINED AND VERTICAL WHEELCHAIR LIFTS FOR DISABLED PERSONS

Presented herein is a proposed amendment of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Elevator Safety Board, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate this amendment without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed in the Legal Division of the Department of Labor and Workforce Development, Andrew Johnson Tower, 2nd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, and in the Administrative Procedures Division of the Department of State, William R. Snodgrass Tennessee Tower, 8th Floor, 312 8th Avenue North, Nashville, Tennessee, 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendment or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendment, contact Gary W. Cookston, Director, Division of Boiler and Elevator Inspection, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 532-1929.

The text of the proposed amendment is as follows:

AMENDMENT

Chapter 0800-3-12 Stairway Inclined and Vertical Wheelchair Lifts for Disabled Persons is amended by deleting that language entirely and substituting the following language, so that as amended the chapter and rule shall read:

CHAPTER 0800-3-12 SAFETY STANDARD FOR PLATFORM LIFTS AND STAIRWAY CHAIRLIFTS

0800-3-12-.01 SAFETY STANDARDS.

- (1) All new stairway inclined lifts and platform lifts for transportation of persons with handicaps as defined in Tennessee Code Annotated Section 68-121-101 shall comply with the Safety Standard for Platform Lifts and Stairway Chairlifts dated September 12, 2003, ASME A18.1-2003, effective September 12, 2004, prepared and published by The American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016-5990, Telephone (212) 591-7722, www.asme.org, except as modified in subparagraphs (a), (b), (c), (d), and (e).
 - (a) Paragraph 2.1.3 Runway Enclosure Not Provided is deleted in its entirety.
 - (b) Paragraph 2.10.1 Operation shall read as follows: Operation of the lift from the landings and from the platform shall be key-operated control switches in all schools except postsecondary educational institutions and in all churches at all stations, and shall be by means of the continuous-pressure type and the key shall be removable in the off position only. Controls

PROPOSED RULES

shall be 48 inches (1 220 millimeters) maximum and 15 inches (380 millimeters) minimum above the platform floor or facility floor or ground level.

- (c) Section 5 Private Residence Vertical Platform Lifts is deleted in its entirety.
- (d) Section 6 Private Residence Inclined Platform Lifts is deleted in its entirety.
- (e) Section 7 Private Residence Inclined Stairway Chairlifts is deleted in its entirety.

Authority: T.C.A. § 68-121-103.

The proposed rules set out herein were properly filed in the Department of State on the 9th day of December, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-11)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF TREASURY - 1700 DIVISION OF UNCLAIMED PROPERTY

CHAPTER 1700-2-1 REGULATIONS GOVERNING THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Presented herein are proposed rules and amendments of the Tennessee Department of Treasury submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Treasury Department, Division of Unclaimed Property located on the 9th Floor of the Andrew Jackson State Office Building located at Fifth and Deaderick, Nashville, Tennessee 37243, and in the Publications Division of the Department of State, Eighth Floor, William R. Snodgrass Tower, Eighth Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed rules and amendments, contact: Mary Krause, General Counsel, Tennessee Treasury Department; 10th Floor, Andrew Jackson State Office Building; Nashville, Tennessee 37243; (615) 741-7063.

The text of the proposed rules and amendments is as follows:

NEW RULES

TABLE OF CONTENTS

- 1700-2-1-.38 Agreements Relative to Unreported Property.
- 1700-2-1-.39 Proxies.

1700-2-1-.38 AGREEMENTS RELATIVE TO UNREPORTED PROPERTY.

- (1) Any agreement entered into on or after July 1, 2005 with an owner whereby the owner is to pay a fee or other remuneration for locating, delivering, recovering, or assisting in the recovery of property that has not yet been reported to the State Treasurer pursuant to the Act is enforceable only if:
 - (a) The agreement is in writing;
 - (b) Clearly sets forth the nature of the property and the services to be rendered;
 - (c) Is signed by the apparent owner;
 - (d) States the value of the property before and after the fee;
 - (e) Discloses that, absent the agreement, the property would otherwise be delivered to a state administered unclaimed property program for safekeeping on the owner's behalf and that

PROPOSED RULES

upon such delivery, the owner would have been able to recover the property from the state administered program without charge; and

- (f) Informs the apparent owner that the owner may obtain additional information about unclaimed property programs by logging onto the state of Tennessee Internet web site www.treasury.state.tn.us/unclaim/.
- (2) Nothing in this rule shall be construed to prevent an owner from asserting at any time that an agreement to locate, deliver, recover, or assist in the recovery of property is based upon an excessive or unjust consideration.

Authority: T.C.A. §§ 66-29-130 and 66-29-122.

1700-2-1-.39 PROXIES. Due to the short time period within which securities are held under the Act prior to their sale, the State Treasurer shall not vote proxies received in connection with securities delivered to the Unclaimed Property Division.

Authority: T.C.A. §§ 66-29-130, 66-29-107 and 66-29-119.

AMENDMENTS

1700-2-1-.08 Voluntary Reporting is amended by deleting the same in its entirety and by substituting instead the following:

1700-2-1-.08 VOLUNTARY REPORTING. Since the Act is purely custodial, any holder of unclaimed property may voluntarily report funds before the statutory due date and be relieved of all accountability and responsibility upon delivery of the unclaimed property to the State Treasurer, to the extent of the value of the property reported and delivered. Provided, however, if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate and the property has a value of fifty dollars (\$50.00) or more, the holder must exercise due diligence, as such term is defined in Rule 1700-2-1-.19 below, to ascertain the whereabouts of the owner prior to reporting such property. The due diligence required by this rule shall be performed not more than one hundred twenty (120) days or less than sixty (60) days before filing the report.

Authority: T.C.A. §§ 66-29-130, 66-29-113(f) and 66-29-116.

1700-2-1-.37 Reports of Safe Deposit Box Contents is amended by deleting paragraph (5) thereof in its entirety.

Authority: T.C.A. §§ 66-29-130, 45-2-907, 66-29-104(4)(A) and 66-29-115(c).

The proposed rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of April, 2006. (12-35)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

FOR TEXT OF PUBLIC NECESSITY RULE, SEE T.A.R. CITED

- 0400 - Department of Environment and Conservation - Petroleum Underground Storage Tank Division - Public Necessity rules dealing with incentives for tank owners, Chapter 1200-1-15 Underground Storage Tank Program, 9 T.A.R. (September 2005) Filed August 29, 2005; effective through February 10, 2006, (08-57)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-1 General Rules, 10 T.A.R. (October 2005) - Filed September 26, 2005; effective through March 10, 2006. (09-29)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules deleting sections relating to the TennCare Partners State-Only Program, chapter 1200-13-13 TennCare Medicaid, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2006. (08-33)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning changes resulting from the amendment of the TennCare waiver, chapter 1200-13-13 TennCare Medicaid, 10 T.A.R. (October 2005) - Filed September 7, 2005; effective through February 19, 2006. (09-12)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Partners State-Only Program, chapter 1200-13-14 TennCare Standard, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2006. (08-34)
- 0780 - Department of Commerce and Insurance - Division of Insurance - Public necessity rules concerning MMA and state Medigap, chapter 0780 Medicare Supplement Insurance Minimum Standards, 10 T.A.R. (October 2005) - Filed September 1, 2005; effective through February 13, 2006. (09-03)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-17 Medical Cost Containment Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-21)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-18 Medical Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-22)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-23)

PUBLIC NECESSITY RULES

- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules realting to the comprehensive medical fee schedule and related system, chapter 0800-2-20 Medical Impairment Rating Registry Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-24)
- 1240 - Department of Human Services - Medical Services Division - Public Necessity Rules promulgated to avoid loss of federal funds, chapter 1240-3-3 Technical and Financial Eligibility Requirements for Medicaid, 10 T.A.R. (October 2005) - Filed September 30, 2005; effective through March 14, 2006. (09-41)
- 1540 - TN Higher Education Commission - Public Necessity Rules adding eligible employees, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 10 T.A.R. (October 2005) - Filed September 1, 2005, 2005; effective through February 13, 2006. (09-01)
- 1640 - TN Student Assistance Corporation - Public Necessity rule dealing with lottery scholarships, Chapter 1640-1-19 TN Educational Lottery Scholarship Program, Volume 31, Number 11 (November 2005) - Filed October 4, 2005; effective through March 18, 2006. (10-02)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

On August 3, August 9 and November 15, 2005, a federal district court issued Orders and an Opinion in which the Court approved modifications of certain provisions of the *Grier Consent Decree*. The *Grier Consent Decree* imposes obligations upon the Bureau of TennCare with respect to providing due process rights to individuals enrolled in the TennCare program, a managed care program for both the Medicaid and expansion population.

On November 14, 2005, the Bureau of TennCare received federal approval for certain amendments to pharmacy benefits covered under the TennCare Demonstration Project (No. 11-W-0015 1/4). The federal government approved these changes to the coverage of pharmacy benefits through an amendment to Tennessee's State Plan.

Tennessee Code Annotated, Section 4-5-209, provides that a state agency is authorized to promulgate public necessity rules when the modifications to the rules are required by a court order. Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment.

For a copy of this public necessity 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.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENTS

Paragraph (18) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (18) which shall read as follows:

(18) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-13-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later.

(a) For services on appeal under *Grier Revised Consent Decree*:

1. Those services currently or in the case of reinstatement, most recently provided to an enrollee; or
2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
3. Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.

(b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.

Paragraph (26) of rule 1200-13-13-.01 Definitions is deleted in its entirety.

Subparagraph (b) of paragraph (27) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

(b) An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision shall not be deemed timely unless it is granted within fourteen (14) days of the MCC's receipt of a request for such authorization.

PUBLIC NECESSITY RULES

A new paragraph (37) is added to rule 1200-13-13-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (37) shall read as follows:

- (37) FINAL AGENCY ACTION shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an impartial administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

Paragraph (77) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (77) which shall read as follows:

- (77) PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery of services.

A new paragraph (78) is added to rule 1200-13-13-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (78) shall read as follows:

- (78) PRIOR AUTHORIZATION shall mean the process under which services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery in order for such services to be covered by the TennCare program.

Paragraph (101) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (101) which shall read as follows:

- (101) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services.

Paragraph (111) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (111) which shall read as follows:

- (111) TIME-SENSITIVE CARE shall mean (1) the TennCare Bureau has determined that the care is time-sensitive or (2) the enrollees' treating physician certifies in writing that if enrollees do not get this care within ninety (90) days:
 - (a) They will be at risk of serious health problems or death,
 - (b) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
 - (c) They will need to go to the hospital.

A new paragraph (115) is added to rule 1200-13-13-.01 Definitions and the subsequent paragraph is re-numbered accordingly. New paragraph (115) shall read as follows:

- (115) VALID FACTUAL DISPUTE shall mean a dispute which, if resolved in favor of the enrollee, would result in the proposed action not being taken.

Subparagraph (b) of paragraph (4) of rule 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

PUBLIC NECESSITY RULES

- (b) A TennCare Medicaid enrollee may change health plans if the TennCare Bureau has granted a request for a change in health plans or an appeal of a denial of a request for a change in health plans has been resolved in his/her favor based on hardship criteria. Requests for hardship MCO reassignments must meet all of the following six (6) hardship criteria for reassignment. Determinations will be made on an individual basis.
1. A member has a medical condition that requires complex, extensive, and ongoing care; and
 2. The member's PCP and/or specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his/her current MCO assignment; and
 3. The ongoing medical condition of the member is such that another physician or provider with appropriate expertise would be unable to take over his/her care without significant and negative impact on his/her care; and
 4. The current MCO has been unable to negotiate continued care for this member with the current PCP or specialist; and
 5. The current provider of services is in the network of one or more alternative MCOs; and
 6. An alternative MCO is available to enrolled members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

A hardship MCO change request will not be granted to a Medicare beneficiary who, with the exception of pharmacy services, may utilize his/her choice of providers, regardless of network affiliation.

Requests to change MCCs submitted by TennCare enrollees shall be evaluated in accordance with the hardship criteria referenced above. Upon denial of a request to change MCCs, enrollees shall be provided notice and appeal rights as described in applicable provisions of rule 1200-13-13-.11.

Subparagraph (g) of paragraph (6) of rule 1200-13-13-.08 Providers is deleted in its entirety and replaced with a new subparagraph (g) which shall read as follows:

- (g) The provider failed to inform the enrollee prior to providing a service not covered by TennCare that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement. Notwithstanding this exemption, providers shall remain obligated to provide notice to enrollees who have exceeded benefit limits in accordance with rule 1200-13-13-.11.

Part 3. of subparagraph (a) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are renumbered accordingly.

PUBLIC NECESSITY RULES

Subparagraph (a) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding renumbered parts 5. and 6. of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits which shall read as follows:

5. Appropriate notice shall be given to an enrollee by the State or MCC when an enrollee exceeds a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
 - (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to provide this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. Providers will not be required to provide any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

Part 2. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of receipt of the request for prior authorization. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee.

Part 4. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are re-numbered accordingly.

Subpart (iv) of part 1. of subparagraph (c) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (iv) which shall read as follows:

- (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.

Parts 2. and 3. of subparagraph (c) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with a new part 2. which shall read as follows:

PUBLIC NECESSITY RULES

2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of 1200-13-13-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.

Subparagraph (d) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) Special Provisions Pertaining to Pharmacy Notice

1. If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1.
 - (i) When the enrollee has exceeded a benefit limit. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees through the PBM. If the PBM denies coverage because an enrollee has exceeded the applicable pharmacy benefit limit and the drug is not included on the Pharmacy Short List, the PBM will provide appropriate notice to the enrollee, informing his/her of the right to appeal the denial. This notice will only be provided upon the first denial of coverage of a pharmacy service sought by the enrollee that exceeds the applicable monthly limits.
 - (ii) When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-13-.11(1)(d)1.(II). No additional notice will be provided to the enrollee.
 - (iii) When a request for prior authorization has not been obtained for a prescription. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:
 - (I) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:
 - I. The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted.

PUBLIC NECESSITY RULES

The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a 72-hour interim supply of a prescription.

- II. The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.
- (II) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.
- (III) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.
- (IV) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request within three business days of its receipt. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.
- (iv) When the requested drug is not a category or class of drugs covered by TennCare. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
- (v) When the enrollee has been locked-into one pharmacy, as described in rule 1200-13-13-.13 and the enrollee seeks to fill a prescription at another pharmacy. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
- (vi) When an enrollee submits a pharmacy reimbursement and billing claim:

PUBLIC NECESSITY RULES

- (I) TennCare will first determine whether the claim has been previously denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
- (II) If the claim had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in sections 1200-13-13-.11(1)(d)1.(i) to 1.(iii).
- (III) If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-13-.11(1)(d)1.(i) to 1.(iii).

Paragraph (3) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new subparagraphs (d), (e), and (f) which shall read as follows:

- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse action affecting TennCare services.
 - 1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the enrollee.
 - 2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse action; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.
- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription the following will apply:
 - 1. TennCare will provide appropriate notice to the enrollee inform him/her that he/she will be required to complete an administrative process. Such administrative process

PUBLIC NECESSITY RULES

requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.

2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.
- (f) Appeals When No Adverse Action is Taken. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services. If enrollees request a hearing when no adverse action has been taken, their request shall be denied by the TennCare bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no claim for services had previously been denied.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

10. Final agency action within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal.

Subparagraph (f) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (f) which shall read as follows:

- (f) Review of Hearing Decisions
1. Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders.
 2. The TennCare Bureau shall have the opportunity to review all decisions of impartial hearing officers to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of the *Grier Revised Consent Decree*.
 - (i) Any such review shall be completed by TennCare within five (5) days of the issuance of the decision of the impartial hearing officer.
 - (ii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.
 - (iii) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.

PUBLIC NECESSITY RULES

- (iv) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq.
- (v) An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

Subparts (iii) and (iv) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subpart (iii) which shall read as follows:

- (iii) Continuation or reinstatement of services within ten (10) days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services.

Parts 5. and 6. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new parts 5. and 6. which shall read as follows:

- 5. Expedited appeals shall be concluded within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:
 - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
 - (ii) The enrollee lacks a compelling justification for the requested delay; and
 - (iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.
- 6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:
 - (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;
 - (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:
 - (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug, unless such supply would exceed applicable pharmacy benefit limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.

PUBLIC NECESSITY RULES

- (iii) When coverage of a prescription drug is denied because the requested drug is not a category or class of drugs covered by TennCare;
- (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
- (v) When a request for reimbursement is denied and the enrollee appeals this denial;
- (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or
- (vii) If TennCare had not paid for the service for which continuation or reinstatement is requested prior to the appeal.

Subparagraph (h) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

(h) Expedited appeals.

1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received. If the appeal is not resolved within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety days (90) from the date the appeal is received.
2. Care will only qualify as time-sensitive if the enrollee's treating physician determines that if the enrollee does not receive the care within ninety (90) days:
 - (i) They will be at risk of serious health problems or death.
 - (ii) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
 - (iii) They will need to go to the hospital.
3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not automatically be resolved in favor of the enrollee, provided the appeal is resolved within ninety (90) days from the date the appeal is received.

Paragraph (5) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (5) which shall read as follows:

(5) Special Provisions Pertaining to Pharmacy

PUBLIC NECESSITY RULES

- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.
 2. The drug as prescribed, if the prescribing provider has obtained prior authorization.
 3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
 4. Subject to the provisions of rule 1200-13-13-.11(1)(d), if the pharmacist is unable to obtain the prescribing physician's approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days of dispensing the seventy-two (72) hour interim supply.
- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or
 2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
 - (i) agents for weight loss or weight gain;
 - (ii) agents to promote fertility or to treat impotence;
 - (iii) agents for cosmetic purposes or hair growth;
 - (iv) agents for the symptomatic relief of coughs and colds;
 - (v) agents to promote smoking cessation;
 - (vi) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
 - (vii) nonprescription drugs;

PUBLIC NECESSITY RULES

- (viii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
 - (ix) barbiturates or benzodiazepines.
3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
 4. If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.
 5. In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.
 6. The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this subsection, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.

Paragraph (7) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (7) which shall read as follows:

(7) Time Requirements and Corrective Action.

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-13-.11(1)(b)2. Failure by the MCCs to meet these deadlines shall not result in an automatic authorization of the requested service.
- (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee.
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time-sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records.

PUBLIC NECESSITY RULES

Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time-sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.

- (d) Failure to meet the ninety (90) day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-13-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve of the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.
- (e) When, under the provisions of rule 1200-13-13-.11(7)(d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
 - 1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or
 - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. Corrective action to implement the decision includes:
 - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
 - 3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.

In the event that a decision in favor of an enrollee is modified or overturned within ninety (90) days from receipt of such appeal, TennCare shall possess the authority to immediately

PUBLIC NECESSITY RULES

implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.

- (g) In no circumstance will a directive be issued by the TennCare Solutions Unit or an impartial hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by TennCare Solutions Unit if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

Rule 1200-13-13-.13 Member Abuse and Overutilization of the TennCare Program is deleted in its entirety and replaced with a new rule 1200-13-13-.13 which shall read as follows:

1200-13-13-.13 MEMBERS ABUSE AND OVERUTILIZATION OF THE TENNCARE PROGRAM.

- (1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:
 - (a) Forging or altering prescription drugs;
 - (b) Selling TennCare paid prescription drugs;
 - (c) Filing to control pharmacy overutilization activity while on lock-in status; or
 - (d) Visiting multiple prescribers or pharmacies to obtain controlled substances.
- (2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:
 - (a) Criteria for selection of abusive or overutilizing enrollees - Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.
 - (b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.
 - (c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.

PUBLIC NECESSITY RULES

(3) Pharmacy lock-in program procedures shall include:

- (a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.
- (b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.
- (c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-13-.11.
- (d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 12th day of June, 2006. (12-38)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

These rules are being amended to allow for the disenrollment of Medically Needy dual eligibles on or after January 1, 2006.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity 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.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENTS

Paragraph (103) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (103) which shall read as follows:

(103) TENNCARE MEDICAID ELIGIBILITY REFORMS shall mean the amendments to the TennCare demonstration project approved by CMS on March 24, 2005, to close enrollment into TennCare Medicaid for non-pregnant adults age twenty-one (21) or older who qualify as Medically Needy under Tennessee's Title XIX State Plan for Medical Assistance and to disenroll non-pregnant adults age twenty-one (21) or older who qualify as Medically Needy under Tennessee's Title XIX State Plan for Medical Assistance after completion of their twelve (12) months of eligibility.

Subparagraph (c) of paragraph (4) of rule 1200-13-13-.02 Eligibility is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

- (c) In implementing TennCare Medicaid Eligibility Reforms, an individual who is eligible as a non-pregnant Medically Needy adult in accordance with Rule 1240-3-2-.03 of the Tennessee Department of Human Services is found to meet all the following criteria:
1. S/he is aged twenty-one (21) or older,
 2. S/he has completed his/her twelve (12) months of eligibility for TennCare,
 3. S/he is eligible for Medicare,
 4. S/he is not receiving TennCare-reimbursed services in either a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Home and Community Based Services waiver as of December 31, 2005, and
 5. S/he has not been determined eligible in an open Medicaid category.

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 9th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 23rd day of May, 2006. (12-09)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

These rules are being amended to point out that effective January 1, 2006 persons who are determined to be Severely and/or Persistently Mentally Ill are subject to lifetime limitations. They point out that effective January 1, 2006 persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D. The rules also allow for the discontinuance of coverage of benzodiazepines and barbiturates drugs effective January 1, 2006.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity 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.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENTS

Part 12. of subparagraph (b) of paragraph (l) of rule 1200-13-13-.04 Covered Services is amended by deleting the second sentence of the first paragraph in the "Benefit for Persons Aged 21 and Older" column so as amended part 12. shall read as follows:

PUBLIC NECESSITY RULES

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10 or (b) as outpatient hospital services (see 42 CFR §440.20(a)].	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and \$30,000 in substance abuse benefits (inpatient, residential, and outpatient). When medically appropriate and cost effective as determined by the BHO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.

Part 26. of subparagraph (b) of paragraph (l) of rule 1200-13-13-.04 Covered Services is amended by adding a sentence to the first paragraph of the “Benefit for Persons Under Age 21” and “Benefit for Persons Aged 21 and Older” columns so as amended the first paragraphs shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
26. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].	Covered as medically necessary. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D.	Covered as medically necessary, subject to the limitations set out below. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D.

Subparagraph (c) of paragraph (1) of rule 1200-13-13-.04 Covered Services is amended by adding a new part 6. and renumbering the current part 6. as 7. and subsequent parts renumbered accordingly so as amended the new part 6. shall read as follows:

6. Agents which are benzodiazepines or barbiturates.

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

PUBLIC NECESSITY RULES

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 12th day of June, 2006. (12-39)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE STANDARD**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

On August 3, August 9 and November 15, 2005, a federal district court issued Orders and an Opinion in which the Court approved modifications of certain provisions of the *Grier Consent Decree*. The *Grier Consent Decree* imposes obligations upon the Bureau of TennCare with respect to providing due process rights to individuals enrolled in the TennCare program, a managed care program for both the Medicaid and expansion population.

On November 14, 2005, the Bureau of TennCare received federal approval for certain amendments to pharmacy benefits covered under the TennCare Demonstration Project (No. 11-W-0015 1/4). The federal government approved these changes to the coverage of pharmacy benefits through an amendment to Tennessee's State Plan.

Tennessee Code Annotated, Section 4-5-209, provides that a state agency is authorized to promulgate public necessity rules when the modifications to the rules are required by a court order. Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Standard rules to reflect changes resulting from court orders and a state plan amendment.

For a copy of this public necessity 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.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE STANDARD**

AMENDMENTS

PUBLIC NECESSITY RULES

Paragraph (18) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (18) which shall read as follows:

(18) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-13-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later.

(a) For services on appeal under *Grier Revised Consent Decree*:

1. Those services currently or in the case of reinstatement, most recently provided to an enrollee; or
2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
3. Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.

(b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.

Paragraph (26) of rule 1200-13-14-.01 Definitions is deleted in its entirety.

Subparagraph (b) of paragraph (27) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

(b) An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision shall not be deemed timely unless it is granted within fourteen (14) days of the MCC's receipt of a request for such authorization.

A new paragraph (37) is added to rule 1200-13-14-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (37) shall read as follows:

(37) FINAL AGENCY ACTION shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an impartial administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

Paragraph (77) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (77) which shall read as follows:

PUBLIC NECESSITY RULES

- (77) PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery of services.

A new paragraph (78) is added to rule 1200-13-14-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (78) shall read as follows:

- (78) PRIOR AUTHORIZATION shall mean the process under which services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery in order for such services to be covered by the TennCare program.

Paragraph (101) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (101) which shall read as follows:

- (101) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services.

Paragraph (111) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (111) which shall read as follows:

- (111) TIME-SENSITIVE CARE shall mean (1) the TennCare Bureau has determined that the care is time-sensitive or (2) the enrollees' treating physician certifies in writing that if enrollees do not get this care within ninety (90) days:

- (a) They will be at risk of serious health problems or death,
- (b) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
- (c) They will need to go to the hospital.

A new paragraph (115) is added to rule 1200-13-14-.01 Definitions and the subsequent paragraph is re-numbered accordingly. New paragraph (115) shall read as follows:

- (115) VALID FACTUAL DISPUTE shall mean a dispute which, if resolved in favor of the enrollee, would result in the proposed action not being taken.

Subparagraph (b) of paragraph (4) of rule 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) A TennCare Medicaid enrollee may change health plans if the TennCare Bureau has granted a request for a change in health plans or an appeal of a denial of a request for a change in health plans has been resolved in his/her favor based on hardship criteria. Requests for hardship MCO reassignments must meet all of the following six (6) hardship criteria for reassignment. Determinations will be made on an individual basis.
 - 1. A member has a medical condition that requires complex, extensive, and ongoing care; and

PUBLIC NECESSITY RULES

2. The member's PCP and/or specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his/her current MCO assignment; and
3. The ongoing medical condition of the member is such that another physician or provider with appropriate expertise would be unable to take over his/her care without significant and negative impact on his/her care; and
4. The current MCO has been unable to negotiate continued care for this member with the current PCP or specialist; and
5. The current provider of services is in the network of one or more alternative MCOs; and
6. An alternative MCO is available to enrolled members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

A hardship MCO change request will not be granted to a Medicare beneficiary who, with the exception of pharmacy services, may utilize his/her choice of providers, regardless of network affiliation.

Requests to change MCCs submitted by TennCare enrollees shall be evaluated in accordance with the hardship criteria referenced above. Upon denial of a request to change MCCs, enrollees shall be provided notice and appeal rights as described in applicable provisions of rule 1200-13-14-.11.

Subparagraph (n) of paragraph (7) of rule 1200-13-14-.05 Enrollee Cost Sharing is deleted in its entirety and replaced with a new subparagraph (n) which shall read as follows:

- (n) The seventy-two (72) hour interim supply of a medication in an emergency situation, as described in rule 1200-13-14-.11, shall not be subject to the pharmacy co-payment requirements.

Subparagraph (g) of paragraph (6) of rule 1200-13-14-.08 Providers is deleted in its entirety and replaced with a new subparagraph (g) which shall read as follows:

- (g) The provider failed to inform the enrollee prior to providing a service not covered by TennCare that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement. Notwithstanding this exemption, providers shall remain obligated to provide notice to enrollees who have exceeded benefit limits in accordance with rule 1200-13-14-.11.

Part 3. of subparagraph (a) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are renumbered accordingly.

Part 2. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

PUBLIC NECESSITY RULES

2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of receipt of the request for prior authorization. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee.

Part 4. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are re-numbered accordingly.

Subpart (iv) of part 1. of subparagraph (c) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (iv) which shall read as follows:

- (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.

Parts 2. and 3. of subparagraph (c) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with a new part 2. which shall read as follows:

2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of 1200-13-14-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.

Subparagraph (d) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) Special Provisions Pertaining to Pharmacy Notice

1. If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1.
 - (i) When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-14-.11(1)(d)1.(II). No additional notice will be provided to the enrollee.
 - (ii) When a request for prior authorization has not been obtained for a prescription. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:

PUBLIC NECESSITY RULES

- (I) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:
 - I. The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted. The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a seventy-two (72) hour interim supply of a prescription
 - II. The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.
- (II) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.
- (III) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.
- (IV) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request within three business days of its receipt. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.
- (iii) When the requested drug is not a category or class of drugs covered by TennCare. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.

PUBLIC NECESSITY RULES

- (iv) When the enrollee has been locked-into one pharmacy, as described in rule 1200-13-14-.13 and the enrollee seeks to fill a prescription at another pharmacy. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
- (v) When an enrollee submits a pharmacy reimbursement and billing claim:
 - (I) TennCare will first determine whether the claim has been previously denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
 - (II) If the claim had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d)1.(i) to 1.(iii).
 - (III) If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d)1.(i) to 1.(iii).

Paragraph (3) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new subparagraphs (d), (e), and (f) which shall read as follows:

- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse action affecting TennCare services.
 - 1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the enrollee.
 - 2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse action; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service

PUBLIC NECESSITY RULES

was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.

- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription the following will apply:
 - 1. TennCare will provide appropriate notice to the enrollee inform him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.
 - 2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.
- (f) Appeals When No Adverse Action Is Taken. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services. If enrollees request a hearing when no adverse action has been taken, their request shall be denied by the TennCare Bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no claim for services had previously been denied.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

- 10. Final agency action within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal.

Subparagraph (f) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (f) which shall read as follows:

- (f) Review of Hearing Decisions
 - 1. Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders.
 - 2. The TennCare Bureau shall have the opportunity to review all decisions of impartial hearing officers to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of the *Grier Revised Consent Decree*.
 - (i) Any such review shall be completed by TennCare within five (5) days of the issuance of the decision of the impartial hearing officer.

PUBLIC NECESSITY RULES

- (ii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.
- (iii) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.
- (iv) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq.
- (v) An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

Subparts (iii) and (iv) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subpart (iii) which shall read as follows:

- (iii) Continuation or reinstatement of services within ten (10) days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services.

Parts 5. and 6. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new parts 5. and 6. which shall read as follows:

- 5. Expedited appeals shall be concluded within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:
 - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
 - (ii) The enrollee lacks a compelling justification for the requested delay; and
 - (iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.
- 6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:
 - (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;

PUBLIC NECESSITY RULES

- (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:
 - (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug unless such supply would exceed applicable pharmacy limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.
- (iii) When coverage of a prescription drug is denied because the requested drug is not a category or class of drugs covered by TennCare;
- (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
- (v) When a request for reimbursement is denied and the enrollee appeals this denial;
- (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or
- (vii) If TennCare had not paid for the service for which continuation or reinstatement is requested prior to the request.

Subparagraph (h) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

- (h) Expedited appeals.
 - 1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received. If the appeal is not resolved within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety days (90) from the date the appeal is received.
 - 2. Care will only qualify as time-sensitive if the enrollee's treating physician determines that if the enrollee does not receive the care within ninety (90) days:
 - (i) They will be at risk of serious health problems or death.
 - (ii) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
 - (iii) They will need to go to the hospital.
 - 3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not be automatically resolved

PUBLIC NECESSITY RULES

in favor of the enrollee, provided the appeal is resolved within ninety (90) days from the date the appeal is received.

Paragraph (5) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (5) which shall read as follows:

(5) Special Provisions Pertaining to Pharmacy

- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
 - 1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.
 - 2. The drug as prescribed, if the prescribing provider has obtained prior authorization.
 - 3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
 - 4. Subject to the provisions of rule 1200-13-14-.11(1)(d), if the pharmacist is unable to obtain the prescribing physicians approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days or dispensing the 72-hour interim supply.
- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
 - 1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or
 - 2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
 - (i) agents for weight loss or weight gain;
 - (ii) agents to promote fertility or to treat impotence;
 - (iii) agents for cosmetic purposes or hair growth;
 - (iv) agents for the symptomatic relief of coughs and colds;

PUBLIC NECESSITY RULES

- (v) agents to promote smoking cessation;
 - (vi) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
 - (vii) nonprescription drugs;
 - (viii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
 - (ix) barbiturates or benzodiazepines.
3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
 4. If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.
 5. In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.
 6. The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this subsection, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.

Paragraph (7) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (7) which shall read as follows:

- (7) Time Requirements and Corrective Action.
 - (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. Failure by the MCCs to meet these deadlines shall not result in an automatic authorization of the requested service.
 - (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required

PUBLIC NECESSITY RULES

to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee.

- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time-sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time-sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.
- (d) Failure to meet the ninety (90) day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the requirements of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-13-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve of the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.
- (e) When, under the provisions of rule 1200-13-14-.11(7)(d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
 - 1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or
 - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. Corrective action to implement the decision includes:
 - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or

PUBLIC NECESSITY RULES

3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.

In the event that a decision in favor of an enrollee is modified or overturned within ninety (90) days from receipt of such appeal, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.

- (g) In no circumstance will a directive be issued by the TennCare Solutions Unit or an impartial hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by TennCare Solutions Unit if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

Rule 1200-13-14-.13 Member Abuse and Overutilization of the TennCare Program is deleted in its entirety and replaced with a new rule 1200-13-14-.13 which shall read as follows:

1200-13-14-.13 MEMBERS ABUSE AND OVERUTILIZATION OF THE TENNCARE PROGRAM.

- (1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:
 - (a) Forging or altering prescription drugs;
 - (b) Selling TennCare paid prescription drugs;
 - (c) Filing to control pharmacy overutilization activity while on lock-in status; or
 - (d) Visiting multiple prescribers or pharmacies to obtain controlled substances.
- (2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:
 - (a) Criteria for selection of abusive or overutilizing enrollees - Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.
 - (b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.
 - (c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of

PUBLIC NECESSITY RULES

prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.

- (e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.
- (3) Pharmacy lock-in program procedures shall include:
- (a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.
 - (b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.
 - (c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-14-.11.
 - (d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 12th day of June, 2006. (12-40)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE STANDARD**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

These rules are being amended to point out that effective January 1, 2006 persons who are determined to be Severely and/or Persistently Mentally Ill are subject to lifetime limitations. The rules also allow for the discontinuance of coverage of benzodiazepines and barbiturates drugs effective January 1, 2006.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity 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.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES

OF

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

AMENDMENTS

Part 12. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is amended by deleting the last sentence of the first paragraph of the "Benefit for Persons Aged 21 and Older" column so as amended part 12. shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10) or (b) as outpatient hospital services (see 42 CFR §440.20(a))].	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and \$30,000 in substance abuse benefits (inpatient, residential, and outpatient). When medically appropriate and cost effective as determined by the BHO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.

Subparagraph (c) of paragraph (1) of rule 1200-13-14-.04 Covered Services is amended by adding a new part 6. and renumbering the current part 6. as 7. and subsequent parts renumbered accordingly so as amended the new part 6. shall read as follows:

6. Agents which are benzodiazepines or barbiturates.

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 12th day of June, 2006. (12-41)

PUBLIC NECESSITY RULES

TENNESSEE REGULATORY AUTHORITY - 1220

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Public Acts of 2005, Chapter 62 makes certain changes in state law regarding the provision of wastewater services by public utilities. Specifically, amendments to T.C.A. § 65-4-201 require the Tennessee Regulatory Authority to promulgate rules directing the posting of security to ensure the continued operation of public utilities that provide wastewater services. The Legislature mandated that the Tennessee Regulatory Authority shall establish rules, forms, and any necessary standards and procedures to implement certain financial security requirements, and specifically authorized that such forms and rules may be promulgated as public necessity rules. See T.C.A. § 65-4-201(e)(3).

For a complete copy of these public necessity rules, please contact Chairman Ron Jones, Tennessee Regulatory Authority, 460 James Robertson Pkwy., Nashville, TN 37243, telephone 615-741-3668.

J. Richard Collier, General Counsel
Tennessee Regulatory Authority

PUBLIC NECESSITY RULES OF THE TENNESSEE REGULATORY AUTHORITY

NEW RULES

CHAPTER 1220-4-13 WASTEWATER REGULATIONS

TABLE OF CONTENTS

1220-4-13-.01	Application and Purpose
1220-4-13-.02	Definitions
1220-4-13-.03	Retention of Records
1220-4-13-.04	Documents to be Filed with the Authority
1220-4-13-.05	Maps and Records
1220-4-13-.06	Adequacy of Facilities
1220-4-13-.07	Financial Security
1220-4-13-.08	Standard Forms for Filing Financial Security
1220-4-13-.09	Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security
1220-4-13-.10	Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment
1220-4-13-.11	Receiverships or Other Transfers of Operation or Ownership
1220-4-13-.12	Customer Relations
1220-4-13-.13	Customer Billing
1220-4-13-.14	Denying or Discontinuing Service
1220-4-13-.15	Reconnection

PUBLIC NECESSITY RULES

1220-4-13-.01 APPLICATION AND PURPOSE

- (1) These rules shall apply to public wastewater utilities as defined in these rules and in T.C.A. § 65-4-101.
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority: T.C.A. § 65-2-102

1220-4-13-.02 DEFINITIONS

- (1) Authority - Tennessee Regulatory Authority.
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to T.C.A. § 65-4-201 et seq.
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater facility.
- (4) Local government – any political subdivision of the state of Tennessee, including, but not limited to a county or incorporated municipality.
- (5) Public utility or public wastewater utility - any person, partnership, corporation, company, association, receiver or two or more persons having a joint or common interest that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the Authority.
- (6) TDEC – Tennessee Department of Environment and Conservation.
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.
- (8) Reporting Period – the twelve (12) month period from May 1 through April 30, during which actual security costs are netted against security costs that have been recovered (collected) from the customers of the public wastewater utility by means of a rate adjustment established in a tariff that is filed with the Authority each July 1.

Authority: T.C.A. § 65-2-102

1220-4-13-.03 RETENTION OF RECORDS

Unless otherwise specified by the Authority, all records required by these rules shall be preserved for a minimum period of three (3) years. All records shall be kept at the main office of the public wastewater utility in Tennessee and shall be made available to the Authority or its authorized representatives upon request.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

PUBLIC NECESSITY RULES

1220-4-13-.04 DOCUMENTS TO BE FILED WITH THE AUTHORITY

- (1) The public wastewater utility shall file with the Authority the following documents and information, and shall refile such documents to keep such information up to date. Rates, schedules, special contracts, and other charges for, and the utility's operating rules and regulations governing wastewater service shall not become effective until filed with and declared effective by the Authority.
 - (a) A copy of the public wastewater utility's tariff as specified in Rule 1220-4-1-.02 that includes the rates, rules, terms and conditions, and that describes the policies and practices in rendering service that conform to all applicable rules and regulations, shall be filed with the Authority.
 - (b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with T.C.A. § 65-4-201 and these rules.
 - (c) Before initiation of service, the public wastewater utility shall file with the Authority the following:
 1. TDEC approval of the wastewater system design.
 2. As-Built certification by wastewater system's design engineer that states that it was constructed according to plans and specifications approved by TDEC.
 3. TDEC permit for the wastewater system.
 - (d) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and all other requirements established by the Authority.

Authority: T.C.A. §§ 65-2-102; 65-4-104; and 65-4-201

1220-4-13-.05 MAPS AND RECORDS

- (1) Each public wastewater utility shall keep on file in its main office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service of its wastewater system, including a statement of time, duration, and cause of such interruptions.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

PUBLIC NECESSITY RULES

1220-4-13-.06 ADEQUACY OF FACILITIES

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local government agencies to assure, as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to assure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis. These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.
- (3) Each public wastewater utility shall provide service in the area described in its CCN within a reasonable period of time. If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, or finds that extension of service to any such customer could be accomplished only at an unreasonable cost and that addition of the designated service area to that of another provider of wastewater services is economical and feasible, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that public wastewater utility.
- (4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN.
- (5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.
- (6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with T.C.A. § 65-2-106 and after notice and an opportunity to be heard.

Authority: T.C.A. §§ 65-2-102; 65-2-106; 65-4-104; 65-4-203; and 65-4-114

1220-4-13-.07 FINANCIAL SECURITY

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority, prior to providing service to a customer, acceptable financial security in an amount not less than \$20,000 using a format prescribed by the Authority. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity to these rules.
- (2) Proof of financial security shall be furnished to the Authority for review and approval as follows:
 - (a) The amount of financial security required by public wastewater utilities holding a CCN at the time these rules become effective shall be one hundred percent (100%) of the gross annual revenue in the most recent Authority Form UD20 or, if a UD20 has not been filed, the estimated gross annual revenue forecasted in the CCN application submitted to the Author-

PUBLIC NECESSITY RULES

ity. A public wastewater utility holding a CCN at the time these rules become effective shall file proof of the required financial security with the Authority seventy-five (75) days after the effective date of these rules.

- (b) Public wastewater utilities submitting their initial application for a CCN shall be required to present to the Authority, prior to approval of this application, proof of financial security in the amount of one hundred percent (100%) of the forecasted gross annual revenue from the wastewater system project(s) submitted in the application for a CCN.
 - (c) The Authority shall review each subsequent UD20, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.
- (3) Sufficient financial security shall be provided in one of the following manners:
 - (a) A bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee; or
 - (b) An irrevocable letter of credit issued by a financial institution acceptable to the Authority.
- (4) The public wastewater utility shall provide written notification by means of both certified mail (return receipt requested) and regular mail to the Authority and the holder of the financial security at least sixty (60) days prior to any termination action, expiration date for an irrevocable letter of credit that will not be renewed, or the expiration date for a bond of non-perpetual duration that is not to be renewed.
- (5) If the public wastewater utility proposes to post financial security other than that permitted above, a hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.
- (6) Financial securities required by any local government may be considered by the Authority as fulfilling this financial security obligation. The public wastewater utility shall file with the Authority evidence of this financial security and a written request that the Authority consider the security as fulfilling the requirements of this Chapter.
- (7) The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on a case by case basis.
 - (a) Each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the pass-through mechanism. The tariff filing shall contain a price-out calculation (number of customers multiplied by the pass-through mechanism) supporting the amount of increase proposed and the percentage increase this represents. This supporting calculation shall be based on the cost of the financial security to the public wastewater utility, the number of customers forecasted for the ensuing twelve (12) month period of operations, and the current approved monthly customer rates. Where applicable, a separate increase shall be calculated for residential and commercial customers.

PUBLIC NECESSITY RULES

1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.
 2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff shall be submitted to the Authority with the CCN application.
- (b) On July 1 of each year, each public wastewater utility shall file proof of security and a tariff with the Authority for its consideration, containing a true-up calculation for the preceding reporting period and updating the financial security pass-through percentage calculation going forward. The tariff filing shall include, but not be limited to, the following:
1. The actual financial security costs for the most recent twelve (12) month reporting period ended April 30. For the first year this rule is in effect and the first year of operations in the case of a new CCN or amended CCN, the true-up calculation shall be based on the actual months the security was in effect during the reporting period ended April 30.
 2. The actual financial security costs collected from its customers during the previous twelve (12) months reporting period or part thereof.
 3. A true-up calculation to establish the amount of refund or surcharge due to or required from its customers going forward. Any residual over-collection or under-collection from the prior reporting period shall be subtracted from or added to the estimated financial security cost to calculate the rate adjustment in effect for the remainder of the next twelve (12) month reporting period.
 4. The new rate adjustment stated as an amount to be reflected on a customer's bill and the corresponding percentage adjustment.
- (8) Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. Public wastewater utility employees having signature authority over such account may be subject to a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (9) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within eighteen (18) months from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of the effective date of these rules to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in this Chapter. The financial condition of any applicant seeking a CCN to provide wastewater service after the effective date of these rules shall be reviewed by the Authority and a determination shall be made regarding the establishment of a reserve/escrow account during the CCN application process. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305

PUBLIC NECESSITY RULES

1220-4-13-.08 STANDARD FORMS FOR FILING FINANCIAL SECURITY

- (1) The following is a form to be used by wastewater service providers under the jurisdiction of the Tennessee Regulatory Authority when filing a corporate surety bond pursuant to this Chapter.

CORPORATE SURETY BOND

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

REFERENCE: Name of Company authorized by TRA:

Company ID # as assigned by the TRA:

Corporate Surety Bond #:

Effective Date:

Expiration Date:

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of Tennessee in the sum of _____ Dollars (\$ _____), and Principal and Surety hereby bind themselves, their successors and assigns, to pay in accordance with the following terms:

THE CONDITION OF THIS BOND IS:

The Principal is or intends to become a public wastewater utility subject to the laws of the State of Tennessee and the rules and regulations of the Tennessee Regulatory Authority ("Authority"), relating to the operation of a public wastewater utility: (describe utility and location

_____).

Tennessee Code Annotated § 65-4-201 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Authority, conditioned as prescribed in Tenn. Comp. R. & Regs. Chapter 1220-4-13.

The Principal and Surety have delivered to the Authority a Surety Bond with an endorsement as required by the Authority.

After notice to the Principal and Surety and a contested case hearing that results in the suspension or revocation of the Principal's Certificate of Public Convenience and Necessity (CCN), the replacement of an operator by the Authority, or the appointment of a receiver by a court, the Authority may assess a sum sufficient of this bond, up to its maximum sum, to enable the continued operation of the public wastewater utility.

The Principal and the Surety are held and firmly bound to the State of Tennessee, in accordance with the provisions of Tenn. Comp. R. & Regs. Chapter 1220-4-13, in the amount of _____ Dollars (\$_____) lawful money of the United States of America to be used for the full and prompt payment of any monetary obligation imposed against the Principal, its representatives, successors or assigns, in any contested case proceeding brought under Chapter 1220-4-13, by or on behalf of the Authority, for which obligation the Principal and the Surety bind themselves, their representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.

PUBLIC NECESSITY RULES

Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, and delivery to the Surety of a Bond Notice, substantially in the form set forth below ("Notice"), the Surety promises to pay, by wire transfer of immediately available funds, the amount of the monetary obligation as stated in the Order and Notice.

If for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Tennessee Regulatory Authority, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period.

Failure to renew the Surety Bond shall operate to forfeit the Surety Bond, without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or CCN. In such an event and upon a directive from the Authority, the Surety agrees to deposit the maximum sum of this Surety Bond with the administrator of the Authority's bonding program to enable the continued operation of the public wastewater utility.

The bond shall become effective after execution by the Principal and Surety and upon filing with the Authority, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Authority in writing.

The Principal and Surety consent to the conditions of this Bond and agree to be bound by them.

This ____ day of _____ 20__.

(Principal)

(Surety)

By: _____

FORM OF BOND NOTICE

(Name of Surety)
(Address)

Re: Bond No. (____)

Dear Sir or Madam:

You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (Principal) its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.

PUBLIC NECESSITY RULES

Pursuant to the bond referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:

Name of Bank Account:
Account Number:
ABA Routing Number:
Reference:
Name of Contact:
Telephone Number:
Facsimile Number:

Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.

Sincerely,

TENNESSEE REGULATORY AUTHORITY

Name:
Title:

- (2) The following is a form to be used by wastewater service providers under the jurisdiction of the Tennessee Regulatory Authority when filing an irrevocable letter of credit pursuant to this Chapter.

LETTER OF CREDIT

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

REFERENCE: Name of Company authorized by TRA:

Company ID # as assigned by the TRA:
Irrevocable Letter of Credit #:
Effective Date:

Sir/Madam:

You have requested of (name of Financial Institution, hereinafter called the "Lender") that we establish an irrevocable letter of credit which will remain available on behalf of (name of the Principal, hereinafter the "Company") who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the state of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp. R. & Regs. Chapter 1220-4-13 by or on behalf of the Authority.

PUBLIC NECESSITY RULES

We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of _____ Dollars (\$ _____) lawful money of the United States of America. Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be canceled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.

Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state funds.

Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.

Very Truly Yours,
(Name of Lending Institution)
Name:
Title:
Address of Lender:

APPROVAL AND ENDORSEMENT

This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this ____ day of _____, 20____.

Name:
Title:

FORM OF LETTER OF CREDIT NOTICE

(Name of Lender)
(Address)

Re: Irrevocable Letter of Credit No. (____)

PUBLIC NECESSITY RULES

Dear Sir or Madam:

You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (Principal), its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.

Pursuant to the Irrevocable Letter of Credit referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:

Name of Bank Account:
Account Number:
ABA Routing Number:
Reference:
Name of Contact:
Telephone Number:
Facsimile Number:

Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.

Sincerely,

TENNESSEE REGULATORY AUTHORITY

Name:
Title:

Authority: T.C.A. §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201

1220-4-13-.09 PROCEDURE FOR SUSPENSION OR REVOCATION OF CCN, FORFEITURE OF WASTE-WATER UTILITY FUNDS, AND CLAIMS AGAINST FINANCIAL SECURITY

- (1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good cause that may include suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.
- (2) Good cause shall include, but is not limited, to the following:
 - (a) A finding by the Authority of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same.
 - (b) A finding by the Authority of:

PUBLIC NECESSITY RULES

1. Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the public wastewater utility;
 2. Criminal conduct on the part of the public wastewater utility;
 3. Actual, threatened or impending insolvency of the public wastewater utility;
 4. Actual or threatened abandonment of the public wastewater utility by its owners or its operators;
 5. Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility; or
 6. Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.
- (3) In addition to the above, the Authority may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:
- (a) Whether, to the extent practicable, service to customers will remain uninterrupted under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court;
 - (b) Whether there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; and
 - (c) Such other factors as the Authority deems relevant to the determination to suspend or revoke a CCN.
- (4) Proceedings before the Authority for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with T.C.A. § 65-2-106 and after notice and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public. In such exigent circumstances, the Authority may order the summary suspension of the CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320.

The Authority will not seek to suspend or revoke a public wastewater utility's CCN, to forfeit the wastewater utility funds, or make a claim against the public wastewater utility's financial security for good cause without first affording the public wastewater utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for such action unless:

- (a) the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public; or
- (b) a public wastewater utility is unable to provide safe, adequate, and reliable wastewater service.

PUBLIC NECESSITY RULES

Authority: T.C.A. §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201

1220-4-13-.10 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to T.C.A. § 65-4-109.
- (2) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer, merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.
- (3) The Petition filed with the Authority shall include the following:
 - (a) The name, address, and telephone number of the public wastewater utility.
 - (b) The identity of the person(s) to contact regarding the Petition with their address, telephone number, and fax number.
 - (c) The location of the public wastewater utility's books and records.
 - (d) The purpose and filing date of the Petition.
 - (e) The proposed effective date of the transaction.
 - (f) The name, address, and telephone number of any potential buyer.
 - (g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.
 - (h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.
 - (i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.
 - (j) A statement detailing the effect of the transaction upon customers.
 - (k) A copy of the customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no less than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, the

PUBLIC NECESSITY RULES

Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider of wastewater services. Good cause includes, but is not limited to, evidence that the current provider is no longer providing wastewater service in Tennessee.

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-112, and 65-4-113

1220-4-13-.11 RECEIVERSHIPS OR OTHER TRANSFERS OF OPERATION OR OWNERSHIP

- (1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-.09 above, the funds of that public wastewater utility, including escrow accounts and any other financial security posted under this rule, shall be subject to forfeiture, after notice and hearing, in the event that the public wastewater utility goes into receivership or is transferred, for any reason, to another owner or operator. In addition, after notice and hearing, the Authority may take the following actions:
 - (a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:
 1. Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 2. Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
 - (b) Petition the appropriate court for the appointment of a receiver that has demonstrated the ability to:
 1. Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 2. Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
- (2) Before taking such action as provided in subparagraphs (1)(a) or (b), the Authority shall give notice of the hearing to the following:
 - (a) The subject public wastewater utility.
 - (b) Other public wastewater utilities in Tennessee.
 - (c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.
 - (d) Holder of the security.
- (3) An order under subparagraph (1)(a) shall provide:
 - (a) that the entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition; and

PUBLIC NECESSITY RULES

- (b) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.
- (4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
 - (a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
 - (c) Other incentives to the entity acquiring the subject public wastewater utility.
- (5) If a receiver is appointed by the court as provided in subparagraph (1)(b), the Authority authorizes the receiver to:
 - (a) Have the same rights and duties under Tennessee law as a public wastewater utility.
 - (b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility
 - 1. has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and
 - 2. has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.
- (6) Upon appointment of a receiver or transfer to another owner or operator, the receiver or new owner or operator shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer.
- (7) If a receiver is appointed by the court:
 - (a) The receiver shall, within thirty (30) days of appointment, file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver;
 - (b) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board;
 - (c) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority; and
 - (d) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).
- (8) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-2-106; and 65-4-114

PUBLIC NECESSITY RULES

1220-4-13-.12 CUSTOMER RELATIONS

Each public wastewater utility shall comply with applicable provisions of Rule 1220-4-3-.14 including, but not limited to, the following:

- (1) Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.
- (2) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints that are received by the public wastewater utility. If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue, the time, the date, and the action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request.
- (3) Each public wastewater utility, within ten (10) business days after being notified of a customer complaint filed with the Consumer Services Division of the Authority, shall file a written response to that complaint with the Authority's Consumer Services Division.
- (4) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
- (5) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: T.C.A. §§ 65-2-102 and 65-4-104.

1220-4-13-.13 CUSTOMER BILLING

- (1) The Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility before customers are charged for wastewater services. All bills for wastewater service shall state how the charge is calculated. The bill/statement shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule 1220-4-3-.16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall not send a customer two successive estimated bills, except due to extenuating circumstances.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at the time of service. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g., high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.

PUBLIC NECESSITY RULES

- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which the service was not provided. The public wastewater utility may refund the amount owed as a credit toward the customer's subsequent bill for service. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule 1220-4-3-.18. The public wastewater utility shall retain customer billing records for not less than three (3) years.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

1220-4-13-.14 DENYING OR DISCONTINUING SERVICE

- (1) No public wastewater utility shall deny or discontinue service to any customer without first providing notice to the customer and diligently trying to induce the customer to comply with its rules and regulations; provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority. A customer who has had service denied or discontinued has the right to a contested case hearing.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either:
 - (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (a) Non-payment for service by a previous occupant of the premises to be served.

PUBLIC NECESSITY RULES

- (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
- (c) Failure to pay the bill of another customer as guarantor thereof.
- (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

1220-4-13-.15 RECONNECTION

The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of December, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 12th day of June, 2006. (12-36)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF WATER POLLUTION CONTROL

There will be a series of hearings before representatives of the Water Quality Control Board to consider the promulgation of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-105 (1), 69-3-105 (3), and 69-3-107 (11). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-202, 4-5-203, and 4-5-204 inclusive and will take place at the following location and time:

<u>DATE</u>	<u>SITE</u>	<u>HEARING LOCATION</u>	<u>TIME</u>
Monday, February 27 th	Jackson	JEA Training Center Jackson Energy Authority 606 South Royal St. Jackson, Tennessee 38301	1:30 p.m. CST
Tuesday, February 28 th	Chattanooga	First Floor Auditorium Chattanooga State Office Building 540 McCallie Avenue Chattanooga, TN 37402	1:30 p.m. EST
Wednesday, March 1 st	Knoxville	Conference Room East Knoxville Environmental Field Office 2700 Middlebrook Pike Knoxville, TN 37921	1:30 p.m. EST
Thursday, March 2 nd	Kingsport	Auditorium Warriors' Path State Park Hemlock Road Kingsport, TN 37663	1:30 p.m. EST
Friday, March 3 rd	Nashville	Ruth Neff Conference Room Tennessee Department of Environment And Conservation 401 Church Street, L & C Tower Nashville, TN 37243	1:30 p.m. CST

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Environment and Conservation's ADA Coordinator at 12th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, (615) 532-0200.

RULEMAKING HEARINGS

SUBSTANCE OF PROPOSED RULES

RULES OF THE WATER QUALITY CONTROL BOARD CHAPTER 1200-4-14

- 1200-4-14-.01 Purpose and applicability.
- 1200-4-14-.02 Objectives of general pretreatment regulations.
- 1200-4-14-.03 Definitions.
- 1200-4-14-.04 State or local law.
- 1200-4-14-.05 National pretreatment standards: Prohibited discharges.
- 1200-4-14-.06 National pretreatment standards: Categorical standards.
- 1200-4-14-.07 Removal credits.
- 1200-4-14-.08 Pretreatment Program Requirements: Development and Implementation by WWF.
- 1200-4-14-.09 WWF pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.
- 1200-4-14-.10 Reserved
- 1200-4-14-.11 Approval procedures for WWF pretreatment programs and WWF granting of removal credits.
- 1200-4-14-.12 Reporting requirements for WWF's and industrial users.
- 1200-4-14-.13 Variances from categorical pretreatment standards for fundamentally different factors.
- 1200-4-14-.14 Confidentiality.
- 1200-4-14-.15 Net/Gross calculation.
- 1200-4-14-.16 Upset provision.
- 1200-4-14-.17 Bypass.
- 1200-4-14-.18 Modification of WWF pretreatment programs.

Appendixes A-C to Part 403 [Reserved]

Appendix D to Part 403—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

Appendix E to Part 403—Sampling Procedures

Appendix F to Part 403 [Reserved]

Appendix G to Part 403—Pollutants Eligible for a Removal Credit

1200-4-14-.01 PURPOSE AND APPLICABILITY.

- (1) This rule chapter establishes responsibilities of State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in domestic wastewater facilities (WWF) or which may contaminate sewage sludge.
- (2) This regulation applies:
 - (a) To pollutants from non-domestic sources covered by Pretreatment Standards which are discharged into or transported by truck or rail or otherwise introduced into WWFs as defined below in 1200-4-14-.03;
 - (b) To WWFs which receive wastewater from sources subject to National Pretreatment Standards;

RULEMAKING HEARINGS

- (c) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a WWF Treatment Plant.

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

1200-4-14-.02 OBJECTIVES OF GENERAL PRETREATMENT REGULATIONS.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

- (1) To prevent the introduction of pollutants into WWFs which will interfere with the operation of a WWF, including interference with its use or disposal of municipal sludge;
- (2) To prevent the introduction of pollutants into WWFs which will pass through the treatment works or otherwise be incompatible with such works; and
- (3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

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

1200-4-14-.03 DEFINITIONS.

For the purposes of this part:

- (1) The term Administrator means the Administrator of the United States Environmental Protection Agency.
- (2) The term Approval Authority means the Division of Water Pollution Control Director or his/her representative(s).
- (3) The term Approved WWF Pretreatment Program or Program or WWF Pretreatment Program means a program administered by a WWF that meets the criteria established in this regulation and which has been approved by the Division.
- (4) The term Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 1200-4-14-.05(1)(a) and (2). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
- (5) The term blowdown means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.
- (6) The term Control Authority refers to the WWF with an approved pretreatment program.
- (7) The term Director means the chief administrative officer of the Division.

RULEMAKING HEARINGS

- (8) The term discharge of pollutant(s) means: (1) the addition of any pollutant to navigable water from any point source and (2) any addition of any pollutant to the waters of the contiguous zone from any point source, other than from a vessel or other floating craft. The term "discharge" includes either the discharge of a single pollutant or the discharge of multiple pollutants.
- (9) The term Division means the Tennessee Division of Water Pollution Control, or the Division's successor.
- (10) The term effluent limitation means any restriction established by the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.
- (11) The term effluent limitations guidelines means any effluent limitations guidelines issued by the Administrator pursuant to section 304(b) of the Federal Clean Water Act.
- (12) The term Environmental Protection Agency means the United States Environmental Protection Agency.
- (13) The term Federal Clean Water Act means the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251, et seq.
- (14) The term Indirect Discharge or Discharge means the introduction of pollutants into a WWF from any non-domestic source.
- (15) The term Industrial User or User means a source of Indirect Discharge.
- (16) The term Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
 - (a) Inhibits or disrupts the WWF, its treatment processes or operations, or its sludge processes, use or disposal; and
 - (b) Therefore is a cause of a violation of any requirement of the WWF's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.
- (17) The terms interstate agency, municipality, person, territorial seas, contiguous zone, biological monitoring, and schedule of compliance shall be defined in accordance with section 502 of the Federal Clean Water Act unless the context otherwise requires.
- (18) The term National Pretreatment Standard, Pretreatment Standard, or Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 1200-4-14-.05.

RULEMAKING HEARINGS

(19) The term navigable waters includes: all navigable waters of the United States; tributaries of navigable waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers and streams from which fish or shellfish are taken and sold in interstate commerce; and intrastate lakes, rivers and streams which are utilized for industrial purposes by industries in interstate commerce. Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Federal Clean Water Act, the final authority regarding Federal Clean Water Act jurisdiction remains with EPA.

(20) The term New Source means

- (a) any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:
 - 1. The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - 2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - 3. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of parts (a)2. or (a)3. of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.
- (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - 1. Begun, or caused to begin as part of a continuous onsite construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment; or
 - (ii) Significant site preparation work including cleaning, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - 2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

RULEMAKING HEARINGS

- (21) The term noncontact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, water product or finished product.
- (22) The terms NPDES Permit or Permit means a permit issued to a WWF pursuant to section 402 of the Federal Clean Water Act.
- (23) The term Pass Through means a Discharge which exits the WWF into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the WWF's NPDES permit (including an increase in the magnitude or duration of a violation).
- (24) The term Person means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any state or country.
- (25) The term point source means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (26) The term pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. It does not mean (1) sewage from vessels or (2) water, gas or other material which is injected into a well to facilitate production of oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purposes, is approved by authority of the State and if determined by the State that such injection or disposal will not result in degradation of ground or surface water resources.
- (27) The term pollution means the man-made or man induced alteration of the chemical, physical, biological and radiological integrity of water.
- (28) The term Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a WWF. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 1200-4-14-.06(4). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the WWF. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 1200-4-14-.06(5).
- (29) The term Pretreatment requirements means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.
- (30) The term process waste water means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.
- (31) The term process waste water pollutants means pollutants present in process waste water.

RULEMAKING HEARINGS

(32) The term Regional Administrator means the appropriate EPA Regional Administrator.

(33) The term Significant Industrial User means:

(a) Except as provided in subparagraph (33)(b) of this paragraph, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and
2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the WWF (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the WWF treatment plant; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement (in accordance with 1200-4-14-.08(6)(f)).

(b) Upon a finding that an industrial user meeting the criteria in (a)2. of this paragraph has no reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an industrial user or WWF, and in accordance with 1200-4-14-.08(6)(f), determine that such industrial user is not a significant industrial user.

The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under 1200-4-14-.06 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

the Industrial User, prior to Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

the Industrial User annually submits the certification statement required in 1200-4-14-.12(17) together with any additional information necessary to support the certification statement; and

the Industrial User never discharges any untreated concentrated wastewater.

(34) The term standard of performance means any restriction established by the Administrator pursuant to section 306 of the Federal Clean Water Act on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are or may be discharged from new sources into navigable waters, the waters of the contiguous zone or the ocean.

(35) The term Submission means:

(a) A request by a WWF for approval of a Pretreatment Program to the Director; or

RULEMAKING HEARINGS

- (b) A request by a WWF to the Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect WWF pollutant removals.
- (36) The term WWF Treatment Plant means that portion of the WWF which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.
- (37) The term Wastewater Facility or WWF means any or all of the following: the collection/transmission system, treatment plant, and the reuse or disposal system, which is owned by any person. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a WWF Treatment Plant. The term also means the municipality as defined in section 502(4) of the Federal Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.
- (38) The term Water Management Division Director means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

The following abbreviations shall have the following meanings:

BOD5 means five-day biochemical oxygen demand;

COD means chemical oxygen demand;

TOC means total organic carbon;

TDS means total dissolved solids;

TSS means total suspended nonfilterable solids;

kw means kilowatt(s);

kwh means kilowatt hour(s);

Mw means megawatt(s);

Mwh means megawatt hour(s);

hp means horsepower;

mm means millimeter(s);

cm means centimeter;

m means meter(s);

in means inch;

ft means foot (feet);

l means liter(s);

cu m means cubic meter(s);

k cu m means 1000 cubic meter(s);

gal means gallon(s);

cu ft means cubic foot (feet);

mg means milligrams(s);

g means gram(s);

kg means kilograms(s);

kkg means 1000kilogram(s);

lb means pound(s);

sq m means square meter(s);

ha means hectare(s);

sq ft means square foot (feet); and

ac means acre(s)

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

RULEMAKING HEARINGS

1200-4-14-.04 LOCAL LAW.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National or State Pretreatment Standards, or any other requirements or prohibitions established by the Department.

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

1200-4-14-.05 PRETREATMENT STANDARDS: PROHIBITED DISCHARGES.

(1) General prohibitions

- (a) A User may not introduce into a WWF any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (2) of this rule apply to each User introducing pollutants into a WWF whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.
- (b) Affirmative Defenses. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subparagraph (1)(a) of this rule and the specific prohibitions in subparagraphs (2)(c), (2)(d), (2)(e), (2)(f), and (2)(g) of this rule where the User can demonstrate that:
 - 1. It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and
 - 2. A local limit designed to prevent Pass Through and/or Interference, as the case may be, fits one of the following descriptions:
 - (i) The local limit was developed in accordance with paragraph (3) of this rule for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or
 - (ii) The local limit has not been developed in accordance with paragraph (3) of this rule for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the WWF was regularly in compliance with the WWF's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(2) Specific prohibitions. In addition, the following pollutants shall not be introduced into a WWF:

- (a) Pollutants which create a fire or explosion hazard in the WWF, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

RULEMAKING HEARINGS

- (b) Pollutants which will cause corrosive structural damage to the WWF, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;
 - (c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the WWF resulting in Interference;
 - (d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the WWF.
 - (e) Heat in amounts which will inhibit biological activity in the WWF resulting in Interference, but in no case heat in such quantities that the temperature at the WWF Treatment Plant exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the WWF, approves alternate temperature limits.
 - (f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
 - (g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the WWF in a quantity that may cause acute worker health and safety problems;
 - (h) Any trucked or hauled pollutants, except at discharge points designated by the WWF.
- (3) When specific limits must be developed by WWF.
- (a) Each WWF developing a WWF Pretreatment Program pursuant to 1200-4-14-.08 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (1)(a) and (2) of this rule. Each WWF with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.
 - (b) All other WWF's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the WWF Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the WWF's NPDES permit or sludge use or disposal practices.
 - (c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.
 - (d) POTWs may develop Best Management Practices (BMPs) to implement subparagraphs (3)(a) and (3)(b) of this paragraph. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this rule chapter.
- (4) Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a WWF in accordance with paragraph (3) above, such limits shall be deemed Pretreatment Standards for the purposes of this rule chapter.
- (5) State enforcement actions. If, within 30 days after notice of an Interference or Pass Through violation has been sent by the Division to the WWF, and to persons or groups who have requested such notice, the WWF fails to commence appropriate enforcement action to correct the violation, the Division may take appropriate enforcement action under the authority provided in _____.

RULEMAKING HEARINGS

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

1200-4-14-.06 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS.

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a WWF by existing or new industrial users in specific industrial subcategories are established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this rule chapter.

(1) Category Determination Request

- (a) **Application Deadline.** Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or WWF may request that the Division provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a WWF, the WWF shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the WWF submission to the Division within 30 days of notification.

(b) **Contents of Application.** Each request shall contain a statement:

- 1. Describing which subcategories might be applicable; and
- 2. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- (c) **Deficient requests.** The Division will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Division that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Division, the request for a determination shall be denied.
- (d) **Final decision.**

RULEMAKING HEARINGS

1. Under receipt of a complete request, the Division will consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Division will then make a written determination of the applicable subcategory and state the reasons for the determination.
 2. The Division shall forward the determination described in this paragraph to the EPA Water Management Division Director who may make a final determination. The EPA Water Management Division Director may waive receipt of these determinations. If the EPA Water Management Division Director does not modify the Division's decision within 60 days after receipt thereof, or if the EPA Water Management Division Director waives receipt of the determination, the Division's decision is final.
 3. Where the EPA Water Management Division Director elects to modify the Division's decision, the EPA Water Management Division Director's decision will be final.
 4. The Division shall send a copy of the determination to the affected Industrial User and the WWF.
- (e) Requests for hearing and/or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by part (d)4. of this subparagraph, the Requester may submit a petition to reconsider or contest the decision to the Division Director who shall act on such petition expeditiously and state the reasons for his or her determination in writing.
- (2) Deadline for Compliance with Categorical Standards. Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in 1200-4-14-.03(20). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.
- (3) Concentration and mass limits.
- (a) Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.
 - (b) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.
 - (c) A Control Authority calculating equivalent mass-per-day limitations under subparagraph (3)(b) of this paragraph shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be

RULEMAKING HEARINGS

based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

- (d) A Control Authority calculating equivalent concentration limitations under subparagraph (3)(b) of this paragraph shall calculate such limitations by dividing the mass limitations derived under subparagraph (3)(c) of this paragraph by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.
- (e) When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions in subparts (3)(e)1.(i) through (c)(e)1.(v) of this subparagraph.

1. To be eligible for equivalent mass limits, the Industrial User must:

- (i) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
- (ii) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
- (iii) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
- (iv) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
- (v) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

2. An Industrial User subject to equivalent mass limits must:

- (i) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- (ii) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

RULEMAKING HEARINGS

- (iii) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subpart (3)(e)1.(iii) of this subparagraph. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - (iv) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subpart (3)(e)1.(i) of this section so long as it discharges under an equivalent mass limit.
- 3. A Control Authority which chooses to establish equivalent mass limits:
 - (i) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
 - (ii) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
 - (iii) May retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to paragraph (4) of this rule. The Industrial User must also be in compliance with 1200-4-14-.17 (regarding the prohibition of bypass).
- 4. The Control Authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.
- (f) The Control Authority may convert the mass limits of the categorical Pretreatment Standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users under the following conditions. When converting such limits to concentration limits, the Control Authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by paragraph (4) of this rule.
- (g) Equivalent limitations calculated in accordance with subparagraphs (3)(c), (3)(d), (3)(e) and (3)(f) of this paragraph are deemed Pretreatment Standards for the purposes of section 307(d) of the Federal Clean Water Act and this rule chapter. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.
- (h) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production

RULEMAKING HEARINGS

or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

- (i) Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.
- (4) Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.
- (5) Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.
- (a) Alternative limit calculation. For purposes of these formulas, the “average daily flow” means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

- 1. Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

RULEMAKING HEARINGS

where

CT=the alternative concentration limit for the combined wastestream.

Ci=the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i. Fi=the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant. FD=the average daily flow (at least a 30-day average) from:

(a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
 - (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
 - (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
 - (4) The wastestream contains only pollutants which are compatible with the WWF (paragraph (8)(b)(i)).
- FT=The average daily flow (at least a 30-day average) through the combined treatment facility (includes Fi, FD and unregulated streams). N=The total number of regulated streams.

2. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^N M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)$$

RULEMAKING HEARINGS

where

MT=the alternative mass limit for a pollutant in the combined wastestream.
Mi=the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production). Fi=the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant. FD=the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
- (4) The wastestream contains only pollutants which are compatible with the WWF (paragraph (8)(b)(i)).

FT=The average flow (at least a 30-day average) through the combined treatment facility (includes Fi, FD and unregulated streams). N=The total number of regulated streams.

- (b) Alternate limits below detection limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.
- (c) Self-monitoring. Self-monitoring required to ensure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 1200-4-14-.12(7).
- (d) Choice of monitoring location. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream,

RULEMAKING HEARINGS

it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

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

1200-4-14-.07 REMOVAL CREDITS.

(1) Introduction

(a) Definitions. For the purpose of this section:

1. Removal means a reduction in the amount of a pollutant in the WWF's effluent or alteration of the nature of a pollutant during treatment at the WWF. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed WWF capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the WWF.
2. Sludge Requirements shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) and State regulations contained in any State sludge management plan prepared pursuant to subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(b) General. Any WWF receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the WWF of pollutants specified in the categorical Pretreatment Standard(s). The WWF may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with subparagraph (1)(d) of this paragraph. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.

(c) Conditions for authorization to give removal credits. A WWF is authorized to give removal credits only if the following conditions are met:

1. Application. The WWF applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (5) of this rule.
2. Consistent removal determination. The WWF demonstrates and continues to achieve consistent removal of the pollutant in accordance with paragraph (2) of this rule.

RULEMAKING HEARINGS

3. WWF local pretreatment program. The WWF has an approved pretreatment program in accordance with and to the extent required by this rule chapter; provided, however, a WWF which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (4) of this rule.
 4. Sludge requirements. The granting of removal credits will not cause the WWF to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the WWF. Alternatively, the WWF can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a WWF to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants.
 - (i) For any pollutant listed in appendix G section I of this part for the use or disposal practice employed by the WWF, when the requirements in 40 CFR part 503 for that practice are met.
 - (ii) For any pollutant listed in appendix G section II of this part for the use or disposal practice employed by the WWF when the concentration for a pollutant listed in appendix G section II of this part in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in appendix G section II of this part.
 - (iii) For any pollutant in sewage sludge when the WWF disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR part 258.
 5. NPDES permit limitations. The granting of removal credits will not cause a violation of the WWF's permit limitations or conditions. Alternatively, the WWF can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s), as modified by the removal credit provision.
- (d) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$Y=X/(1-r)$$

where:

x=pollutant discharge limit specified in the applicable categorical Pretreatment Standard
r=removal credit for that pollutant as established under paragraph (2) of this rule (percentage removal expressed as a proportion, i.e., a number between 0 and 1)
y=revised discharge limit for the specified pollutant expressed in same units as x)

RULEMAKING HEARINGS

(2) Establishment of Removal Credits; Demonstration of Consistent Removal

- (a) **Definition of Consistent Removal.** “Consistent Removal” shall mean the average of the lowest 50 percent of the removal measured according to subparagraph (2)(b) of this paragraph. All sample data obtained for the measured pollutant during the time period prescribed in subparagraph (2)(b) of this paragraph must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the WWF at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term “measurement” refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.
- (b) **Consistent Removal Data.** Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in subparagraph (2)(a) of this paragraph, which demonstrates Consistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:
 - 1. **Representative Data; Seasonal.** The data shall be representative of yearly and seasonal conditions to which the WWF is subjected for each pollutant for which a discharge limit revision is proposed.
 - 2. **Representative Data; Quality and Quantity.** The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in subparagraph (2)(a) of this paragraph.
 - 3. **Sampling Procedures: Composite.**
 - (i) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.
 - (ii) **Sampling frequency and historical data.**
 - (I) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the WWF Treatment Plant, the Control Authority must submit an alternative sampling schedule for approval. The alternative sampling

RULEMAKING HEARINGS

schedule shall not be implemented until written approval is obtained from the Division.

- (II) In addition, upon the Approval Authority's concurrence, a WWF may utilize an historical data base amassed prior to the effective date of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical database to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.
 - (iii) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the WWF elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual WWF operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.
- 4. Sampling Procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.
 - 5. Analytical methods. The sampling referred to in parts (2)(b)1. through 4. of this subparagraph and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Director determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the WWF or other parties, approved by the Director.
 - 6. Calculation of removal. All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the WWF and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.
- (3) Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the WWF may apply for authorization to give removal credits prior

RULEMAKING HEARINGS

to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (2) of this rule. If, within 18 months after the commencement of the discharge of the pollutant in question, the WWF cannot demonstrate consistent removal pursuant to the requirements of paragraph (2) of this rule, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

- (4) Exception to WWF Pretreatment Program Requirement. A WWF required to develop a local pretreatment program by 1200-4-14-.08 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:
- (a) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the WWF the information required in 1200-4-14-.12(2)(a) through (g) (except new or modified industrial users must only submit the information required by 1200-4-14-.12(2)(a) through (f)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit;
 - (b) The WWF must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of 1200-4-14-.08 and 1200-4-14-.09 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the WWF's NPDES permit;
 - (c) The WWF must:
 - 1. Compile and submit data demonstrating its consistent removal in accordance with paragraph (2) of this rule;
 - 2. Comply with the conditions specified in subparagraph (1)(c) of this paragraph; and
 - 3. Submit a complete application for removal credit authority in accordance with paragraph (5) of this rule;
 - (d) If a WWF receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the WWF failed to comply with the conditions in subparagraphs (4)(b) and (c) of this paragraph, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.
 - (e) If a WWF grants conditional removal credits and the WWF or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in subparagraph (4)(a) of this paragraph, the conditional credit shall be terminated by the WWF or the Approval Authority for the non-complying Industrial

RULEMAKING HEARINGS

User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.

- (f) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of 1200-4-14-.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereunder.
- (5) WWF application for authorization to give removal credits and Approval Authority review—
- (a) Who must apply. Any WWF that wants to give a removal credit must apply for authorization from the Approval Authority.
 - (b) To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the WWF to the Approval Authority.
 - (c) When to apply. A WWF may apply for authorization to give or modify removal credits at any time.
 - (d) Contents of the Application. An application for authorization to give removal credits must be supported by the following information:
 - 1. List of pollutants. A list of pollutants for which removal credits are proposed.
 - 2. Consistent Removal Data. The data required pursuant to paragraph (2) of this rule.
 - 3. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of Industrial Users calculated in accordance with subparagraph (1)(d) of this rule.
 - 4. Local Pretreatment Program Certification. A certification that the WWF has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (4) of this rule.
 - 5. Sludge Management Certification. A specific description of the WWF's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in part (1)(c)4. of this rule.
 - 6. NPDES Permit Limit Certification. A certification that the granting of removal credits will not cause a violation of the WWF's NPDES permit limits and conditions as required in part (1)(c)5. of this rule.
 - (e) Approval Authority Review. The Approval Authority shall review the WWF's application for authorization to give or modify removal credits in accordance with the procedures of 1200-4-14-.11 and shall, in no event, have more that 180 days from public notice of an application to complete review.

RULEMAKING HEARINGS

- (f) EPA review of State removal credit approvals. Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to WWF's except to the extent 40 CFR 123.24(d) allows such restriction.
 - (g) Nothing in these regulations precludes an Industrial User or other interested party from assisting the WWF in preparing and presenting the information necessary to apply for authorization.
- (6) Continuation and withdrawal of authorization—
- (a) Effect of authorization. Once a WWF has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the WWF to violate the sludge requirements identified in part (1)(c)4. of this rule or its NPDES permit limits and conditions as required by part (1)(c)5. of this rule. If a WWF elects at a later time to extend removal credits to a certain categorical Pretreatment Standard, industrial subcategory or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.
 - (b) Inclusion in WWF permit. Once authority is granted, the removal credits shall be included in the WWF's NPDES Permit as soon as possible and shall become an enforceable requirement of the WWF's NPDES permit. The removal credits will remain in effect for the term of the WWF's NPDES permit, provided the WWF maintains compliance with the conditions specified in subparagraph (6)(d) of this paragraph.
 - (c) Compliance monitoring. Following authorization to give removal credits, a WWF shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the WWF's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the WWF's compliance report.
 - (d) Modification or withdrawal of removal credits
 - 1. Notice of WWF. The Approval Authority shall notify the WWF if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:
 - (i) That one or more of the discharge limit revisions made by the WWF, of the WWF itself, no longer meets the requirements of this section, or
 - (ii) That such discharge limit revisions are causing a violation of any conditions or limits contained in the WWF's NPDES Permit.
 - 2. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the WWF or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

RULEMAKING HEARINGS

3. Public notice of withdrawal or modification. The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the WWF and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority.
- (7) Compensation for overflow. "Overflow" means the intentional or unintentional diversion of flow from the WWF before the WWF Treatment Plant. WWFs which at least once annually Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either subparagraph (7)(a) or (7)(b) of this paragraph. However, this paragraph shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the WWF Treatment Plant;
- (a) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the WWF or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the WWF. Allowances under this provision will only be granted where the WWF submits to the Approval Authority evidence that:
 1. All Industrial Users to which the WWF proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;
 2. The WWF has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The WWF must also demonstrate that it will monitor and verify the data required in part (7)(a)3. of this subparagraph, to insure that Industrial Users are containing, ceasing or reducing operations during WWF System Overflow; and
 3. All Industrial Users to which the WWF proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the WWF, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

RULEMAKING HEARINGS

- (b) 1. The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

where:

r_m = WWF's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section
 r_c = removal corrected by the Overflow factor
 Z = hours per year that Overflow occurred between the Industrial User(s) and the WWF Treatment Plant, the hours either to be shown in the WWF's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the WWF Treatment Plant; and

2. The POTW is complying with all NPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Federal Clean Water Act affecting combined sewer outflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

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

1200-4-14-.08 PRETREATMENT PROGRAM REQUIREMENTS: DEVELOPMENT AND IMPLEMENTATION BY WWF.

- (1) WWFs required to develop a pretreatment program.
- (a) Subparagraphs (b) and (c) below apply to any WWF that discharges treated effluent to waters of the state or applies treated effluent to land.
 - (b) Any WWF (or combination of WWFs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the WWF or are otherwise subject to Pretreatment Standards will be required to establish a WWF Pretreatment Program.
 - (c) The Division may require that a WWF with a design flow of 5 mgd or less develop a WWF Pretreatment Program upon determination that the nature or volume of the industrial influent, treatment process upsets, violations of WWF effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the WWF, Pass Through, or permit violations by the WWF.
- (2) WWFs identified as being required to develop a WWF Pretreatment Program under paragraph (1) of this rule shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The WWF Pretreatment Program shall meet the criteria set forth in paragraph (6) of this rule

RULEMAKING HEARINGS

and shall be administered by the WWF to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

- (3) Incorporation of approved programs in permits. A WWF may develop an appropriate WWF Pretreatment Program any time before the time limit set forth in paragraph (2) of this rule. The WWF's NPDES Permit will be reissued or modified by the Division to incorporate the approved Program as enforceable conditions of the Permit. The modification of a WWF's NPDES Permit for the purposes of incorporating a WWF Pretreatment Program approved in accordance with the procedure in 1200-4-14-.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.
- (4) Incorporation of compliance schedules in permits. [Reserved]
- (5) Cause for reissuance or modification of Permits. Under the authority of section 402(b)(1)(C) of the Federal Clean Water Act, the Approval Authority may modify, or alternatively, revoke and reissue a WWF's Permit in order to:
 - (a) Put the WWF on a compliance schedule for the development of a WWF Pretreatment Program where the addition of pollutants into a WWF by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;
 - (b) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for WWF Pretreatment Program;
 - (c) Incorporate a modification of the permit approved under section 301(h) or 301(i) of the Act;
 - (d) Incorporate an approved WWF Pretreatment Program in the WWF permit; or
 - (e) Incorporate a compliance schedule for the development of a WWF pretreatment program in the WWF permit.
 - (f) Incorporate the removal credits (established under 1200-4-14-.07) in the WWF permit.
- (6) WWF pretreatment requirements. A WWF pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.
 - (a) Legal authority. The WWF shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the WWF to apply and to enforce the requirements of this rule chapter. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the WWF is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the WWF to:
 - 1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the WWF by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the WWF to violate its NPDES permit;

RULEMAKING HEARINGS

2. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
3. Control through permit, order, or similar means, the contribution to the WWF by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 1200-4-14-.03(33), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows.
 - (i) At the discretion of the WWF, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:
 - (I) Involve the same or substantially similar types of operations;
 - (II) Discharge the same types of wastes;
 - (III) Require the same effluent limitations'
 - (IV) Require the same or similar monitoring; and
 - (V) In the opinion of the WWF, are more appropriately controlled under a general control mechanism than under individual control mechanisms.
 - (ii) To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 1200-4-14-.12(5)(b) for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the WWF deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the Discharge is not effective in the general control mechanism until after the WWF has provided written notice to the Significant Industrial User that such a waiver request has been granted in accordance with 1200-4-14-.12(5)(b). The WWF must retain a copy of the general control mechanism, documentation to support the WWF's determination that a specific Significant Industrial User meets the criteria in items (6)(a)3.(i)(I) through (6)(a)3.(i)(V) of this part, and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A WWF may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (1200-4-14-.06(5) and 1200-4-14-.15).
 - (iii) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:
 - (I) Statement of duration (in no case more than five years);

RULEMAKING HEARINGS

- (II) Statement of non-transferability without, at a minimum, prior notification to the WWF and provision of a copy of the existing control mechanism to the new owner or operator;
 - (III) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;
 - (IV) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with 1200-4-14-.12(5)(b), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;
 - (V) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.
 - (VI) Requirements to control slug discharges, if determined by the WWF to be necessary.
4. Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in 1200-4-14-.12.
5. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or non-compliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the WWF shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under 1200-4-14-.12(15) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
6. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement.
- (i) All WWF's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All WWFs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.
 - (ii) Pretreatment requirements which will be enforced through the remedies set forth in subpart (6)(a)6.(i) of this part, will include but not be limited to, the duty to allow

RULEMAKING HEARINGS

or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the WWF; any requirements set forth in control mechanisms issued by the WWF; or any reporting requirements imposed by the WWF or these regulations. The WWF shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the WWF which reasonably appears to present an imminent endangerment to the health or welfare of persons. The WWF shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the WWF which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the WWF. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the WWF has sought a monetary penalty which the Approval Authority believes to be insufficient.

7. Comply with the confidentiality requirements set forth in 1200-4-14-.14.
- (b) Procedures. The WWF shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the WWF to:
1. Identify and locate all possible Industrial Users which might be subject to the WWF Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;
 2. Identify the character and volume of pollutants contributed to the WWF by the Industrial Users identified under part (6)(b)1. of this subparagraph. This information shall be made available to the Regional Administrator or Director upon request;
 3. Notify Industrial Users identified under part (6)(b)1. of this subparagraph, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Federal Clean Water Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 1200-4-14-.08(6)(f), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.
 4. Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 1200-4-14-.12;
 5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial User at least once every 12 months, except as otherwise specified below:
 - (i) Where the WWF has authorized the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard in accordance with 1200-4-14-.12(5)(b), the WWF must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the WWF subsequently

RULEMAKING HEARINGS

determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based on changes that occur in the User's operations, the WWF must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

- (ii) Where the WWF has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the WWF must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in 1200-4-14-.03(33)(b).
6. Evaluate, whether each such Significant Industrial User needs a plan or other action to control slug discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2005; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant industrial User. For purposes of this part, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the WWF's regulations, local limits or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the WWF immediately of any changes at its facility affecting potential for a Slug Discharge. If the WWF decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
- (i) Description of discharge practices, including non-routine batch discharges;
 - (ii) Description of stored chemicals;
 - (iii) Procedures for immediately notifying the WWF of slug discharges, including any discharge that would violate a prohibition under 1200-4-14-.05(2), with procedures for follow-up written notification within five days;
 - (iv) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;
7. Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 1200-4-14-.12, or indicated by analysis, inspection, and surveillance activities described in part (6)(b)5. of this subparagraph. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and
8. Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the WWF, of industrial users which, at any time during the previous 12 months, were in significant

RULEMAKING HEARINGS

noncompliance with applicable pretreatment requirements. For the purposes of this provision, a significant industrial user (or any industrial user which violates subparts (6)(b)8.(iii), (iv), or (viii) of this part) is in significant noncompliance if its violation meets one or more of the following criteria:

- (i) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a 6-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 1200-4-14-.03;
 - (ii) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 1200-4-14-.03 multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH.
 - (iii) Any other violation of a pretreatment standard or requirement as defined by 1200-4-14-.03 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the WWF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WWF personnel or the general public);
 - (iv) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the WWF's exercise of its emergency authority under paragraph (6)(a)6.(ii) of this section to halt or prevent such a discharge;
 - (v) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
 - (vi) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - (vii) Failure to accurately report noncompliance;
 - (viii) Any other violation or group of violations, which may include a violation of Best Management Practices, which the WWF determines will adversely affect the operation or implementation of the local pretreatment program.
- (c) Funding. The WWF shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subparagraphs (6) (a) and (b) of this paragraph. In some limited circumstances, funding and personnel may be delayed where (i) the WWF has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately.
- (d) Local limits. The WWF shall develop local limits as required in 1200-4-14-.05(3)(a), or demonstrate that they are not necessary.

RULEMAKING HEARINGS

- (e) The WWF shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a WWF will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:
 - 1. Describe how the WWF will investigate instances of noncompliance;
 - 2. Describe the types of escalating enforcement responses the WWF will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
 - 3. Identify (by title) the official(s) responsible for each type of response;
 - 4. Adequately reflect the WWF's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in this rule.
- (f) The WWF shall prepare and maintain a list of its industrial users meeting the criteria in 1200-4-14-.03(33)(a). The list shall identify the criteria in 1200-4-14-.03(33)(a) applicable to each industrial user and, where applicable, shall also indicate whether the WWF has made a determination pursuant to 1200-4-14-.03(33)(b) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to 1200-4-14-.09 as a non-substantial modification pursuant to 1200-4-14-.18(4). Modifications to the list shall be submitted to the Approval Authority pursuant to 1200-4-14-.12(9)(a).
- (7) A WWF that chooses to receive electronic documents must satisfy the requirements of 40 CFR 3 (Electronic reporting).

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

1200-4-14-.09 WWF PRETREATMENT PROGRAMS AND/OR AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL.

- (1) Who approves Program. A WWF requesting approval of a WWF Pretreatment Program shall develop a program description which includes the information set forth in subparagraphs (2)(a) through (d) below. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in 1200-4-14-.11.
- (2) Contents of WWF program submission. The program description must contain, at a minimum, the following information :
 - (a) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those WWFs which have independent legal counsel) that the WWF has authority adequate to carry out the programs described in 1200-4-14-.08. This statement shall:
 - 1. Identify the provision of the legal authority under 1200-4-14-.08(6)(a) which provides the basis for each procedure under 1200-4-14-.08(6)(b);
 - 2. Identify the manner in which the WWF will implement the program requirements set forth in 1200-4-14-.08, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,

RULEMAKING HEARINGS

3. Identify how the WWF intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;
 - (b) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the WWF for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the WWF Pretreatment Program if approved;
 - (c) A brief description (including organization charts) of the WWF organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth;
 - (d) A description of the funding levels and full- and part-time manpower available to implement the Program; and
 - (e) Any additional information requested by the Approval Authority.
- (3) Conditional WWF program approval. The WWF may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (2) of this rule except that the requirements of paragraph (2) of this rule, may be relaxed if the Submission demonstrates that:
 - (a) A limited aspect of the Program does not need to be implemented immediately;
 - (b) The WWF had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and
 - (c) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The WWF will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the WWF Pretreatment Program and any removal allowances granted to the WWF, may be modified or withdrawn.
- (4) Content of removal allowance submission. The request for authority to revise categorical Pretreatment Standards must contain the information required in 1200-4-14-.07(4).
- (5) Approval authority action. Any WWF requesting WWF Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (2), and if appropriate, (4) of this rule (two copies mailed to the central office and one copy mailed to the appropriate field office). Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (2) and, if appropriate, (4) of this rule. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:
 - (a) Notify the WWF that the Submission has been received and is under review; and

RULEMAKING HEARINGS

- (b) Commence the public notice and evaluation activities set forth in 1200-4-14-.11.
- (6) Notification where submission is defective. If, after review of the Submission as provided for in paragraph (5) of this rule, the Approval Authority determines that the Submission does not comply with the requirements of paragraph (2) or (3) of this rule, and, if appropriate, paragraph (4), of this rule, the Approval Authority shall provide notice in writing to the applying WWF and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the WWF and each person who has requested individual notice of the means by which the WWF can comply with the applicable requirements of paragraphs (2), (3) of this rule, and, if appropriate, paragraph (4) of this rule.
- (7) Consistency with water quality management plans.
 - (a) In order to be approved the WWF Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with this rule chapter. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in 1200-4-14-.11(2)(a)2. prior to approval or disapproval of the Program.
 - (b) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

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

1200-4-14-.10 RESERVED

1200-4-14-.11 APPROVAL PROCEDURES FOR WWF PRETREATMENT PROGRAMS AND WWF GRANTING OF REMOVAL CREDITS.

The following procedures shall be adopted in approving or denying requests for approval of WWF Pretreatment Programs and applications for removal credit authorization:

- (1) Deadline for review of submission. The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of 1200-4-14-.09(2) and, where removal credit authorization is sought with 1200-4-14-.07(5) and 1200-4-14-.09(4), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of 1200-4-14-.08 (2) and (6), and, where removal credit authorization is sought, with 1200-4-14-.07. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in part (2)(a)2. of this rule is extended beyond 30 days or if a public hearing is held as provided for in subparagraph (2)(b) of this rule. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of 1200-4-14-.09(2) and, in the case of a removal credit application, 1200-4-14-.07(5) and 1200-4-14-.09(2).

RULEMAKING HEARINGS

- (2) Public notice and opportunity for hearing. Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of 1200-4-14-.09(2) and, where removal allowance approval is sought, 1200-4-14-.07(4) and 1200-4-14-.09(4), the Approval Authority shall:
 - (a) Issue a public notice of request for approval of the Submission;
 1. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:
 - (i) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish and wildfish resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and
 - (ii) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the WWF that meaningful public notice.
 2. The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.
 3. All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and
 - (b) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.
 1. This request for public hearing shall be filed within the 30 day (or extended) comment period described in part (2)(a)2. of this paragraph and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.
 2. The Approval Authority shall hold a hearing if the WWF so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.
 3. Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under subpart (2)(a)1.(ii) of this paragraph. In addition, notice of the hearing shall be sent to those persons requesting individual notice.
- (3) Approval authority decision. At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (1) of this rule, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (1) of this rule

RULEMAKING HEARINGS

and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the WWF and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

- (4) EPA objection to Director's decision. No WWF pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in part (2)(a)2. of this rule and any hearing held pursuant to subparagraph (2)(b) of this rule the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a WWF pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.
- (5) Notice of decision. The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of WWF Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the WWF may make, in accordance with 1200-4-14-.07, for removal of pollutants subject to Pretreatment Standards.
- (6) Public access to submission. The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

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

1200-4-14-.12 REPORTING REQUIREMENTS FOR WWF'S AND INDUSTRIAL USERS.

- (1) [Reserved]
- (2) Reporting requirements for industrial users upon effective date of categorical pretreatment standard—baseline report. Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under 1200-4-14-.06(1)(d), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a WWF shall be required to submit to the Control Authority a report which contains the information listed in subparagraphs (2)(a)–(g) of this paragraph. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in subparagraphs (2)(a)–(e) of this paragraph. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in subparagraphs (2) (d) and (e) of this paragraph:
 - (a) Identifying information. The User shall submit the name and address of the facility including the name of the operator and owners;

RULEMAKING HEARINGS

- (b) Permits. The User shall submit a list of any environmental control permits held by or for the facility;
- (c) Description of operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the WWF from the regulated processes.
- (d) Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the WWF from each of the following:
 - 1. Regulated process streams; and
 - 2. Other streams as necessary to allow use of the combined wastestream formula of 1200-4-14-.06(5). (See part (2)(e)4. of this paragraph.) The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.
- (e) Measurement of pollutants.
 - 1. The user shall identify the Pretreatment Standards applicable to each regulated process;
 - 2. In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard;
 - 3. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
 - 4. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 1200-4-14-.06(5) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 1200-4-14-.06(5) this adjusted limit along with supporting data shall be submitted to the Control Authority;
 - 5. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the WWF or other parties, approved by the Administrator;

RULEMAKING HEARINGS

6. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
 7. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the WWF;
- (f) Certification. A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (12) of this rule) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and
- (g) Compliance schedule. If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.
1. Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (1200-4-14-.07), the combined wastestream formula (1200-4-14-.06(5)), and/or a Fundamentally Different Factors variance (1200-4-14-.13) at the time the User submits the report required by paragraph (2) of this rule, the information required by subparagraphs (2)(f) and (g) of this paragraph shall pertain to the modified limits.
 2. If the categorical Pretreatment Standard is modified by a removal allowance (1200-4-14-.07), the combined wastestream formula (1200-4-14-.06(5)), and/or a Fundamentally Different Factors variance (1200-4-14-.13) after the User submits the report required by paragraph (2) of this rule, any necessary amendments to the information requested by subparagraphs (2)(f) and (g) of this paragraph shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.
- (3) Compliance schedule for meeting categorical Pretreatment Standards. The following conditions shall apply to the schedule required by subparagraph (2)(g) of this rule:
- (a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
 - (b) No increment referred to in subparagraph (3)(a) of this paragraph shall exceed 9 months.
 - (c) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

RULEMAKING HEARINGS

- (4) Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the WWF, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in subparagraphs (2) (d)–(f) of this rule. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 1200-4-14-.06(3), this report shall contain a reasonable measure of the User's long-term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.
- (5) Periodic reports on continued compliance.
 - (a) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the WWF, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in subparagraph (2)(d) of this rule except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.
 - (b) The Control Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:
 1. The Control Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
 2. The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.
 3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with

RULEMAKING HEARINGS

subparagraph (a) of this paragraph, and include the certification statement in 1200-4-14-.06(1)(b)2. Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

4. Any grant of the monitoring waiver by the Control Authority must be included as a condition in the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after expiration of the waiver.
5. Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 1200-4-14-.12(5)(a).

6. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of subparagraph (5)(a) of this paragraph or other more frequent monitoring requirements imposed by the Control Authority, and notify the Control Authority.
 7. This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.
- (c) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by 1200-4-14-.06(4), the report required by subparagraph (5)(a) of this paragraph shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.
 - (d) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 1200-4-14-.06(3), the report required by subparagraph (5)(a) of this paragraph shall contain a reasonable measure of the User's long-term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subparagraph (5)(a) shall include the User's actual average production rate for the reporting period.
- (6) Notice of potential problems, including slug loading. All categorical and non-categorical Industrial Users shall notify the WWF immediately of all discharges that could cause problems to the WWF, including any slug loadings, as defined by 1200-4-14-.05(2), by the Industrial User.
 - (7) Monitoring and analysis to demonstrate continued compliance.

RULEMAKING HEARINGS

- (a) Except in the case of Non-Significant Categorical Users, the reports required in paragraphs (2), (4), (5), and (8) of this rule shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the WWF performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under paragraphs (2)(f) and (4) of this rule. In addition, where the WWF itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.
- (b) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:
 - 1. The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or
 - 2. The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.
- (c) The reports required in paragraph (2), (4), (5), and (8) of this rule must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.
- (d) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (2) and (4) of this rule, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (5) and (8) of this rule, the Control Authority shall require the

RULEMAKING HEARINGS

number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

- (e) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, §§136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the WWF or other parties, approved by the Administrator.
 - (f) If an Industrial User subject to the reporting requirement in paragraph (5) or (8) of this rule monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in subparagraph (7)(e) of this paragraph, the results of this monitoring shall be included in the report.
- (8) Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority must require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Noncategorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user.
- (9) Semiannual WWF reports. WWFs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the WWF's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The reporting periods shall end on the last day of the months of March and September. The report shall be submitted to the Division no later than the 28th day of the month following each reporting period. A WWF may request approval from the Division to submit reports annually in lieu of semiannual reports. The request should be made in writing to the pretreatment coordinator during the NPDES permit renewal process. Only WWF Pretreatment Programs that have successfully implemented their program and submitted acceptable semiannual reports for three years or more will be allowed to submit annual reports in lieu of semiannual reports. Both semiannual and annual reports shall conform to the format set forth in the State POTW Pretreatment Semiannual Report Package, which includes, at a minimum, the following:
- (a) An updated list of the WWF's Industrial Users, including their names and addresses. The WWF shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The WWF shall also list the Industrial Users that are subject only to local Requirements. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are

RULEMAKING HEARINGS

subject to reduced reporting requirements under subparagraph (5)(c), and identify which Industrial Users are Non-Significant Categorical Industrial Users.

- (b) A summary of the status of Industrial User compliance over the reporting period;
 - (c) A summary of compliance and enforcement activities (including inspections) conducted by the WWF during the reporting period;
 - (d) A summary of changes to the WWF's pretreatment program that have not been previously reported to the Approval Authority; and
 - (e) Any other relevant information requested by the Approval Authority.
- (10) Notification of changed discharge. All Industrial Users shall promptly notify the WWF in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 1200-4-14-.12(16).
- (11) Compliance schedule for WWF's. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable WWF Pretreatment Program required by 1200-4-14-.08.
- (a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a WWF Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);
 - (b) No increment referred to in subparagraph (11)(a) of this rule shall exceed nine months;
 - (c) Not later than 14 days following each date in the schedule and the final date for compliance, the WWF shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the WWF to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.
- (12) Signatory requirements for industrial user reports. The reports required by paragraphs (2), (4), and (5) of this rule shall include the certification statement as set forth in 1200-4-14-.06(1)(b)2., and shall be signed as follows:
- (a) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (2), (4) and (5) of this rule is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

RULEMAKING HEARINGS

- (b) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (2), (4) and (5) of this rule is a partnership or sole proprietorship respectively.
 - (c) By a duly authorized representative of the individual designated in subparagraphs (12)(a) or (12)(b) of this paragraph if:
 - 1. The authorization is made in writing by the individual described in subparagraph (12)(a) or (12)(b);
 - 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
 - 3. the written authorization is submitted to the Control Authority.
 - (d) If an authorization under subparagraph (12)(c) of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subparagraph (12)(c) of this rule must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.
- (13) Signatory requirements for WWF reports. Reports submitted to the Approval Authority by the WWF in accordance with paragraph (9) of this rule must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted.
- (14) Provisions Governing Fraud and False Statements: The reports and other documents required to be submitted or maintained under this section shall be subject to:
- (a) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;
 - (b) The provisions of sections 309(c)(4) of the Federal Clean Water Act, as amended, governing false statements, representation or certification; and
 - (c) The provisions of section 309(c)(6) regarding responsible corporate officers.
- (15) Record-keeping requirements.
- (a) Any Industrial User and WWF subject to the reporting requirements established in this rule shall maintain records of all information resulting from any monitoring activities required by this rule, including documentation associated with Best Management Practices. Such records shall include for all samples:
 - 1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

RULEMAKING HEARINGS

2. The dates analyses were performed;
 3. Who performed the analyses;
 4. The analytical techniques/methods use; and
 5. The results of such analyses.
- (b) Any Industrial User or WWF subject to the reporting requirements established in this rule (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this rule) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and WWF in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or WWF or when requested by the Director or the Regional Administrator.
- (c) Any WWF to which reports are submitted by an Industrial User pursuant to paragraphs (2), (4), (5), and (8) of this rule shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the WWF Pretreatment Program or when requested by the Director or the Regional Administrator.
- (16) The Industrial User shall notify the WWF, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the WWF of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261.
- (a) Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the WWF, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 1200-4-14-.12 (10). The notification requirement in this rule does not apply to pollutants already reported under the self-monitoring requirements of 1200-4-14-.12 (2), (4), and (5).
- (b) Dischargers are exempt from the requirements of subparagraph (16)(a) of this rule during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which

RULEMAKING HEARINGS

the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

- (c) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the WWF, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
 - (d) In the case of any notification made under paragraph (16) of this rule, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (17) Annual certification by Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User pursuant to 1200-4-14-.03(33)(b) must annually submit the following certification statement, signed in accordance with the signatory requirements in 1200-4-14-.12(12). This certification must accompany an alternative report required by the Control Authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in 1200-4-14-.03(33)(b); (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

- (18) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

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

1200-4-14-.13 VARIANCES FROM CATEGORICAL PRETREATMENT STANDARDS FOR FUNDAMENTALLY DIFFERENT FACTORS.

- (1) Definition. The term Requester means an Industrial User or a WWF or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.
- (2) Purpose and scope. In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent,

RULEMAKING HEARINGS

as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(3) Criteria—

- (a) General criteria. A request for a variance based upon fundamentally different factors shall be approved only if:
 - 1. There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and
 - 2. Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and
 - 3. The request for a variance is made in accordance with the procedural requirements in paragraphs (7) and (8) of this rule.
- (b) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:
 - 1. The alternative limit requested is no less stringent than justified by the fundamental difference;
 - 2. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under 1200-4-14-.05;
 - 3. The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and
 - 4. Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:
 - (i) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or
 - (ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.
- (c) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:
 - 1. The alternative limit request is no more stringent than justified by the fundamental difference; and

RULEMAKING HEARINGS

2. Compliance with the alternative limit would not result in either:
 - (i) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or
 - (ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.
- (4) Factors considered fundamentally different. Factors which may be considered fundamentally different are:
 - (a) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;
 - (b) The volume of the User's process wastewater and effluent discharged;
 - (c) Non-water quality environmental impact of control and treatment of the User's raw waste load;
 - (d) Energy requirements of the application of control and treatment technology;
 - (e) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;
 - (f) Cost of compliance with required control technology.
- (5) Factors which will not be considered fundamentally different. A variance request or portion of such a request under this section may not be granted on any of the following grounds:
 - (a) The feasibility of installing the required waste treatment equipment within the time the Act allows;
 - (b) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (4) of this rule;
 - (c) The User's ability to pay for the required waste treatment; or
 - (d) The impact of a Discharge on the quality of the WWF's receiving waters.
- (6) Local law. Nothing in this rule chapter shall be construed to impair the right of any locality under section 510 of the Clean Water Act to impose more stringent limitations than required by State or Federal law.
- (7) Application deadline.
 - (a) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.

RULEMAKING HEARINGS

- (b) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the Federal Register.
 - (c) Where the User has requested a categorical determination pursuant to 1200-4-14-.06(1), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to 1200-4-14-.06(1)(d).
- (8) Contents submission. Written submissions for variance requests, whether made to the Administrator (or his delegate) or the Director, must include:
- (a) The name and address of the person making the request;
 - (b) Identification of the interest of the Requester, which is affected by the categorical Pretreatment Standard for which the variance is requested;
 - (c) Identification of the WWF currently receiving the waste from the Industrial User for which alternative discharge limits are requested;
 - (d) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;
 - (e) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;
 - (f) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in subparagraph (8)(e) of this paragraph;
 - (g) A description of the Industrial User's existing water pollution control facilities;
 - (h) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and
 - (i) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.
- (9) Deficient requests. The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.
- (10) Public notice. Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

RULEMAKING HEARINGS

- (a) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:
 - 1. The WWF into which the Industrial User requesting the variance discharges;
 - 2. Adjoining States whose waters may be affected; and
 - 3. Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.
 - (b) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.
 - (c) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the WWF into which the Industrial User discharges and all persons who submitted comments on the request.
- (11) Review of requests by state.
- (a) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the WWF of the denial.
 - (b) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).
- (12) Review of requests by EPA.
- (a) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the WWF, and to the requester (and to the Industrial User, where they are not the same).
 - (b) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Administrator (or his delegate) will:
 - 1. Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;
 - 2. Provide the following information in his written determination:
 - (i) The recommended alternative discharge limits for the Industrial User concerned;

RULEMAKING HEARINGS

- (ii) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;
 - (iii) The supporting evidence submitted to the Administrator (or his delegate); and
 - (iv) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;
 - 3. Notify the Director and the WWF of his or her determination; and
 - 4. Send the information described in parts (12)(b)1. and 2. of this subparagraph to the Requestor (and to the Industrial User where they are not the same).
- (13) Request for hearing.
- (a) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.
 - (b) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in 40 CFR part 1.25) within 30 days of the Regional Administrator's decision.

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

1200-4-14-.14 CONFIDENTIALITY.

- (1) EPA authorities. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).
- (2) Effluent data. Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.
- (3) State or WWF. All other information which is submitted to the State or WWF shall be available to the public at least to the extent provided by 40 CFR 2.302.

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

RULEMAKING HEARINGS

1200-4-14-.15 NET/GROSS CALCULATION.

- (1) Application. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraphs(2) of this rule are met.
- (2) Criteria.
 - (a) Either:
 1. The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or
 2. The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.
 - (b) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
 - (c) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.
 - (d) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the WWF discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

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

1200-4-14-.16 UPSET PROVISION.

- (1) Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (2) Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for non-compliance with categorical Pretreatment Standards if the requirements of paragraph (3) of this rule are met.

RULEMAKING HEARINGS

- (3) Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (a) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
 - (b) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
 - (c) The Industrial User has submitted the following information to the WWF and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):
 1. A description of the Indirect Discharge and cause of noncompliance;
 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
 3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (4) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.
- (5) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.
- (6) User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

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

1200-4-14-.17 BYPASS.

- (1) Definitions.
 - (a) Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
 - (b) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of

RULEMAKING HEARINGS

a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (2) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this rule.
- (3) Notice.
 - (a) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.
 - (b) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- (4) Prohibition of bypass.
 - (a) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless;
 - 1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - 3. The Industrial User submitted notices as required under paragraph (3) of this rule.
 - (b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in subparagraph (4)(a) of this paragraph.

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

RULEMAKING HEARINGS

1200-4-14-.18 MODIFICATION OF WWF PRETREATMENT PROGRAMS.

- (1) General. Either the Approval Authority or a WWF with an approved WWF Pretreatment Program may initiate program modification at any time to reflect changing conditions at the WWF. Program modification is necessary whenever there is a significant change in the operation of a WWF Pretreatment Program that differs from the information in the WWF's submission, as approved under 1200-4-14-.11.
- (2) Substantial modifications defined. Substantial modifications include:
 - (a) Modifications that relax WWF legal authorities (as described in 1200-4-14-.08(6)(a)), except for modifications that directly reflect a revision to this rule chapter or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (4) of this rule;
 - (b) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (4) of this rule. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a WWF (or a subgroup of Industrial Users identified by the WWF) may discharge pursuant to limits developed under 1200-4-14-.05(3);
 - (c) Changes to the WWF's control mechanism, as described in 1200-4-14-.08(6)(a)3.;
 - (d) A decrease in the frequency of self-monitoring or reporting required of industrial users;
 - (e) A decrease in the frequency of industrial user inspections or sampling by the WWF;
 - (f) Changes to the WWF's confidentiality procedures; and
 - (g) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the WWF's Pretreatment Program; could result in an increase in pollutant loadings at the WWF; or could result in less stringent requirements being imposed on Industrial Users of the WWF.
- (3) Approval procedures for substantial modifications.
 - (a) The WWF shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see 1200-4-14-.09(2)), or such other documents the Approval Authority determines to be necessary under the circumstances.
 - (b) The Approval Authority shall approve or disapprove the modification based on the requirements of 1200-4-14-.08(6) and using the procedures in 1200-4-14-.11(2) through (6), except as provided in subparagraphs (3) (c) and (d) of this rule. The modification shall become effective upon approval by the Approval Authority.
 - (c) The Approval Authority need not publish a notice of decision under 1200-4-14-.11(5) provided: The notice of request for approval under 1200-4-14-.11(2)(a) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.
 - (d) Notices required by 1200-4-14-.11 may be performed by the WWF provided that the Approval Authority finds that the WWF notice otherwise satisfies the requirements of 1200-4-14-.11.

RULEMAKING HEARINGS

- (4) Approval procedures for non-substantial modifications.
 - (a) The WWF shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the WWF, in a statement similar to that provided for in subparagraph (3)(a) of this rule.
 - (b) Within 45 days after the submission of the WWF's statement, the Approval Authority shall notify the WWF of its decision to approve or disapprove the non-substantial modification.
 - (c) If the Approval Authority does not notify the WWF within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under subparagraph (2)(g) of this rule, the WWF may implement the modification.
- (5) Incorporation in permit. All modifications shall be incorporated into the WWF's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

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

Appendices A–C to Part 403 [Reserved]

Appendix D to Part 403—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons:

- (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii));
- (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii));
- (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or
- (4) the wastestream contains only pollutants which are compatible with the WWF (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above. This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.
 - Auto and Other Laundries (40 CFR part 444)
 - Carpet and Upholstery Cleaning
 - Coin-Operated Laundries and Dry Cleaning
 - Diaper Services
 - Dry Cleaning Plants except Rug Cleaning
 - Industrial Laundries
 - Laundry and Garment Services, Not Elsewhere Classified

RULEMAKING HEARINGS

Linen Supply
Power Laundries, Family and Commercial
Electrical and Electronic Components 1 (40 CFR part 469)
1The Paragraph 8 exemption for the manufacture of products in the
Electrical and Electronic Components Category is for operations not
covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR
parts 413/433).
Capacitors (Fluid Fill)
Carbon and Graphite Products
Dry Transformers
Ferrite Electronic Devices
Fixed Capacitors
Fluorescent Lamps
Fuel Cells
Incandescent Lamps
Magnetic Coatings
Mica Paper Dielectric
Motors, Generators, Alternators
Receiving and Transmitting Tubes
Resistance Heaters
Resistors
Switchgear
Transformer (Fluid Fill)
Metal Molding and Casting (40 CFR part 464)
Nickel Casting
Tin Casting
Titanium Casting
Gum and Wood Chemicals (40 CFR part 454)
Char and Charcoal Briquets
Inorganic Chemicals Manufacturing (40 CFR part 415)
Ammonium Chloride
Ammonium Hydroxide
Barium Carbonate
Calcium Carbonate
Carbon Dioxide
Carbon Monoxide and Byproduct Hydrogen
Hydrochloric Acid
Hydrogen Peroxide (Organic Process)
Nitric Acid
Oxygen and Nitrogen
Potassium Iodide
Sodium Chloride (Brine Mining Process)
Sodium Hydrosulfide
Sodium Hydrosulfite
Sodium Metal
Sodium Silicate
Sodium Thiosulfate
Sulfur Dioxide
Sulfuric Acid

RULEMAKING HEARINGS

Leather (40 CFR part 425)
Gloves
Luggage
Paving and Roofing (40 CFR part 443)
Asphalt Concrete
Asphalt Emulsion
Linoleum
Printed Asphalt Felt
Roofing
Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR parts 430 and 431)
Groundwood-Chemi-Mechanical
Rubber Manufacturing (40 CFR part 428)
Tire and Inner Tube Plants
Emulsion Crumb Rubber
Solution Crumb Rubber
Latex Rubber
Small-sized General Molded, Extruded and Fabricated Rubber Plants, 2
2Footnote: Except for production attributed to lead-sheathed hose manufacturing operations.
Medium-sized General Molded, Extruded and Fabricated Rubber Plants 2
Large-sized General Molded, Extruded and Fabricated Rubber Plants 2
Wet Digestion Reclaimed Rubber
Pan, Dry Digestion, and Mechanical Reclaimed Rubber
Latex Dipped, Latex-Extruded, and Latex-Molded Rubber 3
3Footnote: Except for production attributed to chromic acid form-cleaning operations.
Latex Foam 4
4Footnote: Except for production that generates zinc as a pollutant in discharge.
Soap and Detergent Manufacturing (40 CFR part 417)
Soap Manufacture by Batch Kettle
Fatty Acid Manufacture by Fat Splitting
Soap Manufacture by Fatty Acid
Neutralization
Glycerine Concentration
Glycerine Distillation
Manufacture of Soap Flakes and Powders
Manufacture of Bar Soaps
Manufacture of Liquid Soaps
Manufacture of Spray Dried Detergents
Manufacture of Liquid Detergents
Manufacture of Dry Blended Detergents
Manufacture of Drum Dried Detergents
Manufacture of Detergent Bars and Cakes
Textile Mills (40 CFR part 410)

RULEMAKING HEARINGS

Apparel manufacturing
Cordage and Twine
Padding and Upholstery Filling
Timber Products Processing (40 CFR part 429)
Barking Process
Finishing Processes
Hardboard—Dry Process

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

Appendix E to Part 403—Sampling Procedures

I. Composite Method

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the WWF elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual WWF operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. Grab Method

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

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

RULEMAKING HEARINGS

Appendix F to Part 403 [Reserved]

Appendix G to Part 403—Pollutants Eligible for a Removal Credit

I. Regulated Pollutants in Part 503 Eligible for a Removal Credit

Pollutants	Use or disposal practice		
	LA	SD	I
Arsenic.....	X	X	X
Beryllium.....			X
Cadmium.....	X		X
Chromium.....		X	X
Copper.....	X		
Lead.....	X		X
Mercury.....	X		X
Molybdenum.....	X		
Nickel.....	X	X	X
Selenium.....	X		
Zinc.....	X		
Total hydrocarbons.....			X \1\

Key:

LA_land application.

SD_surface disposal site without a liner and leachate collection system.

I_firing of sewage sludge in a sewage sludge incinerator.

\1\ The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons (or carbon monoxide) in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, Aldrin/Dieldrin(total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD,DDE,DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2,-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

RULEMAKING HEARINGS

II. Additional Pollutants Eligible for a Removal Credit [Milligrams per kilogram_dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined \1\	Lined \2\	
Arsenic.....		\3\ 100		
Aldrin/Dieldrin (Total).....	2.7			
Benzene.....	\3\ 16	140	3400	
Benzo(a)pyrene.....	15	\3\ 100	\3\ 100	
Bis(2-ethylhexyl)phthalate.....		\3\ 100	\3\ 100	
Cadmium.....	\3\ 100	\3\ 100		
Chlordane.....	86	\3\ 100	\3\ 100	
Chromium (total).....	\3\ 100		\3\ 100	
Copper.....	\3\ 46	100	1400	
DDD, DDE, DDT (Total).....	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid.....		7	7	
Fluoride.....	730			
Heptachlor.....	7.4			
Hexachlorobenzene.....	29			
Hexachlorobutadiene.....	600			
Iron.....	\3\ 78			
Lead.....	\3\ 100	\3\ 100		
Lindane.....	84	\3\ 28	\3\ 28	
Malathion.....		0.63	0.63	
Mercury.....	\3\ 100	\3\ 100		
Molybdenum.....		40	40	
Nickel.....		\3\ 100		
N-Nitrosodimethylamine.....	2.1	0.088	0.088	
Pentachlorophenol.....	30			
Phenol.....	82	82		
Polychlorinated biphenyls.....	4.6	<50	<50	
Selenium.....		4.8	4.8	4.8
Toxaphene.....	10	\3\ 26	\3\ 26	
Trichloroethylene.....	\3\ 10	9500	\3\ 10	
Zinc.....	4500	4500	4500	

\1\ Active sewage sludge unit without a liner and leachate collection system.

\2\ Active sewage sludge unit with a liner and leachate collection system.

\3\ Value expressed in grams per kilogram_dry weight basis.

Key: LA_land application.

I_incineration.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of December, 2005. (12-28)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16th day February 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Paragraph (18) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (18) which shall read as follows:

(18) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-13-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later.

(a) For services on appeal under *Grier Revised Consent Decree*:

1. Those services currently or in the case of reinstatement, most recently provided to an enrollee; or
2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
3. Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.

RULEMAKING HEARINGS

- (b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.

Paragraph (26) of rule 1200-13-13-.01 Definitions is deleted in its entirety.

Subparagraph (b) of paragraph (27) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision shall not be deemed timely unless it is granted within fourteen (14) days of the MCC's receipt of a request for such authorization.

A new paragraph (37) is added to rule 1200-13-13-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (37) shall read as follows:

- (37) FINAL AGENCY ACTION shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an impartial administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

Paragraph (77) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (77) which shall read as follows:

- (77) PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery of services.

A new paragraph (78) is added to rule 1200-13-13-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (78) shall read as follows:

- (78) PRIOR AUTHORIZATION shall mean the process under which services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery in order for such services to be covered by the TennCare program.

Paragraph (101) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (101) which shall read as follows:

- (101) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services.

Paragraph (111) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (111) which shall read as follows:

- (111) TIME-SENSITIVE CARE shall mean (1) the TennCare Bureau has determined that the care is time-sensitive or (2) the enrollees' treating physician certifies in writing that if enrollees do not get this care within ninety (90) days:

- (a) They will be at risk of serious health problems or death,

RULEMAKING HEARINGS

- (b) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
- (c) They will need to go to the hospital.

A new paragraph (115) is added to rule 1200-13-13-.01 Definitions and the subsequent paragraph is re-numbered accordingly. New paragraph (115) shall read as follows:

(115) VALID FACTUAL DISPUTE shall mean a dispute which, if resolved in favor of the enrollee, would result in the proposed action not being taken.

Subparagraph (b) of paragraph (4) of rule 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) A TennCare Medicaid enrollee may change health plans if the TennCare Bureau has granted a request for a change in health plans or an appeal of a denial of a request for a change in health plans has been resolved in his/her favor based on hardship criteria. Requests for hardship MCO reassignments must meet all of the following six (6) hardship criteria for reassignment. Determinations will be made on an individual basis.
 - 1. A member has a medical condition that requires complex, extensive, and ongoing care; and
 - 2. The member's PCP and/or specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his/her current MCO assignment; and
 - 3. The ongoing medical condition of the member is such that another physician or provider with appropriate expertise would be unable to take over his/her care without significant and negative impact on his/her care; and
 - 4. The current MCO has been unable to negotiate continued care for this member with the current PCP or specialist; and
 - 5. The current provider of services is in the network of one or more alternative MCOs; and
 - 6. An alternative MCO is available to enrolled members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

A hardship MCO change request will not be granted to a Medicare beneficiary who, with the exception of pharmacy services, may utilize his/her choice of providers, regardless of network affiliation.

Requests to change MCCs submitted by TennCare enrollees shall be evaluated in accordance with the hardship criteria referenced above. Upon denial of a request to change MCCs, enrollees shall be provided notice and appeal rights as described in applicable provisions of rule 1200-13-13-.11.

RULEMAKING HEARINGS

Subparagraph (g) of paragraph (6) of rule 1200-13-13-.08 Providers is deleted in its entirety and replaced with a new subparagraph (g) which shall read as follows:

- (g) The provider failed to inform the enrollee prior to providing a service not covered by TennCare that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement. Notwithstanding this exemption, providers shall remain obligated to provide notice to enrollees who have exceeded benefit limits in accordance with rule 1200-13-13-.11.

Part 3. of subparagraph (a) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are renumbered accordingly.

Subparagraph (a) of paragraph (1) of rule is amended by adding renumbered parts 5. and 6. of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits which shall read as follows:

- 5. Appropriate notice shall be given to an enrollee by the State or MCC when an enrollee exceeds a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
- 6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
 - (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to provide this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. Providers will not be required to provide any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

Part 2. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

- 2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of receipt of the request for prior authorization. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee.

RULEMAKING HEARINGS

Part 4. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are re-numbered accordingly.

Subpart (iv) of part 1. of subparagraph (c) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (iv) which shall read as follows:

- (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.

Parts 2. and 3. of subparagraph (c) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with a new part 2. which shall read as follows:

- 2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of 1200-13-13-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.

Subparagraph (d) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) Special Provisions Pertaining to Pharmacy Notice

- 1. If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1.
 - (i) When the enrollee has exceeded a benefit limit. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees through the PBM. If the PBM denies coverage because an enrollee has exceeded the applicable pharmacy benefit limit and the drug is not included on the Pharmacy Short List, the PBM will provide appropriate notice to the enrollee, informing his/her of the right to appeal the denial. This notice will only be provided upon the first denial of coverage of a pharmacy service sought by the enrollee that exceeds the applicable monthly limits.
 - (ii) When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-13-.11(1)(d)1.(II). No additional notice will be provided to the enrollee.

RULEMAKING HEARINGS

- (iii) When a request for prior authorization has not been obtained for a prescription. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:
 - (I) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:
 - I. The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted. The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a 72-hour interim supply of a prescription.
 - II. The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.
 - (II) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.
 - (III) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.
 - (IV) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request within three business days of its receipt. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.

RULEMAKING HEARINGS

- (iv) When the requested drug is not a category or class of drugs covered by TennCare. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
- (v) When the enrollee has been locked-into one pharmacy, as described in rule 1200-13-13-.13 and the enrollee seeks to fill a prescription at another pharmacy. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
- (vi) When an enrollee submits a pharmacy reimbursement and billing claim:
 - (I) TennCare will first determine whether the claim has been previously denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
 - (II) If the claim had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in sections 1200-13-13-.11(1)(d)1.(i) to 1.(iii).
 - (III) If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-13-.11(1)(d)1.(i) to 1.(iii).

Paragraph (3) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new subparagraphs (d), (e), and (f) which shall read as follows:

- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse action affecting TennCare services.
 - 1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the enrollee.

RULEMAKING HEARINGS

2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse action; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.
- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription the following will apply:
1. TennCare will provide appropriate notice to the enrollee inform him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.
 2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.
- (f) Appeals When No Adverse Action is Taken. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services. If enrollees request a hearing when no adverse action has been taken, their request shall be denied by the TennCare bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no claim for services had previously been denied.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

10. Final agency action within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal.

Subparagraph (f) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (f) which shall read as follows:

- (f) Review of Hearing Decisions
1. Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders.

RULEMAKING HEARINGS

2. The TennCare Bureau shall have the opportunity to review all decisions of impartial hearing officers to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of the *Grier Revised Consent Decree*.
 - (i) Any such review shall be completed by TennCare within five (5) days of the issuance of the decision of the impartial hearing officer.
 - (ii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.
 - (iii) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.
 - (iv) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq.
 - (v) An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

Subparts (iii) and (iv) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subpart (iii) which shall read as follows:

- (iii) Continuation or reinstatement of services within ten (10) days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services.

Parts 5. and 6. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new parts 5. and 6. which shall read as follows:

5. Expedited appeals shall be concluded within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:
 - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
 - (ii) The enrollee lacks a compelling justification for the requested delay; and

RULEMAKING HEARINGS

- (iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.
- 6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:
 - (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;
 - (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:
 - (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug, unless such supply would exceed applicable pharmacy benefit limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.
 - (iii) When coverage of a prescription drug is denied because the requested drug is not a category or class of drugs covered by TennCare;
 - (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
 - (v) When a request for reimbursement is denied and the enrollee appeals this denial;
 - (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or
 - (vii) If TennCare had not paid for the service for which continuation or reinstatement is requested prior to the appeal.

Subparagraph (h) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

- (h) Expedited appeals.
 - 1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received. If the appeal is not resolved within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety days (90) from the date the appeal is received.
 - 2. Care will only qualify as time-sensitive if the enrollee's treating physician determines that if the enrollee does not receive the care within ninety (90) days:

RULEMAKING HEARINGS

- (i) They will be at risk of serious health problems or death.
 - (ii) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
 - (iii) They will need to go to the hospital.
3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety (90) days from the date the appeal is received.

Paragraph (5) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (5) which shall read as follows:

(5) Special Provisions Pertaining to Pharmacy

- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
 - 1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.
 - 2. The drug as prescribed, if the prescribing provider has obtained prior authorization.
 - 3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
 - 4. Subject to the provisions of rule 1200-13-13-.11(1)(d), if the pharmacist is unable to obtain the prescribing physician's approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days of dispensing the seventy-two (72) hour interim supply.
- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
 - 1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or

RULEMAKING HEARINGS

2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
 - (i) agents for weight loss or weight gain;
 - (ii) agents to promote fertility or to treat impotence;
 - (iii) agents for cosmetic purposes or hair growth;
 - (iv) agents for the symptomatic relief of coughs and colds;
 - (v) agents to promote smoking cessation;
 - (vi) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
 - (vii) nonprescription drugs;
 - (viii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
 - (ix) barbiturates or benzodiazepines.
3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
4. If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.
5. In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.
6. The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this subsection, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.

RULEMAKING HEARINGS

Paragraph (7) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (7) which shall read as follows:

(7) Time Requirements and Corrective Action.

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-13-.11(1)(b)2. Failure by the MCCs to meet these deadlines shall not result in an automatic authorization of the requested service.
- (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee.
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time-sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time-sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.
- (d) Failure to meet the ninety (90) day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-13-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve of the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.
- (e) When, under the provisions of rule 1200-13-13-.11(7)(d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
 - 1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or

RULEMAKING HEARINGS

2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. Corrective action to implement the decision includes:
 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
 3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.

In the event that a decision in favor of an enrollee is modified or overturned within ninety (90) days from receipt of such appeal, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.

- (g) In no circumstance will a directive be issued by the TennCare Solutions Unit or an impartial hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by TennCare Solutions Unit if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

Rule 1200-13-13-.13 Member Abuse and Overutilization of the TennCare Program is deleted in its entirety and replaced with a new rule 1200-13-13-.13 which shall read as follows:

1200-13-13-.13 MEMBERS ABUSE AND OVERUTILIZATION OF THE TENNCARE PROGRAM.

- (1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:
 - (a) Forging or altering prescription drugs;
 - (b) Selling TennCare paid prescription drugs;
 - (c) Filing to control pharmacy overutilization activity while on lock-in status; or
 - (d) Visiting multiple prescribers or pharmacies to obtain controlled substances.
- (2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:

RULEMAKING HEARINGS

- (a) Criteria for selection of abusive or overutilizing enrollees - Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.
 - (b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.
 - (c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.
- (3) Pharmacy lock-in program procedures shall include:
- (a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.
 - (b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.
 - (c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-13-.11.
 - (d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of December, 2005. (12-42)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16th day February 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Part 12. of subparagraph (b) of paragraph (I) of rule 1200-13-13-.04 Covered Services is amended by deleting the second sentence of the first paragraph in the "Benefit for Persons Aged 21 and Older" column so as amended part 12. shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10 or (b) as outpatient hospital services (see 42 CFR §440.20(a)].	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and \$30,000 in substance abuse benefits (inpatient, residential, and outpatient). When medically appropriate and cost effective as determined by the BHO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.

Part 26. of subparagraph (b) of paragraph (I) of rule 1200-13-13-.04 Covered Services is amended by adding a sentence to the first paragraph of the "Benefit for Persons Under Age 21" and "Benefit for Persons Aged 21 and Older" columns so as amended the first paragraphs shall read as follows:

RULEMAKING HEARINGS

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
26. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].	Covered as medically necessary. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D.	Covered as medically necessary, subject to the limitations set out below. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D.

Subparagraph (c) of paragraph (1) of rule 1200-13-13-.04 Covered Services is amended by adding a new part 6. and renumbering the current part 6. as 7. and subsequent parts renumbered accordingly so as amended the new part 6. shall read as follows:

6. Agents which are benzodiazepines or barbiturates.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of December, 2005. (12-43)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16th day February 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Paragraph (18) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (18) which shall read as follows:

(18) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-14-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later.

(a) For services on appeal under *Grier Revised Consent Decree*:

1. Those services currently or in the case of reinstatement, most recently provided to an enrollee; or
2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
3. Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.

RULEMAKING HEARINGS

- (b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.

Paragraph (26) of rule 1200-13-14-.01 Definitions is deleted in its entirety.

Subparagraph (b) of paragraph (27) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision shall not be deemed timely unless it is granted within fourteen (14) days of the MCC's receipt of a request for such authorization.

A new paragraph (37) is added to rule 1200-13-14-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (37) shall read as follows:

- (37) FINAL AGENCY ACTION shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an impartial administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

Paragraph (77) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (77) which shall read as follows:

- (77) PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery of services.

A new paragraph (78) is added to rule 1200-13-14-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (78) shall read as follows:

- (78) PRIOR AUTHORIZATION shall mean the process under which services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery in order for such services to be covered by the TennCare program.

Paragraph (101) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (101) which shall read as follows:

- (101) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services.

Paragraph (111) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (111) which shall read as follows:

- (111) TIME-SENSITIVE CARE shall mean (1) the TennCare Bureau has determined that the care is time-sensitive or (2) the enrollees' treating physician certifies in writing that if enrollees do not get this care within ninety (90) days:

- (a) They will be at risk of serious health problems or death,

RULEMAKING HEARINGS

- (b) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
- (c) They will need to go to the hospital.

A new paragraph (115) is added to rule 1200-13-14-.01 Definitions and the subsequent paragraph is re-numbered accordingly. New paragraph (115) shall read as follows:

(115) VALID FACTUAL DISPUTE shall mean a dispute which, if resolved in favor of the enrollee, would result in the proposed action not being taken.

Subparagraph (b) of paragraph (4) of rule 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) A TennCare Medicaid enrollee may change health plans if the TennCare Bureau has granted a request for a change in health plans or an appeal of a denial of a request for a change in health plans has been resolved in his/her favor based on hardship criteria. Requests for hardship MCO reassignments must meet all of the following six (6) hardship criteria for reassignment. Determinations will be made on an individual basis.
 - 1. A member has a medical condition that requires complex, extensive, and ongoing care; and
 - 2. The member's PCP and/or specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his/her current MCO assignment; and
 - 3. The ongoing medical condition of the member is such that another physician or provider with appropriate expertise would be unable to take over his/her care without significant and negative impact on his/her care; and
 - 4. The current MCO has been unable to negotiate continued care for this member with the current PCP or specialist; and
 - 5. The current provider of services is in the network of one or more alternative MCOs; and
 - 6. An alternative MCO is available to enrolled members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

A hardship MCO change request will not be granted to a Medicare beneficiary who, with the exception of pharmacy services, may utilize his/her choice of providers, regardless of network affiliation.

Requests to change MCCs submitted by TennCare enrollees shall be evaluated in accordance with the hardship criteria referenced above. Upon denial of a request to change MCCs, enrollees shall be provided notice and appeal rights as described in applicable provisions of rule 1200-13-14-.11.

RULEMAKING HEARINGS

Subparagraph (n) of paragraph (7) of rule 1200-13-14-.05 Enrollee Cost Sharing is deleted in its entirety and replaced with a new subparagraph (n) which shall read as follows:

- (n) The seventy-two (72) hour interim supply of a medication in an emergency situation, as described in rule 1200-13-14-.11, shall not be subject to the pharmacy co-payment requirements.

Subparagraph (g) of paragraph (6) of rule 1200-13-14-.08 Providers is deleted in its entirety and replaced with a new subparagraph (g) which shall read as follows:

- (g) The provider failed to inform the enrollee prior to providing a service not covered by TennCare that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement. Notwithstanding this exemption, providers shall remain obligated to provide notice to enrollees who have exceeded benefit limits in accordance with rule 1200-13-14-.11.

Part 3. of subparagraph (a) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are renumbered accordingly.

Part 2. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

- 2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of receipt of the request for prior authorization. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee.

Part 4. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent parts are re-numbered accordingly.

Subpart (iv) of part 1. of subparagraph (c) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (iv) which shall read as follows:

- (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.

Parts 2. and 3. of subparagraph (c) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with a new part 2. which shall read as follows:

- 2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of 1200-13-14-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.

RULEMAKING HEARINGS

Subparagraph (d) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) Special Provisions Pertaining to Pharmacy Notice

1. If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1.
 - (i) When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-14-.11(1)(d)1.(II). No additional notice will be provided to the enrollee.
 - (ii) When a request for prior authorization has not been obtained for a prescription. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:
 - (I) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:
 - I. The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted. The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a seventy-two (72) hour interim supply of a prescription
 - II. The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.
 - (II) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the

RULEMAKING HEARINGS

PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.

- (III) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.
 - (IV) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request within three business days of its receipt. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.
- (iii) When the requested drug is not a category or class of drugs covered by TennCare. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
 - (iv) When the enrollee has been locked-into one pharmacy, as described in rule 1200-13-14-.13 and the enrollee seeks to fill a prescription at another pharmacy. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.
 - (v) When an enrollee submits a pharmacy reimbursement and billing claim:
 - (I) TennCare will first determine whether the claim has been previously denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
 - (II) If the claim had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d)1.(i) to 1.(iii).
 - (III) If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d)1.(i) to 1.(iii).

RULEMAKING HEARINGS

Paragraph (3) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new subparagraphs (d), (e), and (f) which shall read as follows:

- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse action affecting TennCare services.
 - 1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the enrollee.
 - 2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse action; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.
- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription the following will apply:
 - 1. TennCare will provide appropriate notice to the enrollee inform him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.
 - 2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.
- (f) Appeals When No Adverse Action Is Taken. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services. If enrollees request a hearing when no adverse action has been taken, their request shall be denied by the TennCare Bureau without the opportunity for a hearing. Such circumstances include

RULEMAKING HEARINGS

but are not limited to when enrollees appeal and no claim for services had previously been denied.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

10. Final agency action within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal.

Subparagraph (f) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (f) which shall read as follows:

(f) Review of Hearing Decisions

1. Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders.
2. The TennCare Bureau shall have the opportunity to review all decisions of impartial hearing officers to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of the *Grier Revised Consent Decree*.
 - (i) Any such review shall be completed by TennCare within five (5) days of the issuance of the decision of the impartial hearing officer.
 - (ii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.
 - (iii) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.
 - (iv) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq.
 - (v) An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

Subparts (iii) and (iv) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subpart (iii) which shall read as follows:

- (iii) Continuation or reinstatement of services within ten (10) days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services.

RULEMAKING HEARINGS

Parts 5. and 6. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new parts 5. and 6. which shall read as follows:

5. Expedited appeals shall be concluded within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:
 - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
 - (ii) The enrollee lacks a compelling justification for the requested delay; and
 - (iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.
6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:
 - (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;
 - (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:
 - (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug unless such supply would exceed applicable pharmacy benefit limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.
 - (iii) When coverage of a prescription drug is denied because the requested drug is not a category or class of drugs covered by TennCare;
 - (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
 - (v) When a request for reimbursement is denied and the enrollee appeals this denial;
 - (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or

RULEMAKING HEARINGS

- (vii) If TennCare had not paid for the service for which continuation or reinstatement is requested prior to the request.

Subparagraph (h) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

(h) Expedited appeals.

1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received. If the appeal is not resolved within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety days (90) from the date the appeal is received.
2. Care will only qualify as time-sensitive if the enrollee's treating physician determines that if the enrollee does not receive the care within ninety (90) days:
 - (i) They will be at risk of serious health problems or death.
 - (ii) The delay will cause serious problems with their heart, lungs, or other parts of their body, or
 - (iii) They will need to go to the hospital.
3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided the appeal is resolved within ninety (90) days from the date the appeal is received.

Paragraph (5) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (5) which shall read as follows:

(5) Special Provisions Pertaining to Pharmacy

- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
 1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.
 2. The drug as prescribed, if the prescribing provider has obtained prior authorization.
 3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or

RULEMAKING HEARINGS

4. Subject to the provisions of rule 1200-13-14-.11(1)(d), if the pharmacist is unable to obtain the prescribing physicians approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days or dispensing the 72-hour interim supply.
- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or
 2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
 - (i) agents for weight loss or weight gain;
 - (ii) agents to promote fertility or to treat impotence;
 - (iii) agents for cosmetic purposes or hair growth;
 - (iv) agents for the symptomatic relief of coughs and colds;
 - (v) agents to promote smoking cessation;
 - (vi) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
 - (vii) nonprescription drugs;
 - (viii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
 - (ix) barbiturates or benzodiazepines.
 3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
 4. If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.

RULEMAKING HEARINGS

5. In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.
6. The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this subsection, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.

Paragraph (7) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new paragraph (7) which shall read as follows:

(7) Time Requirements and Corrective Action.

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. Failure by the MCCs to meet these deadlines shall not result in an automatic authorization of the requested service.
- (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee.
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time-sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time-sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.

RULEMAKING HEARINGS

- (d) Failure to meet the ninety (90) day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the requirements of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-13-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve of the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.
- (e) When, under the provisions of rule 1200-13-14-.11(7)(d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
 - 1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or
 - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. Corrective action to implement the decision includes:
 - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
 - 3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.

In the event that a decision in favor of an enrollee is modified or overturned within ninety (90) days from receipt of such appeal, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.
- (g) In no circumstance will a directive be issued by the TennCare Solutions Unit or an impartial hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by TennCare Solutions Unit if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

RULEMAKING HEARINGS

Rule 1200-13-14-.13 Member Abuse and Overutilization of the TennCare Program is deleted in its entirety and replaced with a new rule 1200-13-14-.13 which shall read as follows:

1200-13-14-.13 MEMBERS ABUSE AND OVERUTILIZATION OF THE TENNCARE PROGRAM.

- (1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:
 - (a) Forging or altering prescription drugs;
 - (b) Selling TennCare paid prescription drugs;
 - (c) Filing to control pharmacy overutilization activity while on lock-in status; or
 - (d) Visiting multiple prescribers or pharmacies to obtain controlled substances.
- (2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:
 - (a) Criteria for selection of abusive or overutilizing enrollees - Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.
 - (b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.
 - (c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
 - (e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.
- (3) Pharmacy lock-in program procedures shall include:
 - (a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.
 - (b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.

RULEMAKING HEARINGS

- (c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-14-.11.
- (d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.

Authority: *T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of December, 2005. (12-44)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16th day February 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Part 12. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is amended by deleting the last sentence of the first paragraph of the "Benefit for Persons Aged 21 and Older" column so as amended part 12. shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10) or (b) as outpatient hospital services (see 42 CFR §440.20(a)].	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and \$30,000 in substance abuse benefits (inpatient, residential, and outpatient). When medically appropriate and cost effective as determined by the BHO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.

Subparagraph (c) of paragraph (1) of rule 1200-13-14-.04 Covered Services is amended by adding a new part 6. and renumbering the current part 6. as 7. and subsequent parts renumbered accordingly so as amended the new part 6. shall read as follows:

6. Agents which are benzodiazepines or barbiturates.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of November, 2005. (12-45)

RULEMAKING HEARINGS

TENNESSEE MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-108, 63-18-111, and 63-18-115. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 3rd day of March, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0870-1-.05 Establishment Licensure Process, is amended by adding the following language as new paragraph (15) and renumbering the present paragraph (15) as paragraph (16):

- (15) An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111 and 63-18-115.

Rule 0870-1-.12 Continuing Education, is amended by deleting subparagraphs (2) (a), (2) (b) and (2) (c) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a), (2) (b) and (2) (c) shall read:

- (2) (a) Beginning on January 1, 2003, each licensed massage therapist must attend and complete twenty-five (25) hours of massage therapy related continuing education in courses approved by the Board on or before December 31st of 2004 and again every two (2) calendar years thereafter (for example January 1, 2005 through December 31, 2006 and then again from January 1, 2007 through December 31, 2008, and so on) for as long as the therapist's license remains active. The due date for completion of the continuing education hours is the same for every licensed massage therapists in this state.
- (2) (b) Every person who receives a license as a massage therapist after January 1, 2003 will have his or her required continuing education hours pro-rated over the remaining months of the continuing education cycle in which the person became licensed. Every fraction of an hour resulting from any such pro-rating shall be rounded up to the next whole hour. Any

RULEMAKING HEARINGS

such person shall have to obtain one (1) and one/twenty fourth (1/24) hours for every month remaining in the continuing education cycle in which he or she became licensed but those hours won't be due until the final December 31st of the cycle. [For example a person who becomes licensed in June of the first year of a continuing education cycle (January 1st of one year through December 31st of the following year) will be prorated over the 18 months left on the continuing education cycle from July through December of the following year requiring the person to obtain 18 and $\frac{3}{4}$ hours of continuing education (rounded up to 19 hours) which are due on December 31st of the following year.]

- (2) (c) The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once annually toward the required hourly total regardless of the number of times the course is attended or completed by any individual licensee.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-18-111.

Rule 0870-1-.19 Professional Ethical Standards, is amended by deleting subparagraph (1) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (d) shall read:

- (1) (d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of December, 2005. (12-08)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning December 1, 2005 and ending December 29, 2005.

A handwritten signature in black ink, reading 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State