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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission: Department of Commerce and Insurance
Division: Insurance
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0780-01-90	Crop Insurance Adjusters
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Chapter 0780-01-90
Crop Insurance Adjusters

New Rules

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0780-01-90-.12	Severability Provision.

0780-01-90-.01 Purpose.

The purpose of this Chapter is to provide rules to assist the commissioner in administering the laws relating to the licensure and regulation of crop insurance adjusters, as provided for in T.C.A. §§ 56-6-1001, *et seq.* This Chapter should not be viewed as replacing any other or additional statutory requirements not explicitly included in this Chapter. Nothing in this Chapter authorizes any crop insurance adjuster to engage in conduct that constitutes the "practice of law" or "law business" as defined in title 23, chapter 3 or under the rules of the Tennessee Supreme Court.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.02 Scope.

This Chapter applies to all persons acting as crop insurance adjusters in this state as governed by T.C.A. §§ 56-6-1001, *et seq.* Pursuant to T.C.A. §§ 56-6-1001, *et seq.*, the crop insurance adjuster license to be issued by the commissioner shall be a multi-peril crop insurance adjuster license.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.03 Authority.

This Chapter is issued pursuant to the authority vested in the commissioner pursuant to T.C.A. §§ 56-6-1001 *et seq.*

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.04 Definitions.

- (1) "Commissioner" means the Commissioner of Commerce and Insurance;
- (2) "Crop" means and includes any agricultural product, including livestock, nursery product, tree and product from a tree, as well as anything insured by the Federal Crop Insurance Corporation under a crop insurance program;
- (3) (a) "Crop insurance adjuster" means any person, who, for compensation or any other thing of value, does any of the following:

- (i) Acts or aids in investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and/or effectuating the resolution of a claim for loss or damage covered by an insurance contract that insures crops;
 - (ii) Advertises for employment as an adjuster of claims arising under insurance contracts that insure crops or solicits business or represents to the public to be a crop insurance adjuster of insurance claims, for losses or damages arising out of policies of insurance that insure crops; or
 - (iii) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about claims for losses or damages arising out of policies of insurance that insure crops, when doing any of the foregoing for or on behalf of another person engaged in the business of adjusting losses or damages covered by an insurance policy that insures crops, for the insured.
- (b) Nothing in this Chapter shall:
- (i) Authorize any crop insurance adjuster or person operating at the direction of a crop insurance adjuster to engage in conduct that constitutes the "practice of law" or "law business" as defined in title 23, chapter 3 or under the rules of the Tennessee Supreme Court; or
 - (ii) Affect or alter, in any way, the contractual obligations of an insured to its insurance company and the duty of good faith each owes the other;
- (4) "Department" means the Department of Commerce and Insurance;
- (5) "NAIC" means the National Association of Insurance Commissioners;
- (6) "Person" means a natural person; and,
- (7) "Risk Management Agency" means that agency of the United States Department of Agriculture acting on behalf of the Federal Crop Insurance Corporation to administer federal crop insurance programs.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.05 Qualification for the Issuance of a License.

- (1) A person shall apply for and receive from the commissioner a multi-peril crop insurance adjuster license to operate as a multi-peril crop insurance adjuster in this State. All applications for licensure shall contain the following:
 - (a) A completed application form adopted by the commissioner and/or the NAIC, manually signed by the applicant;
 - (b) Proof of the completion and passing of the Risk Management Agency-approved Proficiency test for multi-peril crop insurance adjusters as required by Rule 0780-1-90-.08; and
 - (c) A non-refundable filing fee of one hundred dollars (\$100.00);
- (2) Before issuing a multi-peril crop insurance adjuster license to an applicant under this Chapter, the commissioner shall find that the applicant:
 - (a) Has not committed any act that is grounds for denial, suspension or revocation of a license as set forth in Rule 0780-01-90-.11;

- (b) Is trustworthy, reliable and of good reputation. The applicant shall demonstrate these characteristics to the commissioner on an NAIC biographical affidavit;
 - (c) Has paid all fees as set forth in this chapter; and,
 - (d) Is at least eighteen (18) years of age.
- (3) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243, Attention: Agent Licensing Section.
 - (4) The commissioner may require any documents or materials reasonably necessary to verify the information contained in the application.
 - (5) Applicants should allow thirty (30) days for the Department's review and potential granting of the application upon the Department's receipt of all required information.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.06 Issuance and Maintenance of License.

- (1) Unless denied licensure under this chapter, persons who have met the requirements of this Chapter shall be issued a multi-peril crop insurance adjuster license.
- (2) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.
- (3) A multi-peril crop insurance adjuster license shall remain in effect for twenty-four (24) months from the last day of the licensee's birth month occurring after the license is issued, unless revoked or suspended. The commissioner may renew a license issued under this Chapter, as long as the request for renewal and the fee set forth in the Rule 0780-01-90-.07 is paid and any other requirements for license renewal are met by the date of the license's expiration.
- (4) The licensee shall inform the commissioner, by any means acceptable to the commissioner, of a change of address, change of legal name, or change of material information submitted on the application within thirty (30) days of the change.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.07 License Renewal.

- (1) A multi-peril crop insurance adjuster shall renew such adjuster's license every other year on or before the end of the multi-peril crop insurance adjuster's birth month in order to continue to operate in this State. All applications for renewal shall contain the following:
 - (a) A completed renewal form adopted by the commissioner and signed by the applicant;
 - (b) Proof of completion of no less than twenty-four (24) hours of continuing education courses approved by the commissioner; and
 - (c) A non-refundable renewal fee of one hundred dollars (\$100.00).
- (2) (a) A multi-peril crop insurance adjuster who allows the adjuster's license to lapse may, within twelve (12) months from the date of expiration, be issued a new multi-peril crop insurance adjuster license upon the commissioner's receipt of the request for renewal. However, a lapsed license fee in the amount of double the unpaid renewal fee shall be

required, and the license shall be subject to any other penalties as provided by law, before the license will be renewed.

- (b) If the commissioner receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the commissioner shall reinstate the license retroactively to the date the license lapsed. If the commissioner receives the request for reinstatement and the required lapsed license fee after sixty (60) days, but within one (1) year of the date the license lapsed, the commissioner shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one (1) year from date of lapse, the person shall reapply for the license under this part.
- (3) A licensed multi-peril crop insurance adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. Upon such request, the commissioner may grant a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.
- (4) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243, Attention: Agent Licensing Section.
- (5) In order to ensure the prompt review and potential granting of a renewal application, applicants should file all information required under Paragraph (1) of this Rule thirty (30) days prior to the end of the multi-peril crop insurance adjuster's birth month.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.08 Examination Requirements.

- (1) All individuals applying for a multi-peril crop insurance adjuster license are required to pass the Risk Management Agency-approved Proficiency test for multi-peril crop insurance adjusters.
- (2) The commissioner may enter into a contract with a testing organization for the examination of applicants for a license as a multi-peril crop insurance adjuster. Notwithstanding any other provisions of this Chapter 0780-01-90, such contract may provide that the testing organization shall:
 - (a) Assume responsibility for the administration and grading of the examination; and
 - (b) Charge and collect from each applicant the fee for administering the examination.
- (3) No individual taking an examination for a multi-peril crop insurance adjuster license shall possess or examine the examination questions and/or answers prior to the time of examination, nor shall any such individual use improper notes or other reference materials during the examination. Furthermore, no person shall have such questions or answers reproduced and/or disseminated for the purposes of assisting an applicant in passing an examination.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.09 Continuing Education Requirement.

- (1) An individual, who holds a multi-peril crop insurance adjuster license shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle. The education required by this section shall be in addition to any other continuing education requirements required for other

professional licenses held by the individuals licensed under Chapter 56, Part 6 of the Tennessee Code Annotated.

- (2) Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Paragraph (1).

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301 and 56-6-1001 *et seq.*

0780-01-90-.10 Procedures for Public Complaints.

- (1) Complaints concerning crop insurance adjusters shall be handled by the Consumer Insurance Services Section (or successor organizational unit) of the Department's Insurance Division.
- (2) The Consumer Insurance Services Section (or successor organizational unit) shall record and review all complaints received under this Rule, and the process for such review and disposition shall be the same as that for all other complaints submitted to the Consumer Insurance Services Section.
- (3) Upon receiving notice of a complaint from the Consumer Insurance Services Section, a crop insurance adjuster shall send a written response to the Consumer Insurance Services Section within thirty (30) days thereafter.

Authority: 2009 Public Acts, Chapter 476 and T.C.A. §§ 56-2-301, 56-6-1001 *et seq.*, Title 56, Chapters 8 and 53.

0780-01-90-.11 Grounds for Probation, Suspension, Revocation, Refusal to Issue and Refusal to Renew a License.

- (1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a multi-peril crop insurance adjuster's license, or may levy a civil penalty in accordance with T.C.A. § 56-2-305, or any combination of actions, for any one (1) or more of the following causes:
 - (a) Providing materially incorrect, misleading, incomplete, or untrue information in the license application or renewal application;
 - (b) Violating any laws administered by the commissioner, or violating lawful regulations, or final orders of the commissioner or of another state's commissioner;
 - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating, or converting to the licensee's own use any moneys or properties received in the course of conducting business under this license;
 - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - (f) Having been convicted of a felony or any other offense involving dishonesty, fraud, deceit or misrepresentation, in a final decision of a court of competent jurisdiction;
 - (g) Having committed any insurance unfair trade practice or insurance fraud prohibited under chapters 8 and 53 of this title;
 - (h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
 - (i) Having an insurance producer license, public adjuster license or crop insurance adjuster license, or its equivalent, suspended or revoked in this or any other state, province, district or territory;

- (j) Forging another's name to an application for insurance or to any document related to an insurance transaction;
 - (k) Cheating on an examination for an insurance license;
 - (l) Knowingly accepting insurance business from an individual who is not licensed by the commissioner but who is required to be so licensed;
 - (m) Allowing a person not licensed under T.C.A. § 56-6-1001 *et seq.* and this Chapter to perform actions requiring licensure under T.C.A. § 56-6-1001 *et seq.* and this Chapter; or,
 - (n) Any other grounds or violations permissible by statute.
- (2) Any action by the commissioner to put on probation, suspend, revoke or deny the renewal of a license pursuant to this Chapter shall be governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
 - (3) In the event that the action of the commissioner is to deny an application for a license, the commissioner shall notify the applicant and advise the applicant, in writing, of the denial of the applicant's application within thirty (30) days of such denial.
 - (4) The commissioner shall retain the authority to enforce this Chapter and T.C.A. § 56-6-1001 *et seq.* and impose any penalty or remedy authorized by this Chapter or T.C.A. § 56-6-1001 *et seq.*, or any other provision of Title 56 against any person who is under investigation for or charged with a violation of this Rule, even if the person's license or registration has been surrendered or has lapsed by operation of law.
 - (5) The commissioner may serve a notice or order in any action arising under this Chapter or T.C.A. § 56-6-1001 *et seq.* by registered or certified mail to the multi-peril crop insurance adjuster or applicant at the address of record on file with the commissioner. The multi-peril crop insurance adjuster or applicant shall be deemed to have designated such address and such manner of service as sufficient for reasonable notice of proceedings under this Chapter and T.C.A. § 56-6-1001 *et seq.*

Authority: 2009 Public Acts, Chapter 476, Tenn. Code Ann. §§ 4-5-308, 56-2-301, 56-2-305, 56-6-1001 *et seq.*, Title 4, Chapter 5, Title 56, Chapters 8 and 53.

0780-01-90-.12 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: 2009 Public Acts, Chapter 476 and Tenn. Code Ann. §§ 56-2-301 and 56-6-1001 *et seq.*

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 6-7-10 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 1/29/10

Rulemaking Hearing(s) Conducted on: (add more dates). 3/31/10



Date: 6-7-10

Signature: Leslie A Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 6-7-10

Notary Public Signature: Denise M Lewis

My commission expires on: 3-5-12

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

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
6-15-10
 Date

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Filed with the Department of State on: 6/16/10

Effective on: 9/14/10

Tre Hargett
 Tre Hargett
 Secretary of State

Public Hearing Comments

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

The Department of Commerce and Insurance received no comments.

Regulatory Flexibility Addendum

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

The Department of Commerce and Insurance has considered whether the proposed rule in this notice of rule making hearing are such that they will have an economic impact on small business (business with fifty (50) or fewer employees). The proposed rule is anticipated not to have a significant economic impact affecting small business. The proposed amendment will require anyone acting as crop insurance adjusters in this State to become and maintain a multi-peril crop insurance adjuster license. The proposed amendment is necessary for the Department to implement Chapter 476 of the Public Acts of 2009 now codified at T.C.A. §§ 56-6-1001, et seq.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rule will only apply to individuals acting as crop insurance adjusters in this state.
- (2) The proposed rule requires individuals acting as crop insurance adjusters to become licensed and maintain a license. This includes paying a licensing and renewal fee of One Hundred Dollars (\$100) every two years. The proposed rule also requires individuals to take and pass the Risk Management Agency-approved Proficiency test for multi-peril crop insurance adjusters before they may be issued a license. Finally, the proposed rule also requires licensed crop insurance adjusters to satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses every two years.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect individuals acting as crop insurance adjusters. To date, the Department of Commerce and Insurance has issued one hundred twenty multi-peril crop adjuster licenses.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) The State currently licenses public adjusters. The public adjuster rule was used as a model for this proposed rule and the licensing fee and continuing education requirements are the same for public adjusters and crop adjusters.
- (6) Only natural persons who act as crop insurance adjusters are subject to licensing. Pursuant to the T.C.A. §§ 56-6-1001 et seq., a natural person must be licensed and maintain a license before holding themselves out as a crop insurance adjuster. As such, it would not be possible to exempt small businesses from this regulation because T.C.A. §§ 56-6-101 et seq. applies to natural persons whether they operate a small business or not.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are new rules to establish application requirements and to begin accepting and considering applications for crop insurance adjusters so that the licensure program may commence after the Chapter 476 of the Public Acts of 2009 becomes effective on January 1, 2010.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rulemaking hearing rule is promulgated pursuant to 2009 Public Acts, Chapter 476 and Tenn. Code Ann. §§ 56-6-1001, 56-6-1002, 56-6-1003, 56-6-1004, 56-6-1005, 56-6-1006, 56-6-1007, 56-6-1008 and 56-6-1009.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will affect only those public adjusters and claims adjusters for insurers who specialize in adjusting losses on crop insurance. Chapter 476 of the Public Acts of 2009 requires everyone acting or holding themselves out to be a crop insurance adjuster to maintain a license with the Department of Commerce and Insurance as of January 1, 2010.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None. The licensing fee is intended defray the cost of administering the crop insurance adjuster licensing program.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Larry C. Knight, Jr., Assistant Commissioner for Insurance; Tony Greer, Assistant General Counsel.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Assistant General Counsel.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Second Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-2199.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.