

**Department of State  
Division of Publications**

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Sequence Number: 12-15-10  
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## Proposed Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Department of Safety
<b>Division:</b>	Highway Patrol
<b>Contact:</b>	Gerry Crowover, Staff Attorney
<b>Address:</b>	1150 Foster Avenue, Nashville, TN
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1340-03-05	Passenger Transportation Compliance Review Procedures
Rule Number	Rule Title
1340-03-05-.01	Purpose
1340-03-05-.02	Definitions
1340-03-05-.03	Passenger Transportation Services Compliance Review
1340-03-05-.04	Passenger Transportation Services Inspection Stickers
1340-03-05-.05	Inspection/Review Procedures
1340-03-05-.06	Out of Service Criteria
1340-03-05-.07	Penalties for Violations

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

Rules  
of  
The Tennessee Department of Safety  
Highway Patrol  
Chapter 1340-03-05  
Passenger Transportation Compliance Review Procedures

Table of Contents

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1340-03-05-.01 Purpose.

- (1) To establish uniform procedures for annual compliance reviews on for-hire passenger transportation services and promoting passenger transportation safety.

Authority: T.C.A. §§ 4-3-2009 and 65-15-128. Administrative History:

1340-03-05-.02 Definitions.

- (1) Compliance Review. An annual on-site examination of a motor carrier's operations, both paperwork and vehicle inspection, by the Tennessee Highway Patrol to determine a motor carrier's safety fitness.
- (2) CVSA. Commercial Motor Vehicle Safety Alliance.
- (3) FMCSR. Federal Motor Carrier Safety Regulations.
- (4) For-Hire Passenger Transportation Service. Any person, company or government entity that holds itself out to the public as willing to transport passengers in return for compensation and has the ability to offer such transportation services with motor vehicles designed or constructed to accommodate and transport eight (8) or more passengers, excluding the driver, within the state of Tennessee, or any motor vehicle transporting passengers who are TennCare enrollees eligible for such transportation services under TennCare. Any Passenger Transportation Service that is being inspected by the Department of Safety under another program is deemed to meet the requirements of this rule.
- (5) Level I Inspection. An inspection that includes examination of driver's license, medical examiner's certificate and waiver, if applicable, alcohol and drug possession, driver's record of duty status as required, hours of service, seat belt, vehicle inspection report, brake system, coupling devices, exhaust system, frame, fuel system, turn signals, brake lamps, tail lamps, head lamps, lamps on projecting loads, safe loading, steering mechanism, suspension, tires, van and open-top trailer bodies, wheels and rims, windshield wipers, emergency exits on buses and HM requirements, as applicable.
- (6) Level V Inspection. An inspection that includes each of the vehicle inspection items specified under the North American Standard Inspection (Level I), without a driver present, conducted at any location.
- (7) Level VII Inspection. Other inspection programs that are required by various jurisdictions for the inspection of, for example, limousines and school buses. No CVSA decal is issued.
- (8) Out of Service Criteria (OOSC). The OOSC is used by certified state, provincial, territorial and federal law enforcement personnel in identifying Critical Vehicle Inspection Item violations following a roadside inspection that can prohibit a motor carrier or operator from driving a Commercial Motor Vehicle.
- (9) SafetyNet. A system designed to manage and provide appropriate access to crash data, inspection history, and motor carrier and shipper identification information.

- (10) SAFER. The FMCSA Safety and Fitness Electronic Records System provides company safety data and related services to industry and the public over the Internet.

Authority: T.C.A. § 65-15-128. Administrative History:

#### 1340-03-05-.03 Passenger Transportation Services Compliance Review

- (1) Annual Passenger Transportation Services Inspection/Review (Level I, V, VII)
- (a) Passenger transportation services inspections/reviews will be conducted annually by a qualified Trooper. Those charged with inspecting such vehicles must have completed the training program provided by the department prior to conducting inspections.
  - (b) The Trooper will be responsible for ensuring that all vehicles designed for use for passenger transportation services meet the requirements of the FMCSR handbook. The FMCSR handbook can be accessed on the Department of Safety's website at <http://tn.gov/safety/CVE/index.html>.
  - (c) All inspections/reviews will be coordinated through the Commercial Vehicle Administration Office. Each Passenger Transportation Service will be notified of impending inspection via phone or mail by the THP District Office. Inspection/review locations will be determined by the Trooper. Possible locations may include, but are not limited to, the Passenger Transportation Service's place of business, fixed scale complex, roadside or other designated safe location.
  - (d) Any vehicle that does not meet the requirements of the FMCSR will be placed out of service by the Trooper. Such vehicle shall remain out of service until it is made compliant with the FMCSR.
  - (e) The Trooper shall be required to explain the reason for any non-compliance to operator or company official of the inspected vehicle.
  - (f) Upon approval of and/or noncompliance of the vehicle, the Trooper shall:
    - 1. Complete an Electronic Inspection Report in its entirety.
    - 2. The Trooper will sign the inspection report; this will be an indicator to all receiving it that the vehicle recorded thereon is in compliance/noncompliance with the FMCSR.
    - 3. Distribution of the inspection report shall be the responsibility of the Trooper.
    - 4. A copy of the inspection report shall be provided to the driver, owner or passenger transportation service representative.
  - (g) Troopers will also review the medical examination records for each driver required to be medically qualified as per State and Federal requirements.
  - (h) Troopers will also review the maintenance records of vehicles that are designed or constructed to accommodate and transport 8 or more in number.
  - (i) Troopers will also review the drug and alcohol testing of drivers required to submit to these tests as required by 49 CFR and/or State regulations.
  - (j) Troopers will also review for the meeting of minimum insurance requirements of the carrier.

Authority: T.C.A. § 65-15-128. Administrative History:

#### 1340-03-05-.04 Passenger Transportation Services Inspection Stickers.

- (1) Passenger Transportation Inspection Services Sticker Policy (CVSA).

- (a) The CVSA Inspection Sticker is a system of identification enabling responsible officials and law enforcement personnel to visually identify the inspection status of passenger transportation vehicles.
- (b) CVSA Inspection Stickers will consist of four (4) different and recognizable distinct colors.
  - 1. The calendar quarter in which an inspection is performed is indicated by the color of the sticker issued.
- (c) The CVSA Sticker is to be placed on the glass portion of the passenger door as close to the inspector's eye level as possible.
- (d) The Trooper must remove or cover any previous CVSA Sticker before the new one is applied.

Authority: T.C.A. § 65-15-128. Administrative History:

1340-03-05-.05 Inspection/Review Procedures.

(1) Passenger Transportation Inspection Policy/Procedures

- (a) The Department of Safety will follow all procedures as outlined in the North American Standard Passenger Vehicle Inspection Procedure. The complete procedure can be accessed on the Department of Safety's website at <http://tn.gov/safety/CVE/index.html>.

(2) Inspection Procedures

- (a) No inspection will be completed on vehicles that are powered by alternate sources of energy such as, but not limited to, battery or electric powered vehicles, and hybrids until such training becomes available.

(3) Documentation of Compliance Review

- (a) All inspections when completed will be uploaded to SafetyNet as per the following:
  - 1. Level I inspections completed on for-hire carriers at point of destination.
  - 2. Level V inspections to be completed at the terminal of for-hire carriers.
  - 3. Level VII inspections completed on all government registered carriers.
- (b) A copy of all inspections along with the completed spread sheet will be forwarded to the Commercial Vehicle Administrative Office within seven (7) days of the completion of the review.

Authority: T.C.A. § 65-15-128. Administrative History:

1340-03-05-.06 Out of Service Criteria.

(1) Passenger Transportation Out Of Service Criteria (OOSC) Policy/Procedures

- (a) The Department of Safety will follow all procedures as outlined in the North American Standard Out Of Service Criteria (OOSC). The complete procedure can be accessed on the Department of Safety's website at <http://tn.gov/safety/CVE/index.html>.

Authority: T.C.A. § 65-15-128. Administrative History:

1340-03-05-.07 Penalties for Violations.

(1) Pursuant to T.C.A. § 65-15-122(b) penalties for violations of this rule shall be as follows:

- (a) Every officer, agent or employee of any corporation and every other person who knowingly fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement of the department made in pursuance of the power and authority conferred by Chapter 15 of Title 65 of the T.C.A., commits a Class B misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not to exceed six (6) months, or both, in the discretion of the court.
- (b) Each day any such order, decision, rule or regulation, etc., of the department of safety is violated, is a separate offense.
- (c) The fact that there may have been a prosecution for the violation of any such order, decision, rule or regulation, etc., of the department of safety does not operate to prevent or limit the commissioner of safety from requesting that the commissioner of revenue suspend or revoke the interstate permit or intrastate permit, or both, as provided in Chapter 15 of Title 65 of the T.C.A. and, upon receipt of such a request from the commissioner of safety, the commissioner of revenue shall immediately make the suspension or revocation requested.

Authority: T.C.A. §§ 65-15-122 and 65-15-128. Administrative History:

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on \_\_\_\_\_ (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10/08/10

Signature: [Signature]

Name of Officer: Dereck Stewart

Title of Officer: Major, Tennessee Highway Patrol



Subscribed and sworn to before me on: 10-8-10

Notary Public Signature: Donna L. Elmore

My commission expires on: 1-26-2014

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

[Signature]  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
12-10-10  
 Date

**Department of State Use Only**

Filed with the Department of State on: 12/16/10

Effective on: 5/31/14

[Signature]  
 Tre Hargett  
 Secretary of State

SECRETARY OF STATE  
 STATE CAPITOL

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### **Regulatory Flexibility Addendum**

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

(If applicable, insert Regulatory Flexibility Addendum here)

### **Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. 4-5-401, et seq., the Department of Safety submits the following regulatory flexibility analysis:

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

The proposed rule does not overlap, duplicate or conflict with other federal, state or local government rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule establishes annual compliance review/inspection requirements for small businesses engaged in for-hire passenger transportation services. The proposed rule does not establish any reporting requirements for small businesses.

- (4) The establishment of friendly compliance and reporting requirements for small businesses:

The proposed rule establishes the requirement for annual compliance reviews/inspections for small businesses engaged in for-hire passenger transportation services. The proposed rule does not establish any reporting requirements for small businesses.

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

The proposed rule requires annual compliance reviews/inspections for small businesses engaged in for-hire passenger transportation services.

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

The proposed rule does not establish performance standards for small businesses as opposed to design or operational standards.

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

The proposed rule does not unnecessarily create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

## **Impact on Local Governments**

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

The proposed rule will impact local governments that operate for-hire passenger transportation systems as these entities will be required to comply with the proposed rule's requirements.

## 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;

This is a new rule intended to protect the public safety and welfare by establishing uniform procedures for conducting annual compliance reviews/inspections of for-hire motor carriers providing passenger transportation services.

- (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;

T.C.A. § 65-15-128

- (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;

For-hire motor carriers providing passenger transportation services.

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

None

- (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;

No significant increase or decrease in revenues or expenditures anticipated.

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

Major Dereck Stewart; Lt. Ray Robinson

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

Major Dereck Stewart; Lt. Ray Robinson

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

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

None