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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

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Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-12-01
Hazardous Waste Management

Amendments

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

1. Facilities managing hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv), ~~(xxv)~~, or (xxvii) of Rule 0400-12-01-.02 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the department that include the following information:
 - (i) The name, address, and EPA ID number (if applicable) of the facility;
 - (ii) The name and telephone number of a contact person;
 - (iii) The NAICS code of the facility;
 - (iv) The regulation under which the hazardous secondary materials will be managed;
 - (v) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with subpart (1)(d)1(xxiv) or (xxv) of Rule 0400-12-01-.02, whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator).
 - (vi) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
 - (vii) A list of hazardous secondary materials that will be managed according to the regulation (reported as hazardous waste codes that would apply if the hazardous secondary materials were managed as hazardous wastes);
 - (viii) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
 - (ix) The quantity of each hazardous secondary material to be managed annually; and
 - (x) The certification (included in the forms provided by the department) signed and dated by an authorized representative of the facility.
2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv), ~~(xxv)~~, or (xxvii) of Rule 0400-12-01-.02 the facility must notify the Commissioner within ~~thirty~~ (30) days using forms provided by the department. For purposes of this part, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv), ~~(xxv)~~, or (xxvii) of Rule 0400-12-01-.02 and does not expect to manage any amount of hazardous secondary materials for at least one ~~(1)~~ year.

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

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

(d) Legitimate recycling of hazardous secondary materials [40 CFR 260.43]

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, ~~all~~ persons must address all the requirements of this part 2 of this subparagraph and persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of rule 0400-12-01-.02 must address the requirements of part 3 of this subparagraph and must consider the requirements of part 2 of this subparagraph.

~~2. Requirements that must be addressed by all persons recycling hazardous secondary materials:~~

(i) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(I) Contributes valuable ingredients to a product or intermediate; or

(II) Replaces a catalyst or carrier in the recycling process; or

(III) Is the source of a valuable constituent recovered in the recycling process; or

(IV) Is recovered or regenerated by the recycling process; or

(V) Is used as an effective substitute for a commercial product.

(ii) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(I) Sold to a third party; or

(II) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(iii) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

~~3. Requirements that must be addressed by persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of Rule 0400-12-01-.02.~~

2. The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(i) The product of the recycling process ~~must be comparable to a legitimate product or intermediate~~ does not:

- ~~(I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:~~
- ~~I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and~~
 - ~~II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.~~
- ~~(II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:~~
- ~~I. The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or~~

~~(Note: For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.)~~
 - ~~II. The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).~~

~~(Note: There is no analogous product when the hazardous secondary material is recycled by being returned to the original production process or processes. Production process or processes includes those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment.)~~
- ~~(III) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per item (I) or (II) of this subpart, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Commissioner of this activity using forms provided by the department.~~
- (I) Contain significant concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are not found in analogous products; or

(II) Contain concentrations of hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 at levels that are significantly elevated from those found in analogous products; or

(III) Exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit.

(Note: To comply with the requirements of this subpart, a generator of the hazardous secondary material, product or intermediate may use its knowledge of the materials it recycles and of the recycling process to make legitimacy determinations.)

(ii) Reserved- In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in subpart (i) of this part is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in subpart (i) of this part does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which the factor in subpart (i) of the part is met and in determining whether a process that does not meet the factor in subpart (i) of this part is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations.

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling.)

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

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

II. The hazardous secondary material is not speculatively accumulated, as ~~described~~ defined in subpart (a)3(viii) of this paragraph.

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

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

V. Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all ~~four~~ three factors in part (5)(d)1 of Rule 0400-12-01-.01 and how the factor in part (5)(d)2 of Rule 0400-12-01-.01 was considered. Documentation must be maintained for three years after the recycling operation has ceased.

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

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

(xxiv) Hazardous secondary material that is generated and then transferred to ~~a~~ another person for the purpose of reclamation is not a solid waste, provided that:

- (I) The material is not speculatively accumulated, as defined in subpart (a)3(viii) of this paragraph;
- (II) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ~~ten~~(10) days at a transfer facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;
- (III) The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12), ~~and it does not meet the listing description for K171 or K172 in subparagraph (4)(c) of this rule;~~
- (IV) The reclamation of the material is legitimate, as specified under subparagraph (5)(d) of Rule 0400-12-01-.01;
- (V) The hazardous secondary material generator satisfies all of the following conditions:
 - I. The material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.
 - II. Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three ~~(3)~~ years for the hazardous secondary material generator to claim the exclusion

and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

- A. Does the available information indicate that the reclamation process is legitimate pursuant to subparagraph (5)(d) of Rule 0400-12-01-.01? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process. ~~(By responding to this question, the hazardous secondary material generator has also satisfied its requirement in subparagraph (5)(d) of Rule 0400-12-01-.01 to be able to demonstrate that the recycling is legitimate).~~

- B. Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to subparagraph (5)(c) of Rule 0400-12-01-.01 and have they notified the appropriate authorities that the financial assurance condition is satisfied per ~~item (VI)~~subitem (VI)VII of this subpart? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per subparagraph (5)(c) of Rule 0400-12-01-.01, including the requirement in subpart (5)(c)1(v) of Rule 0400-12-01-.01 to notify the appropriate authorities whether the reclaimer or intermediate facility has financial assurance.

- C. Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three ~~(3)~~ years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the ~~Department~~ department. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three ~~(3)~~ years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have

credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the ~~Department~~ department, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

- D. Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.
- E. If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the ~~Department~~ department, or information provided by the facility itself.

III. The hazardous secondary material generator must maintain for a minimum of three ~~(3)~~ years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by the Commissioner within ~~seventy-two (72)~~ hours, or within a longer period of time as specified by the Commissioner. The certification statement must:

- A. Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;
- B. Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with subitem (1)(d)1(xxiv)(V)II of Rule

0400-12-01-.02 to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.”.

- IV. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:
 - A. Name of the transporter and date of the shipment;
 - B. Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and
 - C. The type and quantity of hazardous secondary material in the shipment.
 - V. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);
 - VI. The hazardous secondary material generator must comply with the emergency preparedness and response conditions in paragraph (13) of this rule.
- (VI) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, satisfy all of the following conditions:
- I. The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:
 - A. Name of the transporter and date of the shipment;
 - B. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;
 - C. The type and quantity of hazardous secondary material in the shipment; and

- D. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.
- II. The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.
- III. The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials, within ~~thirty~~ (30) days of receipt. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).
- IV. The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.
- V. The intermediate or reclamation facility must ~~have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet~~ comply with the emergency preparedness and response ~~requirements under conditions of~~ paragraph (13) of this rule.
- VI. Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to paragraph (3) of this rule, or if they themselves are specifically listed in paragraph (4) of this rule, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of Rules 0400-12-01-.01 through 0400-12-01-.10.
- VII. The reclaimer and intermediate facility have financial assurance as required under paragraph (8) of this rule.
- (VII) In addition, all persons claiming the exclusion under this subpart must provide notification as required under subparagraph (5)(c) of Rule 0400-12-01-.01.

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

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

(xxv) Reserved Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of 40 CFR § 261.4(a)(24)(i)-(v) excepting 40 CFR § 261.4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:

(I) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least 60 days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a 12-month or lesser period. The notification must be in writing, signed by the hazardous secondary material generator, and include the following information:

I. Name, mailing address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

II. A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

III. The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

IV. The estimated total quantity of hazardous secondary material;

V. All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

VI. A description of the means by which each shipment of the hazardous secondary material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.);

VII. A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

VIII. The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

IX. The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this subpart, the terms "EPA Acknowledgement of Consent", "country of import", and "country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in this subpart refer to hazardous secondary materials, rather than hazardous waste).

(II) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(III) Except for changes to the telephone number in subitem (I)I of this subpart and decreases in the quantity of hazardous secondary material

indicated pursuant to subitem (I)IV of this subpart, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written re-notification of the change. The shipment cannot take place until consent of the country of import to the changes (except for changes to subitem (I)IX of this subpart and in the ports of entry to and departure from countries of transit pursuant to subitem (I)V of this subpart) has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

- (IV) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.
- (V) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of item (I) of this subpart. Where a claim of confidentiality is asserted with respect to any notification information required by item (I) of this subpart, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.
- (VI) The export of hazardous secondary material under this subpart is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.
- (VII) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to item (I) of this subpart within 30 days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the 30-day period; re-notification and renewal of all consents is required for exports after that date.
- (VIII) A copy of the EPA Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the EPA Acknowledgment of Consent.
- (IX) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with item (III) of this subpart and obtain another EPA Acknowledgment of Consent.

(X) Hazardous secondary material generators must keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or department inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under this subpart if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the hazardous secondary material generator bears no responsibility.

(XI) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. Such reports must include the following information:

I. Name, mailing and site address, and EPA ID number (if applicable) of the hazardous secondary material generator;

II. The calendar year covered by the report;

III. The name and site address of each reclaimer and intermediate facility;

IV. By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

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

(XII) All persons claiming an exclusion under this subpart must provide notification as required by 40 CFR 260.42.

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

Subparagraph (d) of paragraph (8) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting the opening phrase which reads: "Per subitem (1)(d)1(xxiv)(VI)VI" and substituting a new opening phrase to read: "Per subitem (1)(d)1(xxiv)(VI)VII" so that as amended the first sentence of the

subparagraph shall read:

Per subitem ~~(1)(d)1(xxiv)(VI)VI~~ (1)(d)1(xxiv)(VI)VII of this rule, an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under subpart (1)(d)1(xxiv).

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

Parts 10 and 11 of subparagraph (d) of paragraph (8) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting them in their entirety and substituting instead the following:

10. Removal and Decontamination Plan for Release

- (i) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under subitem ~~(1)(d)1(xxiv)(VI)VI~~ (1)(d)1(xxiv)(VI)VII of this rule must submit a plan for removing all hazardous secondary material residues to the Commissioner at least 180 days prior to the date on which he expects to cease to operate under the exclusion.
- (ii) The plan must include, at least:
 - (I) For each hazardous secondary materials storage unit subject to financial assurance requirements under subitem ~~(1)(d)1(xxiv)(VI)VI~~ (1)(d)1(xxiv)(VI)VII of this rule, a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and
 - (II) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and
 - (III) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc.; and
 - (IV) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under subitem ~~(1)(d)1(xxiv)(VI)VI~~ (1)(d)1(xxiv)(VI)VII of this rule and the time required for intervening activities which will allow tracking of the progress of decontamination.
- (iii) The Commissioner will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Commissioner will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Commissioner will approve, modify, or

disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved plan. The Commissioner must assure that the approved plan is consistent with this part. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(iv) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Commissioner, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Commissioner, upon request, until he releases the owner or operator from the financial assurance requirements for subitem ~~(1)(d)1(xxiv)(VI)V~~ (1)(d)1(xxiv)(VI)VII of this rule.

11. Release of the owner or operator from the requirements of this subparagraph. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per part 10 of this subparagraph, the Commissioner will notify the owner or operator in writing that he is no longer required under subitem ~~(1)(d)1(xxiv)(VI)V~~ (1)(d)1(xxiv)(VI)VII of this rule to maintain financial assurance for that facility or a unit at the facility, unless the Commissioner has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Commissioner shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

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

Part 1 of subparagraph (h) of paragraph (8) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting the first sentence and substituting instead the following as the first sentence:

An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under subitem ~~(1)(d)1(xxiv)(VI)V~~ (1)(d)1(xxiv)(VI)VII of this rule, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

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

Part 5 of subparagraph (h) of paragraph (8) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

5. Period of coverage

Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per part (d)8 of this paragraph, the Commissioner will

notify the owner or operator in writing that he is no longer required under item ~~(1)(d)1(xxiv)(VI)V~~ (1)(d)1(xxiv)(VI)VII of this rule to maintain liability coverage for that facility or a unit at the facility, unless the Commissioner has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Stacey Cothran (Solid/Hazardous Waste Management Industry/Business)					
Chuck Head (Commissioner's Designee, Dept. of Environment and Conservation)					
Dr. George Hyfantis, Jr. (Faculty from Institute of Higher Learning—Registered Engineer, Registered Geologist, or Qualified Land Surveyor)					
Alan M. Leiserson TN Environmental Council—Knowledge of Solid/Hazardous Wastes)					
Jared L. Lynn (TCCI--Manufacturing)					
David Martin (Farm Bureau—Engaged in a field related to Agriculture)					
Richard “Ric” Morris (TCCI—Private Petroleum Concern)					
William “Will” Ownby (TCCI--Manufacturing)					
Brian Parnell (TN Fuels and Convenience Store Association—Private Petroleum Concern)					
DeAnne Redman (TN Petroleum Council--Petroleum Management Business)					
The Honorable Bob Rial (TN County Services Association--County Government)					
Jimmy West (Commissioner's Designee, Dept. of Economic and Community Development)					
Mark Williams (TN Automotive Association--Small Generator of Solid/Hazardous Materials representing Automotive Interests)					
(Vacant) (TN Municipal League--City Government)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 12/04/2019, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (06/18/19)

Rulemaking Hearing(s) Conducted on: (add more dates). (08/13/19)

Date: December 4, 2019

Signature: _____

Name of Officer: Stacey Cothran

Title of Officer: Board Chair

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): Chapter 0400-12-01

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

Comment: The Tennessee Chamber of Commerce and Industry (“TCCI”) on behalf of its members wanted to point out that while this rule is often referred to as the “definition of solid waste,” this rule is in fact a hazardous waste rule.

Response: The Board agrees that the amended definition of solid waste in Chapter 0400-12-01 is only applicable to the hazardous waste rules.

Comment: TCCI acknowledges that the department and industry faced an unprecedented situation in July 2017, when the DC Circuit Court of Appeals issued a decision casting doubt on aspects of the federal definition of solid waste when similar amendments to Chapter 0400-12-01 were about to become effective in Tennessee. TCCI wants to thank the department for the numerous conversations and meetings to find an acceptable path forward for these rules.

Response: The Board appreciates the comment.

Comment: TCCI points out that consistency and continuity in regulations are important to industry operating in compliance with state and federal regulations. Now that challenges have been resolved at the federal level and EPA revised their regulation, Tennessee’s rules will align with the federal regulations. The department’s three clarifications are reasonable. TCCI and its members support adopting these amendments.

Response: The Board appreciates the comment.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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

The Board estimates that 546 businesses generating hazardous waste have the greatest potential to recycle hazardous waste or hazardous secondary material in compliance with the variances, exclusions, or exemptions provided by the rules. The Board estimates that about 173 of those businesses will attempt to benefit from the available variances, exclusions, and exemptions. Approximately 60 of those 173 businesses are believed to be small businesses. The variances, exclusions, and exemptions are not mandatory and do not impose additional costs on small businesses.

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

These amendments do not mandate any additional reporting, recordkeeping, or administrative costs.

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

These amendments make recycling a more viable option for managing hazardous wastes and hazardous secondary materials which could result in significant savings and conserve valuable resources.

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

These amendments are consistent with federal regulations and incorporate the best methods for achieving the purpose and objectives of the proposed rule.

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

These amendments will make Tennessee's program consistent with the federal program. Relative to states that do not adopt similar recycling exemptions, those states will be more stringent than necessary to protect public health and the environment.

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

Small business would no longer benefit from the variances, exclusions, and exemptions included in these rule amendments.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

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

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The rule amendments address the definition of solid waste for purposes of regulating how hazardous waste and hazardous secondary materials are managed and determining when management of these materials is exempt from more stringent regulation. On May 30, 2018, the EPA issued a final rule regarding the definition of solid waste and hazardous secondary materials revising regulations to comply with a modified opinion and order issued by the United States Court of Appeals, District of Columbia Circuit, on March 6, 2018, and mandated on March 14, 2018. *Am. Petroleum Inst. v. Env'tl. Prot. Agency*, 862 F.3d 50 (D.C. Cir. 2017), *reh'g granted*, 883 F.3d 918 (D.C. Cir. 2018). Substantive revisions include modifying the fourth factor relative to determination of legitimate recycling and adding language addressing exports. These amendments will make Tennessee's rules consistent with the final federal regulations except for three clarifications. A reference to the definition of "contained" is added in these rule amendments to clarify the meaning of the term when used at subpart (5)(d)1(iii) of Rule 0400-12-01-.01 [third legitimate recycling factor] and at subitem (1)(d)1(xxiv)(VI)IV of Rule 0400-12-01-.02 [the hazardous secondary material managed off-site by reclaimers and intermediate facilities must be contained]. In addition, a deadline for a confirmation of receipt and a requirement for emergency preparedness in the current rules are retained.

- (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;

These rules are being promulgated under the authority of Tenn. Code Ann. Title 68, Chapter 212, and § 4-5-201 et seq. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

- (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;

All generators and recyclers of hazardous waste and hazardous secondary materials are directly affected by this rulemaking.

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

American Petroleum Institute v. EPA, 862 F.3d 50 (D.C. Cir. 2017) *reh'g granted*, 883 F.3d 918 (D.C. Cir. 2018.)

- (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;

There will be no fiscal impact resulting from this rulemaking.

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

Wayne Gregory
Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5420
Wayne.gregory@tn.gov

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

Emily Urban
Deputy General Counsel
Office of General Counsel

- (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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The Underground Storage Tanks and Solid Waste Disposal Control Board ("Board) is amending Chapter 0400-12-01 Hazardous Waste Management to be consistent with federal regulations. As explained above, the federal regulations were amended in response to a mandate issued by the United States Court of Appeals, District of Columbia Circuit, on March 14, 2018. Tennessee is authorized by the Environmental Protection Agency ("EPA") to implement the hazardous waste management program in Tennessee in lieu of the federal government. To maintain hazardous waste program authorization the state rules must be as stringent as the federal regulations. The purpose of this rulemaking is to make Tennessee's hazardous waste rules consistent with the federal regulations and to provide more flexibility to the regulated community. These rule amendments are being promulgated under the authority of Tenn. Code Ann. Title 68, Chapter 212. When effective these amended hazardous waste rules are self-implementing.

- (2) A determination that the action is the least-costly method for achieving the stated purpose.

The Board has determined that these amendments are necessary to support continuing hazardous waste program authorization and are the least-costly method of achieving the purposes of these amendments. Some aspects of the federal amendments are not mandatory for Tennessee to adopt to maintain continuing program authorization. However, being more stringent than the federal regulations would potentially put Tennessee at a competitive disadvantage with other states when retaining or attracting employers. For these reasons, the Board's amendments are the least-costly method for achieving its purpose.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

Not amending the hazardous waste rules to include the more stringent aspects of the federal regulations would place continuing hazardous waste program authorization in jeopardy. Not being consistent with the federal regulations providing more opportunities for legitimate recycling will make Tennessee less attractive for employers to remain in, or to locate to, Tennessee.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources.

- (5) A determination of the effect of the action on competition.

These amendments make more opportunities available for legitimate recycling and conservation of

natural resources. The rules are applied equally to all generators of hazardous waste and hazardous secondary material generators in Tennessee.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

These amendments are needed to support continuing hazardous waste program authorization and to provide industry more flexibility. By being consistent with federal regulations, Tennessee will remain business friendly and protective of public health and the environment. There is a potential that the increased options for legitimate recycling may provide employment opportunities for new recycling businesses or the expansion of existing recyclers.

- (8) The source of revenue to be used for the action.

The Tennessee hazardous waste program is currently funded by a combination of state appropriations, fees, and federal grants. This rulemaking action was funded with existing funds and the amended rules do not require additional expenditures by the department. .

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

If this rulemaking action has an economic impact upon the regulated community it is anticipated to be a positive economic impact. As stated above, this rulemaking makes Tennessee's rules consistent with the federal regulations for legitimately recycling hazardous waste and hazardous secondary materials. The rules when effective will provide more recycling options, and the Board believes less costly options, for safely managing hazardous waste and hazardous secondary materials. These amendments will not increase the cost of the hazardous waste program on the public or the regulated community.