G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Real Estate Commission
DIVISION:	Regulatory Boards
SUBJECT:	Supervision of Affiliate Brokers
STATUTORY AUTHORITY:	This rule change is not mandated by federal or state law or regulation.
EFFECTIVE DATES:	April 24, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule eliminates the requirement that any licensee who is not a principal broker or a property manager must live within 50 miles by straight line calculation from the firm with which they are affiliated.

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;

   This amendment would directly benefit the small businesses that are licensed as real estate firms, as affiliate brokers, brokers (working with firms as independent contractors), and time-share salespersons in the state of Tennessee by allowing licensees to affiliate with licensed real estate firms that are located more than 50 miles from the licensee's residence. There are approximately 38,000 small business licensees (firms or independent contractors) that would potentially benefit from the removal of this requirement.

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

   There are no projected administrative costs as a result of these amendments.

3. A statement of the probable effect on impacted small businesses and consumers;

   The probable effect on impacted small businesses that are licensed as real estate firms, affiliate brokers, brokers and time-share salespersons (working with firms as independent contractors) is that these licensees will be able to affiliate with the real estate firm of their choosing without being restricted by the distance from their home to the firm. There is no probable effect of this rule on consumers.

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

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

5. A comparison of the proposed rule with any federal or state counterparts;

   The Commission does not know of any other state or federal law that regulates the distance allowed between a licensee's residence and the firm with which they are affiliated.

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.

   An exemption for small businesses to these rules would not be beneficial, as this rule removes a current restriction for small businesses that are licensed as real estate firms, affiliate brokers, brokers, and timeshare salespersons (working with firms as independent contractors).

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 Real Estate Commission foresees no impact on local governments.

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;

This rule eliminates the requirement that any licensee who is not a principal broker or a property manager must live within 50 miles by straight line calculation from the firm with which they are affiliated.

(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 rule change is not mandated by federal or state law or regulation.

(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;

Licensed real estate firms and individuals who hold licenses as affiliate brokers, brokers or time-share salespersons will potentially be affected by this rule. It is anticipated that these individuals will urge adoption of the rule because it removes a requirement which restricts the distance allowed between the licensee's residence and the firm with which they are affiliated. Licensees will potentially have more options regarding where they can place their license.

(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;

There are no known attorney general opinions or judicial rulings directly related to this rule.

(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 are no probable increases or decreases in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Sarah M. Mathews, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072

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

Malcolm Young, Executive Director, Real Estate Commission Sarah M. Mathews, Assistant 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

Malcolm Young, Executive Director 500 James Robertson Parkway Davy Crockett Tower, 4th Floor Nashville, TN 37243 615-741-3321 Malcolm.young@tn.gov Sarah M. Mathews, Assistant General Counsel 500 James Robertson Parkway Davy Crockett Tower, 5th Floor Nashville, TN 37243 615-741-3072 Sarah.Mathews@tn.gov

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

There is no known additional relevant information.

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For Department of State Use Only

Sequence Number: 01-24-17
Rule ID(s): 6411
File Date: 1/24/17
Effective Date: 4/24/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Sarah M. Mathews
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-532-6303
Email:	Sarah.Mathews@tn.gov

Revision Type (check all that apply):
x 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**
1260-02	Rules of Conduct
Rule Number	**Rule Title**
.01	Supervision of Affiliate Brokers

Redline – 2016 Proposed Rules
Tennessee Real Estate Commission

Chapter 1260-02
Rules of Conduct
Amendments

Rule 1260-02-.01 is amended by deleting paragraph (2) and renumbering current paragraph (3) appropriately so that, as amended, the rule shall read:

(1) No licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to the management of such office.

~~(2) No principal broker shall engage a licensee (other than as a property manager) who lives more than fifty (50) miles by a straight line calculation from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission's satisfaction that the distance involved is not unreasonable and that adequate supervision can be provided. For purposes of this rule, a property manager is defined as a licensee who engages exclusively in leasing and otherwise managing rental properties.~~

(~~3~~2) A licensee may be engaged only by a principal broker who is:

(a) engaged primarily in the real estate business; and

(b) accessible during normal daytime working hours.

Authority: T.C.A. §§ 62-13-203 and 62-13-312(b)(15).

Rules of Tennessee Real Estate Commission
Chapter 1260-02 Rules of Conduct
Rule 1260-02-.01 Supervision of Affiliate Brokers

* 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)
John Griess	x				
Austin McMullen				x	
Diane Hills	x				
Marcia Franks	x				
Bobby Wood		x			
Rick Douglass	x				
Fontaine Taylor	x				
Gary Blume	x				
Johnny Horne	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 10/06/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 01/4/2017

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHEWS

Title of Officer: ASSISTANT GENERAL COUNSEL

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 01/04/2017

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

1/12/2017
Date

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Filed with the Department of State on: 1/24/17

Effective on: 4/24/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Operation of Personal Watercraft
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-9-504
EFFECTIVE DATES:	April 13, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The rule prescribes safe operation practices for personal watercraft.

Public Hearing Comments

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

RULE: 1660-02-10-.01

New	____
Amendment	X
Repeal	____

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

[ ] Attached hereto are the responses to public comments.

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

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

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

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

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

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

The rule puts no burden on small business.

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

The rule follows guidelines set forth in T.C.A. 69-9-504.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

Impact on Local Governments

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

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

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

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 prescribes safe operation practices for Personal Watercraft.

(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 Section 69-9-504 establishes similar requirements as the rule.

(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

(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;

The fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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Sequence Number: 01-11-17
Rule ID(s): 6396
File Date: 1/13/17
Effective Date: 4/13/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating and Law Enforcement Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):
X 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**
1660-02-10	Rules and Regulations Governing Personal Watercraft
Rule Number	**Rule Title**
1660-02-10-.01	Operation of Personal Watercraft

Amendment

1660-02-10-.01 Operation of Personal Watercraft is amended by removing from paragraph (2) "type I, type II, type III, or type V" and replacing with "wearable" and adding "and in accordance with the approval label" to the end of the sentence.

(1) "Personal Watercraft" shall mean a vessel propelled by machinery which is designed to be operated by a person sitting, standing or kneeling on the vessel rather than being operated by a person sitting or standing inside the vessel. It shall include, but not be limited to, jet skis, wet bikes, waverunners, seadoos, and similar craft.

(2) No person shall operate a personal watercraft unless each person aboard is wearing a ~~type I, type II, type III or type V~~ wearable personal flotation device as approved by the United States Coast Guard and in accordance with the approval label.

(3) No person shall operate a personal watercraft between sunset and sunrise.

(4) Personal watercraft shall not be operated in such a manner as to endanger life, limb, or property. Maneuvers such as, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to said vessel or when visibility around said vessel is obstructed, or riding unreasonably or unnecessarily close to ramps, docks, or the shore shall constitute unsafe or reckless operation.

(5) Exemptions: the provision of these rules shall not apply to a person's participation in an event authorized by permit in accordance with T.C.A. §69-9-211.

Authority: T.C.A. §§70-1-206 and 69-9-209. Administrative History: Original rule filed July 8, 1994; effective September 21, 1994. Amendment filed _____; effective _____.

* 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)
Chad Baker				✓	
Jim Bledsoe	✓				
Harold Cannon	✓				
Jeff Cook	✓				
Bill Cox				✓	
Kurt Holbert	✓				
Connie King	✓				
Jeff McMillan	✓				
Jim Ripley	✓				
Bill Swan	✓				
Trey Teague				✓	
David Watson	✓				
Jamie Woodson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-10) 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

1/6/2017
Date

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Filed with the Department of State on: 1/13/17

Effective on: 4/13/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Noise Level Standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-9-302
EFFECTIVE DATES:	April 13, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The rulemaking hearing rule prescribes requirements for vessel noise level standards.

Public Hearing Comments

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

RULE: 1660-02-09-.01

New	____
Amendment	__X__
Repeal	____

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

[ ] Attached hereto are the responses to public comments.

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

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

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

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

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

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

The rule puts a minimal burden on small business.

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

The rule is fairly similar to those that have been passed in other states.

(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.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

Impact on Local Governments

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

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

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

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 prescribes requirements for vessel noise level standards

(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 Section 69-9-302 establishes guidelines for the rule.

(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;

Persons who operate recreational vessels principally in Tennessee.

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

No opinion of the attorney general or any judicial ruling that directly relates to the rule has been identified.

(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;

The fiscal impact to state and local governments is minimal.

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

W. Glenn Moates, LT Colonel, Boating & Law Enforcement Division, 615-781-6684, Glenn.Moates@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

(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

Chris Richardson, TWRA, P.O. Box 40747, Ellington Agricultural Center, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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Sequence Number: 01-12-17
Rule ID(s): 6397
File Date: 1/13/17
Effective Date: 4/13/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating and Law Enforcement Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):
X 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**
1660-02-09	Rules and Regulations Governing Noise Level Standards
Rule Number	**Rule Title**
1660-02-09-.01	Noise Level Standards

Amendment

1660-02-09-.01 Noise Level Standards is amended by removing "70-2222" in section (1) (e) and replacing it with "T.C.A. §69-9-301 et. seq."

(1) No person shall operate any vessel in or upon the waters of Tennessee in such a manner so that the total noise produced by the watercraft exceeds 86 dBA at a distance of 50 feet or more, whether or not said vessel is in motion.

(a) Measurements shall be made with a Type I or Type II sound level meter which meets the requirements of the American National Standards Institute SI.4-1971.

(b) Measurements shall be taken at a minimum distance of 50 feet, and in so far as practical, be taken at an angle approximately perpendicular to the vessel in question.

(c) A test course, if used in testing, shall consist of an approximately straight course 50 yards in length through which the vessel in question shall operate at full throttle; measurements shall be made at a minimum distance of 50 feet and at an angle approximately perpendicular to the vessel near the center of the course.

(d) Any duly commissioned officer of the Wildlife Resources Agency with a reason to suspect that a vessel is exceeding the noise limitation may require the vessel operator to transverse a noise emission test course as set forth herein.

(e) Any person who fails to comply with the directive to transverse the test course shall be subject to prosecution under ~~70-2222~~ T.C.A. §69-9-301 et seq. and/or at the discretion of the officer, the vessel shall be ordered to immediately return to its mooring and cease operations.

Authority: T.C.A. §§ 69-9-302 and 70-1-206. Administrative History: Original rule filed June 11, 1981; effective July 27, 1981. Amendment filed _____; effective _____.

* 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)
Chad Baker				✓	
Jim Bledsoe	✓				
Harold Cannon	✓				
Jeff Cook	✓				
Bill Cox				✓	
Kurt Holbert	✓				
Connie King	✓				
Jeff McMillan	✓				
Jim Ripley	✓				
Bill Swan	✓				
Trey Teague				✓	
David Watson	✓				
Jamie Woodson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10/28/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *08/29/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/28/2016*

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 11-8-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-16

Notary Public Signature: Lisa Crawford

My commission expires on: 03-10-2019

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-02-09) have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

1/4/2017
Date

Department of State Use Only

Filed with the Department of State on: 1/13/17

Effective on: 4/13/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Office of Energy Programs
SUBJECT:	State Set-Aside Program; Small Business Energy Loan Program; Local Government Energy Efficiency Loan Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 11-1-101 et seq.; 4-3-510 through 4-3-515; 4-5-201 et seq.; and Executive Order Number 25.
EFFECTIVE DATES:	April 17, 2017 through June 30, 2018
FISCAL IMPACT:	None

STAFF RULE ABSTRACT:

Effective January 1, 2013 governor Haslam, by Executive Order Number 25, transferred the Energy Division from the Department of Economic and Community Development (ECD) to the Department of Environment and Conservation (TDEC). The Energy Division is now the Office of Energy Programs. The purpose of this rulemaking is to renumber the rules related to the Office of Energy programs from Division 0500-03 to Division 0400-60. Additionally, the rules have been updated as necessary to make housekeeping changes, including the change of departmental references to the Department of Environment and Conservation and updating statutory citations.

Public Hearing Comments

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

There were no comments received during the public comment period.

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.

Effective January 1, 2013, Governor Bill Haslam by Executive Order Number 25 transferred the Energy Division from the Department of Economic and Community Development to the Department of Environment and Conservation (TDEC). The Energy Division is now the Office of Energy Programs. The purpose of this rulemaking is to renumber the rules related to the Office of Energy Programs from Division 0500-03 to Division 0400-60. In addition to renumbering, these rules have been updated as necessary to make housekeeping changes including changing departmental references to the Department of Environment and Conservation and updating statutory citations.

(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.

This rulemaking will have no impact on small businesses in Tennessee.

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

There is no additional reporting, recordkeeping or other administrative costs as a result of this rulemaking.

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

There will be no effect on small businesses or consumers as a result of this rulemaking.

(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.

This rulemaking does not impact small businesses.

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

The federal government and surrounding states have programs similar to the Tennessee Set-Aside Program for managing the fuel supply during emergency conditions. There are no comparable federal or state programs similar to the Small Business Energy Loan Program (SBELP) or the Local Government Energy Loan Program (LGELP).

(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.

There is no impact on small businesses resulting from this rulemaking so exempting small businesses from these rules would not have a beneficial effect.

Impact on Local Governments

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

The Department does not anticipate that these amended rules will have a financial impact on local governments.

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;

Effective January 1, 2013, Governor Bill Haslam by Executive Order Number 25 transferred the Energy Division from the Department of Economic and Community Development (ECD) to the Department of Environment and Conservation (TDEC). The Energy Division is now the Office of Energy Programs. The purpose of this rulemaking is to renumber the rules related to the Office of Energy Programs from Division 0500-03 to Division 0400-60. In addition to renumbering, these rules have been updated as necessary to make housekeeping changes including changing departmental references to the Department of Environment and Conservation and updating statutory citations.

(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 rule changes are being promulgated in accordance with T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

(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;

State Set-Aside Program rules impact suppliers of liquid fuel. The Small Business Energy Loan Program rules impact private sector companies and increase energy efficiency. The remaining outstanding loans will be repaid in 2017. The Local Government Energy Loan Program helped municipal and county governments to improve the energy efficiency of local government-owned buildings. The remaining outstanding Local Government Energy Loans with be repaid in 2016. Both loan programs are closed to new applications.

None of these entities commented on this rulemaking.

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

The Department is not aware of any.

(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;

This rulemaking will have no impact on state and local government revenues and expenditures.

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

Angela McGee
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 741-2994
angela.mcgee@tn.gov

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

Lucian Geise

Senior Counsel for Legislative Affairs
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
Lucian.Geise@tn.gov

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

The Department is not aware of any additional relevant information requested.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-14-17
Rule ID(s): 6399-6406
File Date: 1/17/17
Effective Date: 4/17/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Office of Energy Programs
Contact Person:	Angela McGee
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-2994
Email:	angela.mcgee@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-60-01	State Set-Aside Program
Rule Number	**Rule Title**
0400-60-01-.01	Authority
0400-60-01-.02	Purpose
0400-60-01-.03	Definitions
0400-60-01-.04	State Set-Aside Volume
0400-60-01-.05	Prime Supplier Representative
0400-60-01-.06	Price
0400-60-01-.07	Priority for Assistance
0400-60-01-.08	Application Process
0400-60-01-.09	Decision and Order
0400-60-01-.10	Geographical Area Release
0400-60-01-.11	Confidentiality
0400-60-01-.12	Misrepresentations
0400-60-01-.13	Appeal

Chapter Number	Chapter Title
0400-60-02	Public Records
Rule Number	**Rule Title**
0400-60-02-.01	Confidentiality of All Proprietary Information
0400-60-02-.02	Copies of Public Records

Chapter Number	Chapter Title
0400-60-04	Small Business Energy Loan Program
Rule Number	**Rule Title**
0400-60-04-.01	Authority
0400-60-04-.02	Purpose and Scope
0400-60-04-.03	Definitions
0400-60-04-.04	Maximum Loan Amount
0400-60-04-.05	Repayment Period
0400-60-04-.06	Early Payoff of Loan
0400-60-04-.07	Eligibility
0400-60-04-.08	Energy Audit Required
0400-60-04-.09	Eligible Measures
0400-60-04-.10	Retroactive Assistance Prohibited
0400-60-04-.11	Application Package Required
0400-60-04-.12	Completion Certificate Required
0400-60-04-.13	Confidentiality of Information Submitted

Chapter Number	Chapter Title
0400-60-05	Local Government Energy Efficiency Loan Program
Rule Number	**Rule Title**
0400-60-05-.01	Authority
0400-60-05-.02	Purpose and Scope
0400-60-05-.03	Definitions
0400-60-05-.04	Eligible Projects
0400-60-05-.05	Maximum Loan Amount
0400-60-05-.06	Eligible Costs
0400-60-05-.07	Loan Term and Interest Rate
0400-60-05-.08	Retroactive Projects
0400-60-05-.09	Reserved
0400-60-05-.10	Loan Application
0400-60-05-.11	Application Review
0400-60-05-.12	Reserved
0400-60-05-.13	Project Implementation
0400-60-05-.14	Loan Repayment
0400-60-05-.15	Reporting Requirements

Chapter Number	Chapter Title
0500-03-01	State Set-Aside Program
Rule Number	**Rule Title**
0500-03-01-.01	Authority
0500-03-01-.02	Purpose
0500-03-01-.03	Definitions
0500-03-01-.04	State Set-Aside Volume
0500-03-01-.05	Prime Supplier Representative
0500-03-01-.06	Price
0500-03-01-.07	Priority for Assistance
0500-03-01-.08	Application Process
0500-03-01-.09	Decision and Order
0500-03-01-.10	Geographical Area Release

0500-03-01-.11	Confidentiality
0500-03-01-.12	Misrepresentations
0500-03-01-.13	Appeal

Chapter Number	**Chapter Title**
0500-03-02	Public Records
Rule Number	**Rule Title**
0500-03-02-.01	Authority
0500-03-02-.02	Purpose
0500-03-02-.03	Definitions
0500-03-02-.04	Public Record Policy
0500-03-02-.05	Inspection

Chapter Number	**Chapter Title**
0500-03-04	Small Business Energy Loan Program
Rule Number	**Rule Title**
0500-03-04-.01	Authority
0500-03-04-.02	Purpose and Scope
0500-03-04-.03	Definitions
0500-03-04-.04	Maximum Loan Amount
0500-03-04-.05	Repayment Period
0500-03-04-.06	Early Payoff of Loan
0500-03-04-.07	Eligibility
0500-03-04-.08	Energy Audit Required
0500-03-04-.09	Eligible Measures
0500-03-04-.10	Retroactive Assistance Prohibited
0500-03-04-.11	Application Package Required
0500-03-04-.12	Completion Certificate Required
0500-03-04-.13	Confidentiality of Information Submitted
0500-03-04-.14	Repealed

Chapter Number	**Chapter Title**
0500-03-05	Local Government Energy Efficiency Loan Program
Rule Number	**Rule Title**
0500-03-05-.01	Authority
0500-03-05-.02	Purpose and Scope
0500-03-05-.03	Definitions
0500-03-05-.04	Eligible Projects
0500-03-05-.05	Maximum Loan Amount
0500-03-05-.06	Eligible Costs
0500-03-05-.07	Loan Term and Interest Rate
0500-03-05-.08	Retroactive Projects
0500-03-05-.09	Appealed
0500-03-05-.10	Loan Application
0500-03-05-.11	Application Review
0500-03-05-.12	Appealed
0500-03-05-.13	Project Implementation
0500-03-05-.14	Loan Repayment
0500-03-05-.15	Reporting Requirements

(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)

Repeals

Chapter 0500-03-01
State Set-Aside Program

Chapter 0500-03-01 State Set-Aside Program is repealed

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-02 Public Records is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-04 Small Business Energy Loan Program is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-05 Local Government Energy Efficiency Loan Program is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

New Rules

Chapter ~~0500-3-1~~ 0400-60-01
State Set-Aside Program

Table of Contents

~~0500-3-1-.01~~ 0400-60-01-.01 Authority
~~0500-3-1-.02~~ 0400-60-01-.02 Purpose
~~0500-3-1-.03~~ 0400-60-01-.03 Definitions
~~0500-3-1-.04~~ 0400-60-01-.04 State Set-Aside Volume
~~0500-3-1-.05~~ 0400-60-01-.05 Prime Supplier Representative
~~0500-3-1-.06~~ 0400-60-01-.06 Price
~~0500-3-1-.07~~ 0400-60-01-.07 Priority for Assistance
~~0500-3-1-.08~~ 0400-60-01-.08 Application Process
~~0500-3-1-.09~~ 0400-60-01-.09 Decision and Order
~~0500-3-1-.10~~ 0400-60-01-.10 Geographical Area Release
~~0500-3-1-.11~~ 0400-60-01-.11 Confidentiality
~~0500-3-1-.12~~ 0400-60-01-.12 ~~Evaluation~~ Misrepresentations
~~0500-3-1-.13~~ 0400-60-01-.13 Appeal

~~0500-3-1-.01~~ 0400-60-01-.01 Authority.

Upon the declaration of an energy emergency by the Governor pursuant to the provisions of T.C.A. §§ 58-2-101 et seq., the Office of Energy ~~Division~~ Programs may be directed to administer a State Set-Aside Program for the emergency allocation of liquid fuels in accordance with the following ~~regulations~~ rules.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.02~~ 0400-60-01-.02 Purpose.

The State Set-Aside Program shall be utilized by the Office of Energy ~~Division~~ Programs to meet hardship and emergency requirements of the eligible wholesale purchaser-consumers and wholesale purchaser-resellers within the ~~State~~ state from the ~~Set-Aside~~ set-aside volume~~;~~ as ~~defined~~ provided by these ~~regulations~~ rules.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1.03~~ 0400-60-01-.03 Definitions.

(1) "Agriculture production" ~~Means~~ means commercial farming, fishing, dairy, poultry and livestock production, and the services directly related to the planting, cultivation, harvesting, processing, and distribution of fiber, and food intended for human consumption and animal feed.

(2) "Assignment" means ~~An~~ an action taken by the Office of Energy ~~Division~~ Programs directing a prime supplier of petroleum products to transfer the designated products to an authorized purchaser, wholesale purchaser-consumer or wholesale purchaser-reseller.

~~(3) Assistant Commissioner. The Assistant Commissioner of the Energy Division of the Department of Economic and Community Development.~~

~~(4)~~(3) "Base period" means ~~The~~ the corresponding month's purchases from the previous calendar year.

~~(5)~~(4) "Commissioner" means ~~The~~ the Commissioner of the Tennessee Department of ~~Economic and Community Development~~ Environment and Conservation.

~~(6)~~(5) "Current requirements" means ~~The~~ the supply of an allocated product needed by a wholesale purchaser-consumer~~,~~ or wholesale purchaser-reseller to meet its present supply requirements for a particular use of that product.

~~(7)~~(6) "Emergency services" means ~~Law~~ law enforcement, firefighting, and emergency medical services, and the Tennessee Emergency Management Agency.

~~(8)~~(7) "End-user" means ~~Any~~ any firm which is an ultimate consumer of a petroleum product, other than a wholesale purchaser-consumer.

~~(9)~~(8) "Energy production" means ~~The~~ the manufacturing, processing, storage, or transportation of primary energy sources, including electricity, natural gas, or petroleum products. Excluded from this definition is electrical generation, whose power source is petroleum-based.

~~(10)~~(9) "Extreme emergency" means ~~An~~ an energy situation in which the Office of Energy ~~Division~~ Programs finds that the public health, safety or welfare is in danger or would be seriously impacted by loss of supply.

~~(11)~~(10) "Firm" means ~~Any~~ any business association, company, corporation, estate, joint-venture, partnership, or sole proprietorship or any other legal entity, other than an individual, including, but not limited to, charitable and education institutions, and all federal, state and local governmental subdivisions.

~~(12)~~(11) "Middle distillate" means ~~Any~~ any derivatives of petroleum obtained in the range of kerosene to lubrication oil in the refining process, including kerosene, home heating oil, range oil, stove oil, and diesel fuel.

~~(13)~~(12) "Motor gasoline" means ~~Any~~ any of the various grades of motor gasoline (premium, regular, or unleaded, including gasoline/alcohol mixtures, such as gasohol) which are a volatile flammable liquid hydrocarbon mixture, such as a fuel especially for internal combustion engines.

~~(14)~~(13) "Passenger transportation services" means ~~Public~~ public and privately-owned facilities and vehicles, including water and rail, for carrying passengers.

~~(15)~~(14)"Petroleum products" means ~~Propane~~ propane, gasoline, unleaded gasoline, gasohol, kerosene, #2 heating oil, diesel fuel, kerosene base jet fuel, aviation gasoline, Bunker C fuel oil, and #4, #5, and #6 residual oil for utility and non-utility uses.

~~(16)~~(15)"Prime supplier" means ~~The~~ the supplier which makes the first sale of any petroleum products into the ~~State~~ state distribution system for consumption within the ~~State~~ state.

~~(17)~~(16)"Purchaser" means ~~A~~ a wholesale purchaser, an end-user, or both.

~~(18)~~(17)"Retailer" means ~~A~~ a firm that sells petroleum or petroleum products to the general public for direct consumption.

~~(19)~~(18)"Sanitation services" means ~~The~~ the collection and disposal of solid wastes for the benefit of the general public, whether by public or private entities, and the maintenance, operation, and repair of liquid purification and waste facilities during emergency conditions; also the provision of water supply services by public utilities, whether privately or publicly owned or operated.

~~(20)~~(19)"Set-~~Aside~~aside" means ~~A~~ a set percentage of petroleum products to be allocated from a prime supplier by the Office of Energy ~~Division~~ Programs.

~~(21)~~(20)"Supplier" means ~~Any~~ any firm which presently supplies, sells, transfers or otherwise furnishes, as by consignment, any petroleum product to wholesale purchasers or end-users, including but not limited to, a refiner, importer, reseller, jobber or retailer.

~~(22)~~(21)"Telecommunication services" means ~~The~~ the operation, repair, and maintenance of voice, data, telegraph, video, and similar communications common carriers during periods of substantial disruption of normal service, excluding sales and administrative activities.

~~(23)~~(22)"Total supply" means ~~The~~ the sum of petroleum products a prime supplier will make available for distribution to the ~~State~~ state of Tennessee in a given month.

~~(24)~~(23)"Wholesale purchaser" means ~~A~~ a wholesale purchaser-reseller or wholesale purchaser-consumer, or both.

~~(25)~~(24)"Wholesale purchaser-consumer" means ~~Any~~ any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains a petroleum product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location.

~~(26)~~(25)"Wholesale purchaser-reseller" means ~~A~~ a firm who purchases, receives through transfer or otherwise obtains such as by consignment petroleum products, and who resells or otherwise transfers its product to purchasers without substantially changing its form, excluding retailers.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.04~~ 0400-60-01-.04 State Set-Aside Volume.

(1) The Office of Energy ~~Division~~ Programs shall notify each prime supplier of the monthly ~~Set-Aside~~ set-aside percentage applicable to each product in the Set-Aside Program. The percentage remains constant until further notification.

(2) A prime supplier shall inform the Office of Energy ~~Division~~ Programs on or before the 20th day of each month of the estimated volume of each petroleum product to be delivered into Tennessee for consumption within the state during the following month.

(3) The ~~Set-Aside~~ set-aside volume available to the Office of Energy ~~Division~~ Programs for a particular month is calculated by multiplying the ~~Set-Aside~~ set-aside percentage by each prime supplier's total supply~~,~~ of each petroleum product for that month.

(4) Upon a determination by the Office of Energy ~~Division~~ Programs that after serving all qualified applicants an excess amount of petroleum product remains in the state set-aside, a statewide release may be made to any or all suppliers.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.05~~ 0400-60-01-.05 Prime Supplier Representative.

Each prime supplier shall designate a Set-Aside Program representative to act for ~~an~~ and on behalf of the prime supplier, and shall notify the Office of Energy ~~Division~~ Programs in writing of such designation.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~05-3-1-.06~~ 0400-60-01-.06 Price.

Suppliers shall charge prevailing prices for ~~Set-Aside~~ set-aside petroleum product and not place a premium or spot price on set-aside volumes.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.07~~ 0400-60-01-.07 Priority for Assistance.

Only a wholesale purchaser-consumer or a wholesale purchaser-reseller is eligible for an assignment from the ~~State Set-Aside~~ state set-aside. Priority for ~~Set-Aside~~ set-aside shall go to wholesale purchaser-consumers and wholesale purchaser-resellers who are involved in the following activities~~.~~:

(1) Agricultural production;

(2) Emergency services;

(3) Energy production;

(4) Passenger transportation services;

(5) Sanitation services; and

(6) Telecommunication services.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.08~~ 0400-60-01-.08 Application Process.

(1) Applications must be filed with the Office of Energy ~~Division~~ Programs.

(2) Applications received within three (3) working days of the first day of the month will be deemed to have been received on the first day of the month. All applications received earlier than three (3) working days prior to the first day of the month will be returned to the applicant.

(3) Filing procedures:

(a) Each applicant must submit a written and signed "Certification of Petroleum Product Hardship" application to the Office of Energy ~~Division~~ Programs. Such application shall contain a sworn statement testifying to the truth and accuracy of all statements contained in the application.

(b) In extreme emergencies applications may be made orally and written information provided within five (5) days. Oral applications will be accepted beginning on the first day of the month and will be

deemed to have been filed on the day they are received by the Office of Energy ~~Division~~ Programs. A written application must follow the oral application within five (5) days. No hardship application will be approved for an oral applicant until all prior oral applications by the same firm have been documented by acceptable written application.

(c) Each application will be for only one product type and will apply only to the current month during which the application is being made.

(d) The wholesale purchaser-consumer and wholesale purchaser-reseller submitting applications on behalf of end-users must, in addition to their own application, submit a "Certification of Petroleum Product Hardship" application for each entity for whom they are requesting five thousand (5,000) gallons or more of petroleum product.

(e) Each wholesaler purchaser-consumer or wholesale purchaser-reseller application requesting less than five thousand (5,000) gallons of petroleum product must be accompanied by the following minimum information:

1. ~~firm~~ Firm name, address and phone number;

2. ~~contact~~ Contact person;

3. ~~applicant~~ Applicant category;

4. ~~supplier~~ Supplier, product brand and type, and delivery terminal;

5. ~~a~~ A listing of monthly purchases during the base period;

6. ~~minimum~~ Minimum fuel requirements during the month;

7. ~~shortfall~~ Shortfall for month; and

8. ~~reason~~ Reason for shortfall.

(f) In making a determination on a request for a Set-Aside release, the Office of Energy ~~Division~~ Programs shall consider, but not be limited to, the following criteria:

1. The nature and effect of the unusual or abnormal circumstances causing the supply shortfall.

2. The type of customer for which the product is being requested.

3. The total amount of product available in the ~~State Set-Aside~~ state set-aside for the month in question.

4. The punctuality and completeness with which the Certification for Petroleum Product Hardship application is submitted.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.09~~ 0400-60-01-.09 Decision and Order.

(1) The Office of Energy ~~Division~~ Programs shall make a decision granting or denying the application for an assignment in whole or part upon consideration of the application and any other relevant information received or obtained during the application process.

(2) The Office of Energy ~~Division~~ Programs will make a decision on all applications within fifteen (15) days of filing, to the extent administratively feasible. If no order authorizing an assignment has been issued within said period, the application shall be deemed to have been denied in all respects.

(3) The Office of Energy ~~Division~~ Programs shall issue a written order authorizing the assignment and serve it on the prime supplier from whose set-aside the assigned product is to be drawn. An order is effective upon issuance and must be presented within ten (10) days unless stayed, modified, suspended, or rescinded. The order represents a call on the prime supplier's set-aside volume for the month of issuance, even if delivery of the product cannot be made until the following month.

(4) By means of a written notice the Office of Energy ~~Division~~ Programs may temporarily suspend the running of the fifteen (15) day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Office of Energy ~~Division~~ Programs serves notice upon the firm that the additional information has been received. Unless otherwise provided in writing by the Office of Energy ~~Division~~ Programs, the fifteen (15) day period shall resume running on the first working day following the day on which the notice was served.

(5) If the Office of Energy ~~Division~~ Programs determines that there is insufficient information upon which to base a decision and requested additional information is not submitted, the application will be denied.

(6) At any time during the month the Office of Energy ~~Division~~ Programs may order the release of part or all of the prime supplier's set-aside volume through the prime supplier's normal distribution system in the state. The Office of Energy ~~Division~~ Programs shall serve a copy of such an order upon the prime supplier.

(7) In all cases the Office of Energy ~~Division~~ Programs will attempt to work within existing supplier-purchaser relationships to the maximum extent possible.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.10~~ 0400-60-01-.10 Geographical Area Release.

(1) The Office of Energy ~~Division~~ Programs may designate certain geographical areas within the ~~State~~ state as suffering from a supply imbalance. At any time during the month the Office of Energy ~~Division~~ Programs may order a prime supplier to release all or part of ~~their~~ the prime supplier's set-aside volume through ~~their~~ the prime supplier's normal distribution systems to the designated areas. Such a release is intended to increase the volume of petroleum products available to the motoring public through the retailers located within the geographical area.

(2) Any area is eligible to apply to the Office of Energy ~~Division~~ Programs for a geographical area release if circumstances of an unusual or abnormal nature have contributed to supply imbalance.

(3) The chief executive officer of the county shall certify the geographical area shortage to the Office of Energy ~~Division~~ Programs through a written certification signed by the same and must contain the following minimum information:

(a) A statement detailing the abnormal or unusual circumstances and the actual or projected effect upon the people of the area.

(b) A definition of the size and boundaries of the geographical area, and the number of people in the area.

(c) A detailing of the fuel shortage demand/restraint~~,~~ and supply/management measures being practiced in the area.

(d) The number of retail stations, a list of the brands of gasoline, and the minimum amount of gasoline by brand estimates to be necessary to supply the area with gasoline through the last day of the month.

(e) A sworn statement containing an affirmation that all the information given is true and accurate~~,~~; the relief will be used for the purpose described, and the nature of the gasoline conservation measures being practiced in the geographical area.

(4) In extreme emergencies the certification process may be initiated orally and the written information provided within five (5) days. No further geographical area releases will be approved for an oral applicant until all prior oral applications by the same entity have been documented by acceptable written application.

(5) If the request for geographical area release is approved, a confirming correspondence shall be sent to the county executive and to suppliers with retail outlets in the area. The correspondence will direct the release of specified amounts of petroleum products through the supplier's normal distribution system in that area.

(6) In making a determination on a request for geographical area release, the Office of Energy ~~Division~~ Programs shall consider the following criteria:

(a) Number of retail stations in the area, and the quantity of fuel products available.

(b) Approximate number of persons residing in the area.

(c) The nature and effect of the unusual or abnormal circumstances causing the supply imbalance.

(d) The extent to which fuel shortage demand/restraint and supply/ management measures are being practiced in the area.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.11~~ 0400-60-01-.11 Confidentiality.

~~All information supplied to the Energy Division shall be treated in accordance with the provisions of T.C.A. Section 4-3-712(b).~~ T.C.A. § 4-3-514 provides that the Office of Energy Programs shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

> trade secrets and commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the office under this chapter, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

The Office of Energy Programs will maintain any such records so deemed to be confidential in accordance with T.C.A. Title 10, Chapter 7, Part 5.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.12~~ 0400-60-01-.12 Misrepresentations.

The Office of Energy ~~Division~~ Programs may initiate an investigation of any material statement made in connection with any application. In the course of such an investigation the Office of Energy ~~Division~~ Programs may solicit and accept relevant information from any source, all of which shall be made a part of a permanent investigatory file. In the event the Office of Energy ~~Division~~ Programs finds cause to believe that a willful misrepresentation of a material fact has been made by applicant during the application process, it shall convene a contested case ~~proceedings~~ proceeding pursuant to the provisions of the ~~Tennessee~~ Uniform Administrative Procedures Act, compiled in T.C.A. ~~§§ 4-5-301, et seq.~~ Title 4, Chapter 5, to resolve the issue. Such proceedings shall be conducted by the Office of Energy ~~Division~~ Programs in accordance with the Uniform Rules of ~~Procedures~~ Procedure for Hearing Contested Cases ~~before~~ Before State Administrative Agencies, Chapter ~~1360-1-7~~ 1360-04-01, Official Compilation of Rules and Regulations of the State of Tennessee. At the conclusion of such proceedings a copy of the administrative record shall be forwarded to the ~~office~~ Office of the Attorney General and Reporter for appropriate action.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-1-.13~~ 0400-60-01-.13 Appeal.

Within ten (10) days after the granting or denial of an application, an applicant aggrieved thereby may file with the Office of Energy ~~Division~~ Programs a written petition of appeal which shall distinctly state the grounds upon which the review is sought. Each such petition of appeal shall state the name and address of the petitioner, a concise statement of the facts surrounding the case, the reasons for the appeal and the nature of the relief sought, and the names and addresses of firms known to the petitioner that may be affected by the outcome of the appeal. The petitioner shall attach to each such petition of appeal a sworn statement setting forth that the information contained therein is true and correct to the best of the petitioner's knowledge, information and belief. The Office of Energy ~~Division~~ Programs shall convene a contested case proceeding pursuant to the provisions of the ~~Tennessee~~ Uniform Administrative Procedures Act, compiled in T.C.A. ~~§§ 4-5-301, et seq.~~ Title 4, Chapter 5, for each such petition of appeal filed in a timely manner. Such proceedings shall be conducted by the Office of Energy ~~Division~~ Programs in accordance with the Uniform Rules of ~~Procedures~~ Procedure for Hearing Contested Cases ~~before~~ Before State Administrative Agencies, Chapter ~~1360-1-7~~ 1360-04-01, Official Compilation of Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter ~~0500-3-2~~ 0400-60-02
Public Records

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~~0500-3-2-.01~~ 0400-60-02-.01 ~~Authority~~ Confidentiality of All Proprietary Information.

~~Pursuant to the provisions of T.C.A. § 4-3-712(b), the Energy Division may adopt regulations concerning types of information which it considers proprietary and to be treated in a confidential manner.~~ T.C.A. § 4-3-514 provides that the Office of Energy Programs shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

> trade secrets and commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the office under this chapter, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

The Office of Energy Programs will maintain any such records so deemed to be confidential in accordance with T.C.A. Title 10, Chapter 7, Part 5.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-2-.02~~ 0400-60-02-.02 ~~Purpose~~ Copies of Public Records.

~~The purpose of this policy is to clarify those records of the Energy Division which are open to public inspection and records which are proprietary and confidential.~~ Copies of public records will be made available upon request in accordance with Rule 0400-01-01-.01.

~~0500-3-2-.03 Definitions~~

~~(1) Public record(s) shall mean all documents, papers, letters, maps, books, photographs, microfilm, electronic data processing files and output, films, sound recordings, or other material regardless of physical form or characteristics made or recorded.~~

~~(2) Working papers shall mean those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.~~

~~(3) Proprietary information shall mean any information which reveals the market share, marketing strategy, or plans of marketing of individual electricity, coal, oil, or natural gas producers, distributors, or retailers.~~

~~(4) Energy information shall mean any aggregate statistical data pertaining to energy consumption and production.~~

~~0500-3-2-.04 Public Record Policy~~

~~(1) All records of the Energy Division which are public records as defined in 0500-3-2-.03 are open to examination by the public during regular office hours, except those records which are confidential by law. The following, by law, shall be considered proprietary and not open for public inspection:~~

~~(a) All forms of information related to the actual and projected sales, volumes and revenues of individual electricity, coal, oil, and natural gas producers, distributors, and retailers which would~~

~~expose the reporting source to advantage or any opportunity to advantage by competitors. These forms shall include, but not be limited to, EIA-782C, EA-104 and FERC-16.~~

~~(b) Working papers or work sheets containing proprietary information designated to serve as input for the final aggregate reporting of the data.~~

~~0500-3-2-.05 Inspection~~

~~(1) All information defined as public records will be available to the public pursuant to the conditions as follows:~~

~~(a) A written request for inspection of public records shall be made to the Assistant Commissioner of the Energy Division at least five (5) working days prior to the desired day of inspection.~~

~~(b) The written request will provide specific description of the records to be reviewed including the time periods from which information is desired.~~

~~(c) The requests shall provide the name, address and telephone number of the person seeking access to the information.~~

~~(d) The inspection shall occur during normal office hours.~~

~~(e) The inspection shall be conducted under the observation of a member of the staff of the Energy Division.~~

~~(f) Copies of public records will be made available upon request at a cost of $.50 per page except for federal, state, or local government agencies.~~

~~(g) No public records shall be removed from the offices of the Energy Division.~~

~~(h) All charges for copies of records and information provided for herein shall be prepaid and payable by personal or corporate check to the Tennessee Department of Economic and Community Development.~~

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter ~~0500-3-4~~ 0400-60-04
Small Business Energy Loan Program

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~~0500-3-4-.01~~ 0400-60-04-.01 Authority.

Pursuant to the provisions of T.C.A. ~~4-3-702(c)~~ § 11-1-101, the Commissioner of the Tennessee Department of ~~Economic and Community Development~~ Environment and Conservation may promulgate rules and regulations necessary ~~for the operation of any programs of any of the divisions of the department~~ to carry out such Commissioner's duties and responsibilities.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.02~~ 0400-60-04-.02 Purpose and Scope.

(1) The purpose of this program is to provide low interest loans to small businesses, units of county and local governments and other eligible organizations throughout the ~~State~~ state of Tennessee to facilitate in the identification, installation, and incorporation of energy efficiency measures onto, or into, existing facilities, processes, and/or operations located in the ~~State~~ state of Tennessee.

(2) This chapter sets forth the rules for the submission, acceptance, review, and approval of applications for financial assistance under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.03~~ 0400-60-04-.03 Definitions.

The following definitions shall apply to these rules:

(1) "Applicant"~~—Any~~ means any individual, domestic Tennessee company or unit of county or local government applying for assistance under this program.

(2) "Approved Applicant"~~—Any~~ means any applicant who has submitted an application for financial assistance and has been approved according to the approval criteria published by the Office of Energy ~~Division~~ Programs ~~of the Department of Economic and Community Development~~.

~~(3) "ECD or E & CD"—The Department of Economic and Community Development.~~

~~(4)~~(3) "Eligible Applicant"~~—Any~~ means any applicant that has met the applicant eligibility criteria published by the Office of Energy ~~Division~~ Programs ~~of the Department of Economic and Community Development~~.

~~(5)~~(4) "Eligible Structure"~~. Any~~ means any structure that has met the structural eligibility criteria published by the Office of Energy ~~Division~~ Programs ~~of the Department of Economic and Community Development~~.

~~(6) "Energy Division". The Energy Division of the Department of Economic and Community Development.~~

~~(7)~~(5) "Energy Efficiency Measure"~~. The~~ means the installation of a new energy system or a modification to an existing energy system, plant process, operation, or structure which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.

(6) "Office of Energy Programs" means the Office of Energy Programs of the Tennessee Department of Environment and Conservation.

~~(8)~~(7) "Residential End Use"~~. Any~~ means any structure that is used for personal residential occupancy.

~~(9)~~(8) "Targeted Structure"~~. The~~ means the structure onto which the identified energy efficiency measures will be affixed or which houses the applicant's existing plant processes, operations, or energy systems which will undergo an energy efficiency modification with proceeds of a loan under this program.

(9) "TDEC" means the Tennessee Department of Environment and Conservation.

(10) "TVA"~~. The~~ means the Tennessee Valley Authority.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.04~~ 0400-60-04-.04 Maximum Loan Amount.

The maximum loan amount available per applicant under this program shall be ~~Three Hundred Thousand Dollars~~ three hundred thousand dollars ($300,000.00).

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.05~~ 0400-60-04-.05 Repayment Period.

All loans approved and accepted under this program shall be paid back monthly within seven (7) years from the date that begins sixty (60) days after the date of loan closing.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.06~~ 0400-60-04-.06 Early Payoff of Loan.

There shall be no penalty assessed to the borrower for the early payoff of a loan under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.07~~ 0400-60-04-.07 Eligibility.

In order to be approved for financial assistance under this program, both the applicant and the targeted structure must be deemed eligible according to criteria published by the Office of Energy ~~Division~~ Programs ~~of the Department of Economic and Community Development~~.

(1) Applicants for financial assistance must meet all of the following four (4) criteria:

(a) Be classified as either a small business of less than three hundred (300) employees or less than $3.5 million in annual gross sales or receipts or a unit of county or local government utilizing the loan to improve the energy efficiency of an existing building that the applicant owns, occupies or uses for a business, industrial or commercial purpose.

(b) Own, occupy or use the targeted structure in its operations; and,

(c) Be declared financially sound and capable of repaying the monies borrowed according to criteria published by the Office of Energy ~~Division~~ Programs.

(2) A structure that is to be the target for the installation of energy efficiency measures that will be financed with the proceeds of a loan under this program shall be considered an eligible structure only if it is an existing structure, at least one (1) year old, that is located within the territorial boundaries of the ~~State~~ state of Tennessee and, is not:

(a) Classified as condemned or scheduled for demolition; ~~or,~~

(b) Leased or rented by the applicant from another party unless the landlord has given the tenant written permission to proceed with the installation; ~~or,~~

(c) Encumbered by a real estate sale, purchase, option, or trade agreement that is scheduled to take place prior to the maturity of the loan unless either:

1. The current occupant/debtor agrees to retire the outstanding balance of the loan before closing the agreement; or,

2. The new occupant agrees to retire the outstanding indebtedness according to the terms and conditions of the originally executed loan agreement; ~~or,~~

(d) Included on the National Register of Historic Landmarks and Sites maintained by the U.S. Secretary of the Interior or, if included, has the approval, in writing, of the Historical Society to perform the work; ~~or,~~

(e) Located in a wetland or special flood hazard area as designated by the Federal ~~emergency~~ Emergency Management Agency; or,

(f) Encumbered by subordinate mortgages, mechanics', or materialmen's, and/or any other types of liens which would prevent the Office of Energy ~~Division~~ Programs from obtaining a security interest which is junior to no more than one security interest as collateral for a loan under the program or in an amount that would cloud the Office of Energy ~~Division's~~ Programs' collateral or jeopardize the ~~Division's~~ Programs' ability to collect on the unpaid balance of a loan in the event of a default.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.08~~ 0400-60-04-.08 Energy Audit Required.

An ~~Energy Audit~~ energy audit, conducted by either an architect or engineer licensed to do business in the ~~State~~ state of Tennessee, the Tennessee Valley Authority or other energy utility, or an architect or engineer on the faculty or staff of a Tennessee college or university and in a format published by the Office of Energy ~~Division~~ Programs ~~of the Department of Economic an Community Development~~ shall be a prerequisite for application review under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.09~~ 0400-60-04-.09 Eligible Measures.

Loans shall be made available only for the purchase and installation of one (1) or more energy efficiency, renewable energy and/or clean energy technology measures on projects that have been identified as having either a simple economic payback of ten (10) years or less or a positive net present value.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.10~~ 0400-60-04-.10 Retroactive Assistance Prohibited.

The proceeds of all loans received under this program shall be used solely for the purpose of installing new energy efficiency measures and shall not be used to finance energy efficiency projects that were either completed, or in progress, prior to the date of the application for assistance.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.11~~ 0400-60-04-.11 Application Package Required.

In order to be considered for financial assistance under this program, an applicant must submit an approved ~~Application Package~~ application package to the Office of Energy ~~Division~~ Programs ~~of the Department of Economic and Community Development~~.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.12~~ 0400-60-04-.12 Completion Certificate Required

Loan proceeds shall not be disbursed unless the Office of Energy ~~Division~~ Programs has received a fully executed Work Completion Certificate signed by an authorized agent for the Office of Energy ~~Division~~ Programs.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-4-.13~~ 0400-60-04-.13 Confidentiality of Information Submitted.

(1) ~~Tennessee Code Annotated~~ T.C.A. § ~~4-3-712(b)~~ 4-3-514 provides that the Office of Energy ~~Division~~ Programs shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

> ~~"~~trade secrets and commercial or financial information ~~which~~ that is used either directly or indirectly in the business of any person submitting information to the ~~division~~ office under this ~~program~~ chapter, and ~~which~~ that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.~~"~~

~~This statute was enacted in 1983. Subsequently, the Tennessee General Assembly enacted Tennessee Code Annotated Section 10-7-504(a)(8). This section, which is a part of the Public Records Act, states that records of ECD pertaining to proprietary information of industrial and commercial enterprises shall not be subject to public review if such records are deemed by the Commissioner, after consultation with the Attorney General, to be of a confidential and sensitive nature. The Energy Division interprets its duty under these two statutes to be to maintain the confidentiality of all its records pertaining to proprietary information as defined in T.C.A. § 4-3-712(b) by submitting any such records to the Commissioner for consideration and consultation with the Attorney General.~~ The Office of Energy ~~Division~~ Programs will ~~thereafter~~ maintain any such records so deemed to be confidential in accordance with ~~the Public Records Act, T.C.A. §§ 10-7-501 et seq~~ T.C.A. Title 10, Chapter 7, Part 5.

~~(1)~~(2) ~~Definition~~ Copies of Public Records.

~~For the purpose of these regulations, "records pertaining to proprietary information" shall include any records submitted by Applicants or records compiled by the Energy Division which contain information pertaining to:~~

~~(a) the personal finances of any individual officer, director, general partner, limited partner, or shareholder of an Applicant;~~

~~(b) costs, income, profit margins, or salaries of employees of any Applicant;~~

~~(c) the identity of any supplier or customer of any Applicant or the magnitude of its business with the Applicant;~~

~~(d) trade secrets, manufacturing processes, actual or projected sales, market share, marketing strategy, or plans of marketing of any Applicant.~~

Copies of public records will be made available upon request in accordance with Rule 0400-01-01-.01.

~~(2) Conclusion By Commissioner.~~

~~The Commissioner of ECD shall make a written finding that certain types of records are deemed to contain confidential information and shall transmit such findings to the Attorney General for consideration. The types of information shall include, but shall not be limited to, the following records:~~

~~(a) financial statements of an Applicant or any individual described in (1)(a) hereof;~~

~~(b) lists of customers or suppliers of any Applicant; and,~~

~~(c) any portion of any form submitted by an Applicant in which the Applicant is asked to provide information described in (1)(d) hereof.~~

~~Upon the conclusion by the Commissioner of ECD, after consultation with the Attorney General, that such records are confidential, any such records submitted by an Applicant shall be marked "confidential" and shall be maintained as confidential records in accordance with the Public Records Act, T.C.A. 10-7-501 et seq.~~

~~(3) Other Records.~~

~~The Energy Division shall submit any other records pertaining to proprietary information as defined in (1) hereof to the Commissioner of ECD for his or her determination as to whether such records should be exempt from public review pursuant to T.C.A. 10-7-504(a)(8). If the Commissioner of ECD concludes that such records should be exempt, the Commissioner shall make a written finding of such conclusion, stating the reasons for the conclusion. Such findings and such records shall be submitted to the Attorney General, who shall return a written statement regarding his or her conclusions and the reasons therefor to the Commissioner. Upon receiving such statement, the Commissioner shall state in writing that he or she deems such records to be of a confidential and sensitive nature within the meaning of T.C.A. 10-7-504(a)(8). Any records so deemed shall be marked "confidential" and maintained in accordance with the Public Records Act.~~

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter ~~0500-3-5~~ 0400-60-05
Local Government Energy Efficiency Program

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~~0500-3-5-.03~~ 0400-60-05-.03 Definitions
~~0500-3-5-.04~~ 0400-60-05-.04 Eligible Projects
~~0500-3-5-.05~~ 0400-60-05-.05 Maximum Loan Amount
~~0500-3-5-.06~~ 0400-60-05-.06 Eligible Costs
~~0500-3-5-.07~~ 0400-60-05-.07 Loan Term and Interest Rate
~~0500-3-5-.08~~ 0400-60-05-.08 Retroactive Projects
~~0500-3-5-.09~~ 0400-60-05-.09 ~~Repealed~~ Reserved
~~0500-3-5-.10~~ 0400-60-05-.10 Loan Application
~~0500-3-5-.11~~ 0400-60-05-.11 Application Review
~~0500-3-5-.12~~ 0400-60-05-.12 ~~Repealed~~ Reserved
~~0500-3-5-.13~~ 0400-60-05-.13 Project Implementation
~~0500-3-5-.14~~ 0400-60-05-.14 Loan Repayment
~~0500-3-5-.15~~ 0400-60-05-.15 Reporting Requirements

~~0500-3-5-.01~~ 0400-60-05-.01 Authority.

Pursuant to the provisions of T.C.A. § ~~4-3-702(c)~~ 11-1-101, the Commissioner of the Tennessee Department of ~~Economic and Community Development~~ Environment and Conservation may promulgate rules and regulations necessary ~~for the operation of any programs or any of the divisions of the department~~ to carry out such Commissioner's duties and responsibilities.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.02~~ 0400-60-05-.02 Purpose and Scope.

The Local Government Energy Efficiency Loan Program provides low interest loans to Tennessee county, metropolitan and municipal governments for energy efficiency measures that improve facility energy efficiency and reduce energy costs.

This chapter sets forth the rules for program application and participation.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.03~~ 0400-60-05-.03 Definitions.

The following definitions shall apply to these rules.

(1) "Applicant" means ~~Any~~ any county, metropolitan or municipal government that submits an application to ~~ECD~~ TDEC for program loan funds.

(2) "Distressed County" means ~~Any~~ any county listed by ~~ECD~~ the Department of Economic and Community Development as being economically distressed in accordance with criteria established by ~~ECD~~ the Department of Economic and Community Development for county per capita income and average unemployment rate.

~~(3) ECD - the Tennessee Department of Economic and Community Development.~~

~~(4)~~(3) "Energy Efficiency Measure" means ~~Any~~ any structural modification or equipment change out that reduces energy costs in a facility,

~~(5)~~(4) "Local Government" means ~~Any~~ any Tennessee county, metropolitan or municipal government.

~~(6)~~(5) "Net Present Value" means ~~The~~ the dollar figure that is obtained by totaling the annual energy savings, which has been discounted at a rate equal to the loan interest rate as established by ~~ECD~~ TDEC, and subtracting the total cost of the energy efficiency measure.

~~(7)~~(6) "Program" means ~~The~~ the Local Government Energy Efficiency Loan Program.

(7) "TDEC" means the Tennessee Department of Environment and Conservation.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.04~~ 0400-60-05-.04 Eligible Projects.

~~ECD~~ TDEC may loan funds to a local government for the purpose of financing energy efficiency measures for a building or structure owned and used by the local government. Such buildings or structures must have been used or operated for one (1) year prior to the date of application for an energy efficiency loan. ~~ECD~~ TDEC will only loan funds for energy efficiency measures which have a positive net present value.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.05~~ 0400-60-05-.05 Maximum Loan Amount.

~~ECD~~ TDEC may make energy efficiency loans in the amounts not exceeding five hundred thousand dollars ($500,000.00). Local governments may receive several energy efficiency loans under this loan program, but the cumulative outstanding balance of such loans under this loan program may not exceed five hundred thousand dollars ($500,000.00).

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.06~~ 0400-60-05-.06 Eligible Costs.

Energy efficiency loan funds can be used for the identification, design, purchase and installation of energy efficiency measures.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.07~~ 0400-60-05-.07 Loan Term and Interest Rate.

The maximum loan term is seven (7) years. A participating local government may prepay the loan at any time without penalty. ~~ECD~~ TDEC will announce the loan interest rate for local governments in distressed counties and the loan interest rate for local governments in non-distressed counties in an annual program directive memorandum.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.08~~ 0400-60-05-.08 Retroactive Projects.

~~ECD~~ TDEC will not approve applications where the energy efficiency measures have been purchased, or partially or completely installed prior to formal ~~ECD~~ TDEC approval.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.09~~ 0400-60-05-.09 ~~REPEALED.~~ Reserved.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.10~~ 0400-60-05-.10 Loan Application.

Applicants must submit a complete application to ~~ECD~~ TDEC in order to qualify for consideration for loan funds. A complete application consists of a completed and signed application form for each facility which will be the subject of energy efficiency measures, a technical energy audit for each facility, and a certified copy of a resolution from the local governing body authorizing participation in the program. Application forms for K-12 schools and offices must be signed by the school superintendent. All other applications must be signed by the county executive, mayor, city manager or city administrator. The technical energy audit must be less than two (2) years old and must be conducted by either an architect or an engineer licensed to practice in the ~~State~~ state of Tennessee, by the Tennessee Valley Authority or other energy utility, or by an architect or an engineer on the faculty or staff of a Tennessee college or university.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.11~~ 0400-60-05-.11 Application Review.

~~ECD~~ TDEC will review an application for completeness and accuracy. ~~ECD~~ TDEC will review all projects for technical accuracy and soundness and net present value. Projects must have a positive ~~new~~ net present value in order to be approved for funding.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.12~~ 0400-60-05-.12 ~~REPEALED.~~ Reserved.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.13~~ 0400-60-05-.13 Project Implementation.

Approved applicants must implement their project by submitting an authorized capital outlay note to ~~ECD~~ TDEC within six months of application approval, completing the project within one (1) year of application approval, and submitting a work completion form and copies of invoices showing actual project cost to ~~ECD~~ TDEC within two (2) months of completion of the project. Failure to meet this implementation timetable can result in withdrawal of approval or disqualification for future loans.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.14~~ 0400-60-05-.14 Loan Repayment.

Loan recipients must amortize debt within the agreed upon term, not to exceed seven (7) years. The recipient will make one (1) payment per year in accordance with a repayment schedule provided by ~~ECD~~ TDEC. The first payment date will be one (1) year from the date of the capital outlay note.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

~~0500-3-5-.15~~ 0400-60-05-.15 Reporting Requirements.

Loan recipients will provide, or arrange for its energy distributors to provide, copies of monthly utility bills to ~~ECD~~ TDEC during the term of the loan.

Authority: T.C.A. §§ 11-1-101, 4-3-510 through 4-3-515, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 09/20/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/20/15

Rulemaking Hearing(s) Conducted on: (add more dates). 01/21/16

CAROL L. GRICE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: 9-20-16

Signature:

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9-20-16

Notary Public Signature:

My commission expires on: March 3, 2020

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

1/12/2017
Date

Department of State Use Only

Filed with the Department of State on: 1/17/17

Effective on: 4/17/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Podiatric Medical Examiners
DIVISION:	
SUBJECT:	Continuing Education
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-1-402
EFFECTIVE DATES:	May 1, 2017 through June 30, 2018
FISCAL IMPACT:	None

STAFF RULE ABSTRACT:

The amendment to Rule 1155-02-.12 [Continuing Education] will add the requirement that podiatrists obtain two hours of continuing education in prescribing practices to comply with Public Chapter No. 430, passed by the 108th General Assembly and signed by the Governor on May 16, 2013 and codified in T.C.A. § 63-1-402.

Public Hearing Comments

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

There were no public comments, either written or oral, regarding the amendment to 1155-02-.12 (Continuing Education).

There was one written comment regarding 1155-02-.08 (Examinations) from David H. Long, DPM, urging refusal of the proposed amendment. Pursuant to this comment, that proposed rule amendment was withdrawn.

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 extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

This rule does not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

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

This rule exhibits clarity, conciseness, and lack of ambiguity.

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

This rule does not contain additional reporting requirements.

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

This rule does not contain additional reporting requirements.

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

This rule does not contain additional reporting requirements.

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

This rule does not establish performance, design, or operational standards.

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

This rule does not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Podiatric Medical Examiners

Rulemaking hearing date: 08/10/2016

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

   All licensed podiatric medical doctors will be subject to the proposed rule amendment. This amendment is cost neutral as the rule does not increase the total required hours of CME. This amendment is required pursuant to T.C.A. § 63-1-402.

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

   The proposed rule amendment does not create new reporting requirements or other administrative costs for compliance.

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

   The proposed rule amendment should have little effect on small businesses. Although there is a new requirement that two of the CME hours biennially must be related to the prescribing of controlled substances, the total number of required CME hours remains the same.

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

   The proposed rule amendment is not burdensome, intrusive, or costly and is required to comply with state law.

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

   Federal: The United States Code Annotated has requirements for military physicians to complete applicable continuing medical education requirements.

   State: Almost all health related boards have some type of continuing education requirements.

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

   The proposed rule amendment does not provide exemptions for small businesses.

Impact on Local Governments

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

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

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 amendment to Rule 1155-02-.12 [Continuing Education] will add the requirement that podiatrists must obtain two hours of continuing education in prescribing practices to comply with Public Chapter No. 430, passed by the 108th General Assembly and signed by the Governor on May 16, 2013 and codified in T.C.A. § 63-1-402.

(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;

Public Chapter No. 430, passed by the 108th General Assembly and signed by the Governor on May 16, 2013 and codified in T.C.A. § 63-1-402.

(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 licensed podiatric medical doctors will be subject to the proposed rule amendment.

(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;

This rule should not result in any increase or decrease in state or local government revenues or expenditures.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health.

(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, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Andrea.Huddleston@tn.gov.

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

None.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-26-17
Rule ID(s): C6413
File Date: 1-31-17
Effective Date: 5-1-17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Podiatric Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Andrea.Huddleston@tn.gov

Revision Type (check all that apply):
X 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**
1155-02	General Rules and Regulations Governing the Practice of Podiatry
Rule Number	**Rule Title**
1155-02-.12	Continuing Education

(Rule 1155-02-.11, continued)

(3) A licensee whose license has been retired may re-enter active status by doing the following:

(a) Obtain complete and submit to the Board's administrative office a reactivation/reinstatement application.

(b) Pay the licensure renewal fees and state regulatory fees as provided in rule 1155-02-.06. If retirement reactivation is requested prior to the expiration of one year from the date of retirement, the Board will require payment of the late renewal fee and past due renewal fees.

(c) Submit verification of successful completion of continuing medical education hours, pursuant to rule 1155-02-.12.

(d) Retake and pass the Board's oral exam if the license has been retired for five (5) years or more.

(e) An individual who has a podiatry license that has been retired for at least twelve (12) months shall submit to a criminal background check and cause the results to be submitted to the Board office before the license can be reactivated.

(4) Licensure reactivation applications shall be treated as licensure applications, and review decisions shall be governed by rule 1155-02-.07.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-115, and 63-3-116.* ***Administrative History:*** *Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed March 23, 2007; effective June 6, 2007. Amendment filed January 20, 2012; effective April 19, 2012.*

1155-02-.12 CONTINUING EDUCATION.

(1) The Board requires each licensed podiatrist to complete fifteen (15) clock hours of continuing education each calendar year (January 1 – December 31).

(a) Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care. If the licensee is performing ankle surgery pursuant to T.C.A. § 63-3-101 (b) (1), ten (10) of these twelve (12) hours shall pertain to the ankle surgery.

~~(b) Beginning January 1, 2008, at least one (1) hour of the annual fifteen (15) hour requirement shall, every other calendar year, be a course designed specifically to address prescribing practices.~~

(b) Unless exempt under T.C.A. 63-1-402(c), all podiatrists holding a current Tennessee license shall complete a minimum of two (2) hours of continuing education biennially related to controlled substance prescribing, which must include instruction in the Department's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol and may include topics such as medicine addiction, risk management tools, and other topics approved by the Board.

(c) Ten (10) hours of the fifteen (15) clock hour requirement must be completed in the traditional "lecture / classroom" format.

(d) Five (5) hours of the fifteen (15) clock hour requirement may be completed in any of the following multi-media formats:

1. The Internet

(Rule 1155-02-.12, continued)

2. Closed circuit television

3. Satellite broadcasts

4. Correspondence courses

5. Videotapes

6. CD-ROM

7. DVD

8. Teleconferencing

9. Videoconferencing

10. Distance learning

(2) Acceptable continuing education shall consist of courses provided or sponsored by the APMA, APMA approved colleges of podiatric medicine, state, regional (zone), national and affiliated specialty groups, the U.S. federal government, or other education programs approved by the Board.

(3) Course Approval

(a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided pursuant to 1155-02-.12 (2), receive prior approval from the Board.

(b) Prior approval of a course may be obtained by submitting the following information to the Board's administrative office at least forty-five (45) days prior to the scheduled date of the course.

1. A course description or outline;

2. Names of all lecturers;

3. Brief resume of all lecturers;

4. Number of hours of educational credit requested;

5. Date of course;

6. How certification of attendance is to be documented.

(4) Documentation

(a) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four years from the end of the calendar year in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(Rule 1155-02-.12, continued)

(b) Each licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing education requirements. Such evidence must be by submission of one or more of the following:

1. Certificates verifying the licensee's attendance at continuing education program(s). The certificate must include the following: continuing education program's sponsor, date, clock hours awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number.

2. An original letter on official stationery from the continuing education program's sponsor indicating, date, clock hours awarded (CE units must be converted to clock hours), program title, licensee's name, license number and social security number.

(c) If a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and how it applies to the practice of podiatry. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.

(5) Persons who are full-time residents in a graduate training program approved by the Council on Podiatric Medical Education and individuals who have been students of a Podiatry College during the year they obtain their Tennessee license shall be exempt from the CME requirements during that calendar year.

(6) Continuing education credit will not be allowed for the following:

(a) Regular work activities, administrative staff meetings, case staffing/reporting, etc.

(b) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.

(7) Revocation of license for non-compliance with continuing education:

(a) If the continuing education requirement is not met, a letter is issued to the last known address of the individual requiring him to show cause why his license should not be revoked for failure to comply with the continuing education requirements.

(b) The licensee has 30 days from the date of notification to respond to the show cause letter and prepare for any hearing on the matter

(8) Continuing Education for Reactivation of Retired or Revoked License.

(a) Reactivation of Retired Licensure

1. An individual whose license has been retired for less than one year will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and can not be counted toward meeting the calendar year end requirement.

2. Any individual requesting reactivation of a license which has been retired for one or more years must submit, along with the reactivation request, verification which indicates the attendance and completion of fifteen (15) hours of continuing

(Rule 1155-02-.12, continued)

education for each year in which the license was retired or the equivalent of this state's requirement multiplied by the number of years in retirement. The continuing education hours must have been begun and successfully completed before the date of reinstatement.

(b) Reactivation of Revoked License.

1. No person whose license has been revoked for failure to comply with continuing education may have his license reinstated without complying with all the requirements. The required clock hours of continuing education must have been begun and completed before the date of reinstatement.

(9) Violations

(a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements may be subject to disciplinary action.

(b) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (7) (a) above may be subject to disciplinary action.

(10) Waiver of Continuing Education

(a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education if it can be shown to the Board that the failure to comply was not attributed to or was beyond the physical capabilities of the person seeking the waiver.

(b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board's administrative office:

1. A written request for a waiver which specifies what requirements are sought to be waived and a written and signed explanation of the reason for the request.

2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.

(c) A waiver approved by the Board is effective only for the calendar year for which the waiver is sought.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-3-101, 63-1-402, 63-3-106, 63-3-109, 63-3-115, 63-3-116, and 63-3-119.* ***Administrative History:*** *Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed August 23, 2001; effective November 6, 2001. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed April 26, 2006; effective July 10, 2006. Amendment filed March 23, 2007; effective June 6, 2007. Amendment filed August 9, 2007; effective October 23, 2007. Amendment filed January 20, 2012; effective April 19, 2012.*

1155-02-.13 PROFESSIONAL ETHICS. Immoral, unprofessional, unethical, or dishonorable conduct shall include, but not be limited to, the following:

(1) Conduct designed to, or likely to, deceive or harm the public.

(2) Being a party to or aiding and abetting the violation of these regulations or the laws of the State of Tennessee regulating the practice of podiatry.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David J. Sables, D.P.M.	X				
Karl M. Fillauer, C.P.O.	X				
Sheila Schuler, D.P.M.	X				
Paul Somers, Jr. D.P.M.	X				
Paul C. Rivard, D.P.M.	X				
Martha Kay Oglesby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Podiatric Medical Examiners (board/commission/ other authority) on 08/10/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *05/11/16 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *08/10/16 (mm/dd/yy)*

Date: 1-13-17

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Chief Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 1-13-17

Notary Public Signature:

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

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

1/23/2017
Date

Filed with the Department of State on: 1-31-17

Effective on: 5-1-17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Standards for General Industry
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-3-201, 29 U.S.C. § 667, and 29 U.S.C. § 655
EFFECTIVE DATES:	April 19, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rules 0800-01-01-.06 is amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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)

This rule does not have a projected impact on local governments.

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;

Rules 0800-01-01-.06 is amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

(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;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

(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 persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapter 0800-01-01. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

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

There have been no Attorney General opinions or judicial rulings relevant to these rules.

(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 are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

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

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

(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

Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health 220 French Landing Drive Nashville, TN 37243-1002 (615) 741-7036 email: larry.hunt@tn.gov

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

Department of State
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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 01-21-17
Rule ID(s): 6410
File Date: 1/19/17
Effective Date: 4/19/17

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.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):
X 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**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2017" to "February 1, 2017".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~January 1, 2016~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of February 1, 2017 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

* 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 12/13/16 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 12-13-16

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

DESIREE W FELTS STATE OF TENNESSEE NOTARY PUBLIC CHEATHAM COUNTY

Subscribed and sworn to before me on: December 13, 2016

Notary Public Signature: Desiree W. Felts

My commission expires on: March 13, 2017

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

1/4/2017
Date

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Filed with the Department of State on: 1/19/17

Effective on: 4/19/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Financial Institutions
DIVISION:	Compliance
SUBJECT:	Home Equity Conversion Mortgages
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 45-1-107(h), 47-30-103(c), and 47-30-116(a)
EFFECTIVE DATES:	April 17, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The Home Equity Conversion Mortgage Act (HECMA) (T.C.A. §§ 47-30-101, et seq.) states that only authorized lenders shall engage in the business of making reverse mortgages. The Tennessee Housing Development Agency, and any bank, savings institution, or credit union may be designated as authorized lenders of reverse mortgage loans by providing notice to the Commissioner. See, T.C.A. § 47-30-103(b). All other persons, pursuant to T.C.A. § 47-30-103(c), shall submit an application for authorization to make reverse mortgage loans containing the information required in T.C.A. § 47-30-103(c) and Rule 0180-24-.04 of the Rules of the Department of Financial Institutions. Application requirements for authorization to make reverse mortgage loans are found in T.C.A. § 47-30-103(c) and in Chapter 0180-24 at Rule 0180-24-.04. Rule 0180-24-.04(2)(i) states that the application shall, among other requirements, include "a copy of the most recent federal tax return for each of the applicant's executive officers". This rule amendment will delete the application requirement of submitting a copy of the most recent federal tax return for each of the applicant's executive officers.

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.

This rule amendment that deletes the application requirement of submitting a copy of the most recent federal tax return for each of the applicant's executive officers will reduce the regulatory burden on all businesses including small businesses who file an application for authorization to make reverse mortgage loans.

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)

This rule amendment will not have any impact on local governments.

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 Home Equity Conversion Mortgage Act (HECMA) (T.C.A. §§ 47-30-101, et seq.) states that only authorized lenders shall engage in the business of making reverse mortgages. The Tennessee housing development agency, and any bank, savings institution, or credit union may be designated as authorized lenders of reverse mortgage loans by providing notice to the Commissioner. See, T.C.A. § 47-30-103(b). All other persons, pursuant to T.C.A. § 47-30-103(c), shall submit an application for authorization to make reverse mortgage loans containing the information required in T.C.A. § 47-30-103(c) and Rule 0180-24-.04 of the Rules of the Department of Financial Institutions. Application requirements for authorization to make reverse mortgage loans are found in T.C.A. § 47-30-103(c) and in Chapter 0180-24 at Rule 0180-24-.04. Rule 0180-24-.04(2)(i) states that the application shall, among other requirements, include "a copy of the most recent federal tax return for each of the applicant's executive officers". This rule amendment will delete the application requirement of submitting a copy of the most recent federal tax return for each of the applicant's executive officers.

(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. § 45-1-107(h) grants the Commissioner of the Department of Financial Institutions the power to enact reasonable substantive and procedural rules to carry out the purpose of any and all chapters within the Commissioner's regulatory authority as conferred by law. T.C.A. § 47-30-103(c) states that the application for authority to make reverse mortgage loans shall include such information the Commissioner deems necessary to evaluate the applicant. T.C.A. § 47-30-116(a) states the Commissioner shall adopt rules necessary to implement and enforce HECMA.

(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 amendment will affect any person, firm, or corporation who, pursuant to T.C.A. § 47-30-103(c), is required to file an application for authorization to make reverse mortgage loans. No other acts under the Department's regulatory jurisdiction require the submission of federal tax returns for each of the applicant's executive officers. Such a requirement is not necessary to evaluate applicants wanting to engage in the business of making reverse mortgages because applicants are already vetted under the mortgage license application process conducted by the Compliance Division of the Department of Financial Institutions, which includes the review of financial statements of the applicant and a fingerprint criminal background check. The federal tax returns of the executive officers, who can and do leave employment with the applicant, do not add any material information for evaluating an applicant. Since this rule amendment deletes this application requirement, those affected may support this amendment

(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;

There are no known attorney general opinions that directly relate to this rule.

(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 probable increase or decrease in state and local government revenues and expenditures resulting from this rule amendment.

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

Troy McPeak, Assistant General Counsel Mike Igney, Assistant Commissioner, Compliance Division

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

Troy McPeak, Assistant General Counsel Mike Igney, Assistant Commissioner, Compliance Division

(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

Troy McPeak, Assistant General Counsel Tennessee Tower, 26th Floor 312 Rosa L. Parks Avenue Nashville, TN 37243 (615) 854-0318 Troy.Mcpeak@tn.gov Mike Igney, Assistant Commissioner, Compliance Division Tennessee Tower, 26th Floor 312 Rosa L. Parks Avenue (615) 945-5945 Mike.Igney@tn.gov

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

None

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Sequence Number: 01-15-17
Rule ID(s): 6407
File Date: 1/17/17
Effective Date: 4/17/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Department of Financial Institutions
Division:	Compliance
Contact Person:	Troy McPeak, Assistant General Counsel
Address:	Tennessee Tower, 26th Floor, 312 Rosa L. Parks Ave.
Zip:	37243
Phone:	(615) 854-0318
Email:	Troy.Mcpeak@tn.gov

Revision Type (check all that apply):
X 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**
0180-24	Rules Pertaining to Home Equity Conversion Mortgages
Rule Number	**Rule Title**
0180-24-.04	Application Requirement

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

0180-24-.04. Application Requirement.

(1) Any person, firm or corporation (other than a bank, savings institution or credit union) seeking to engage in the business of making reverse mortgages may submit to the commissioner a written application for authorization to make reverse mortgage loans.

(2) The application required by Chapter 0180-24-.04(1) shall be in letter form and shall include:

(a) A nonrefundable application fee of five hundred dollars ($500).

(b) A copy of the applicant's license or registration (if applicable) under the Tennessee Residential Lending Brokerage and Servicing Act of 1988 (T.C.A. §45-13-101 et seq.)

(c) The name and complete business address or addresses of the applicant.

(d) Evidence that the applicant is an approved HUD lender.

(e) A current audited financial statement.

(f) If the applicant is a corporation, a copy of its charter and bylaws.

(g) A copy of the applicant's lending policies.

(h) A resume for each of the applicant's executive officers including the officers' date of birth.

~~(i) A copy of the most recent federal tax return for each of the applicant's executive officers.~~

~~(j)~~(i) A statement as to whether the applicant or any employee of the applicant has been convicted of a felony and, if so, supporting details.

~~(k)~~(j) A copy of the information to be provided to the borrowers by the lender pursuant to T.C.A. § 47-30-109 and Chapter 0180-24-.05.

~~(l)~~(k) A sworn, notarized, statement as to the accuracy of the information provided in the application. Such statement shall contain the following or similar language: Having been duly sworn, and under the penalty of perjury, I hereby certify that the information provided to the commissioner in this application is truthful, complete, and correct.

(3) Investigation. The commissioner may conduct an investigation into any aspect of the application as he or she may deem appropriate. This may include but not necessarily be limited to the character, financial condition and past business practices of the applicant and the applicant's officers, directors, employees, or shareholders.

Authority: T.C.A. §§ 45-1-107(h), 47-30-103 and 47-30-116(a).

* 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)
Not Applicable					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Financial Institutions on 12/2/16 ,and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 12/2/16

Signature: Greg Gonzales

Name of Officer: Greg Gonzales

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/2/16

Notary Public Signature: Paula J. Cagle

My commission expires on: July 2, 2018

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

Herbert H. Slatery III
Attorney General and Reporter

12/15/2016
Date

Department of State Use Only

Filed with the Department of State on: 1/17/17

Effective on: 4/17/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Medical Examiners
DIVISION:	
SUBJECT:	Specially Regulated Areas and Aspects of Medical Practice
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 53-11-311
EFFECTIVE DATES:	May 1, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule amendment to Rule 0880-02-.14 establishes new requirements to become an "addiction specialist," creates a new definition and incorporates Public Chapter 396, signed by the Governor on May 8, 2015, now codified in T.C.A. § 53-11-311 into the rule.

Public Hearing Comments

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

There were no public comments, either written or oral.

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

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

   These rules do not overlap, duplicate, or conflict with other state or local governmental rules.

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

   These rules exhibit clarity, conciseness, and lack of ambiguity.

3. **The establishment of flexible compliance and/or reporting requirements for small business.**

   The compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not establish new reporting requirements.

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

   These rule amendments do not contain any reporting requirements. Compliance requirements contained in the rules are the same for large or small businesses.

5. **The consolidation or simplification of compliance or reporting requirements for large or small businesses.**

   Compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not create any reporting requirements.

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

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

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

   These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation. These rules are required pursuant to T.C.A. § 53-11-311 which provides that healthcare providers prescribing in excess of 20mg of buprenorphine should either be an addiction specialist or refer the patient to or consult with an addiction specialist and requires the Board to establish guidelines for physicians to qualify as addiction specialists.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Medical Examiners

Rulemaking hearing date: September 13, 2016

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

   This rule affects only those physicians in Tennessee wishing to treat opiate addiction and prescribe in excess of 20mg of buprenorphine per day to a patient. Only if a physician wishes to prescribe in excess of that amount would a physician need to either be an addiction specialist or refer to or consult with such a specialist. As such, these rule amendments should be cost neutral.

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

   This rule amendment creates no new reporting or recordkeeping requirements.

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

   This rule affects only those physicians in Tennessee wishing to treat opiate addiction and prescribe in excess of 20mg of buprenorphine per day to a patient. Only if a physician wishes to prescribe in excess of that amount would a physician need to either be an addiction specialist or refer to or consult with such a specialist. This rule amendment is required pursuant to T.C.A. §53-11-311 which provides that healthcare providers prescribing in excess of 20mg per day to a patient should either be an addiction specialist or refer to or consult with such a specialist. This rule amendment will likely limit the amount of buprenorphine prescribed to patients with opiate addiction and improve the quality of addiction services to patients.

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

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose or objectives of the proposed rule.

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

   Federal: The U.S. Drug Abuse Treatment Act (DATA 2000) signed into law in 2000 permits certain qualified physicians to prescribe narcotic drugs in Schedule III, IV, or V or combinations of such drugs (which includes buprenorphine) to patients for maintenance or detoxification treatment. DATA 2000 also limits the number of patients that such a qualified physician may treat at any time.

   State: None.

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

   This rule does not provide for exemptions for small businesses.

Impact on Local Governments

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

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

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 proposed rule amendment to Rule 0880-02-.14 establishes new requirements to become an "addiction specialist," creates a new definition and incorporates Public Chapter 396, signed by the Governor on May 8, 2015, now codified in T.C.A. § 53-11-311 into the rule.

(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;

Public Chapter 396, signed by the Governor on May 8, 2015, now codified in T.C.A. § 53-11-311.

(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 affects only those physicians in Tennessee wishing to treat opiate addiction and prescribe in excess of 20mg of buprenorphine per day to a patient.

(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;

These rules should not result in any increase or decrease in state and or local government revenues or expenditures.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

(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, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Andrea.Huddleston@tn.gov and Tennessee Board of Medical Examiners, Division of Health Related Boards, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243, (615) 741-8402, mzanolli@mac.com.

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

None.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-28-17
Rule ID(s): 6415
File Date: 1-31-17
Effective Date: 5-1-17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Andrea.Huddleston@tn.gov

Revision Type (check all that apply):

X 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**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.14	Specially Regulated Areas and Aspects of Medical Practice

(Rule 0880-02-.14, continued)

pursuant to T.C.A. §63-6-244(a)(1) has not been achieved and such practice may not be re-instituted until such board-certification is achieved.

(c) For purposes of T.C.A. §63-6-244(a)(3), a physician who is board-certified in a different ABMS or ABPS/ AAPS specialty than those listed in (a)(1) may practice interventional pain management upon successful completion of an ACGME pain fellowship or becoming board-certified through the American Board of Interventional Pain Physicians.

(15) For purposes of T.C.A. § 53-11-311 regarding use of buprenorphine products and in order to qualify as an "addiction specialist", a physician must meet one of the following definitions:

(a) A physician licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination who is certified by the American Board of Addiction Medicine (ABAM), or is certified in addiction medicine by the American Osteopathic Association or is subspecialty certified by the American Board of Psychiatry and Neurology (ABPN) in addiction psychiatry or has completed the residency and fellowship requirements for same and is in the board certification process; or

(b) A physician licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination who has a primary ABMS (American Board of Medical Specialties) or AOA (American Osteopathic Association) board certification and at least three (3) years of full-time equivalent experience treating patients with a primary substance abuse disorder while the physician is employed by or practicing in a facility that is licensed by the Tennessee Department of Mental Health and Substance Abuse Services or in a facility of equivalent licensure in another state. At least six (6) months full-time equivalent of that experience must be gained while caring for patients who are receiving care in licensed Alcohol and Drug Residential Detoxification Treatment facilities, as defined in 0940-05-44-.01 or Alcohol and Drug Residential Rehabilitation Treatment facilities, as defined in 0940-05-45-.01, or their equivalent in other states.

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Authority: *T.C.A. §§ 4-5-202, 4-5-204, 53-11-311, 63-6-101, 63-1-145, 63-6-101, 63-6-204, 63-6-214, 63-6-244, and 68-3-502.* ***Administrative History:*** *Original Rule filed February 26, 1991; effective April 12, 1991. Amendment filed September 17, 1991; effective November 1, 1991. Amendment filed November 27, 1991; effective February 26, 1992. Amendment filed April 20, 1994; effective July 4, 1994. Amendment filed May 18, 1994; effective August 1, 1994. Amendment filed May 19, 1994; effective August 2, 1994. Emergency Rule filed and effective March 27, 1997, expired September 6, 1997. Amendment filed September 24, 1997; effective December 8, 1997. Amendment filed April 16, 1999; effective June 30, 1999. Amendment filed March 9, 2001; effective May 23, 2001. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed September 26, 2002; effective December 10, 2002. Notice of withdrawal of rule 0880-02-.14(10)(c) to be effective on December 18, 2002 was filed and effective November 6, 2002. Amendment filed October 4, 2002; effective December 18, 2002. Amendment filed April 21, 2003; effective July 5, 2003. Amendment filed August 23, 2005; effective November 6, 2005. Amendment filed March 22, 2006; effective June 5, 2006. Amendment filed April 17, 2006; effective July 1, 2006. Amendment filed December 29, 2006; effective March 14, 2007. Amendment filed February 13, 2008; effective April 28, 2008. Amendment filed April 4, 2014; effective July 3, 2014.*

0880-02-.15 MEDICAL RECORDS.

(1) Purposes - The purposes of these rules are:

* 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)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, M.D.	X				
Michael John Baron, M.D.	X				
Neal Beckford, M.D.	X				
Deborah Christiansen, M.D.	X				
Clinton A. Musil, Jr., M.D.	X				
Patricia Eller				X	
Barbara Outhier	X				
Julianne Cole	X				
Melanie Blake, M.D.	X				
W. Reeves Johnson, Jr. MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners (board/commission/ other authority) on 09/13/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *07/26/16 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/13/16 (mm/dd/yy)*

Date: 1-17-17

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Chief Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 1-17-17

Notary Public Signature:

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MELCHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Tennessee Board of Medical Examiners
Rules 0880-02-.14
General Rules and Regulations Governing the Practice of Medicine
Specially Regulated Areas and Aspects of Medical Practice

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

1/23/2017
Date

Department of State Use Only

Filed with the Department of State on: 1-31-17

Effective on: 5-1-17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Dentistry
DIVISION:	
SUBJECT:	Schools, Programs and Courses for the Registered Dental Assistant
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	May 1, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rule amendments add requirements for Registered Dental Assisting Programs.

Public Hearing Comments

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

There were no public comments, either written or oral.

Regulatory Flexibility Addendum

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

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

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

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

The proposed rule amendment establishes clarity, conciseness, and lack of ambiguity.

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

The proposed rule amendments should have little effect on small businesses as the rules provide the minimum standards a program must meet to obtain an optional board approval designation.

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

The proposed rule amendments should have little effect on small businesses as the rules provide the minimum standards a program must meet to obtain an optional board approval designation.

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

The proposed rule amendments should have little effect on small businesses as the rules provide the minimum standards a program must meet to obtain an optional board approval designation.

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

The proposed rule amendments should have little effect on small businesses as the rules provide the minimum standards a program must meet to obtain an optional board approval designation.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: *Board of Dentistry*

Date of Hearing: October 13, 2016

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

   All applicants (owners or directors of dental assistant programs) seeking to obtain board approval for their dental assisting schools or programs will be affected by these proposed rules. Currently, there are thirty-six (36) in-state programs and five (5) out of state programs with a board approved designation.

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

   The proposed rule amendments should have little effect on small businesses as the rules provide the minimum standards a program must meet to obtain an optional board approval designation and do not involve administrative costs.

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

   The proposed rule amendments should positively impact small businesses as those businesses offering dental assisting programs will have the opportunity to become board-approved.

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

   The proposed rule amendments are not burdensome, intrusive, or costly.

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

   Federal: None.

   State: None.

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

   The proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

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

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;

These rule amendments add requirements for Registered Dental Assisting Programs.

(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;

None.

(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 applicants (owners or directors of dental assistant programs) seeking to participate in, or offer, dental assisting schools or programs will be affected by these proposed rules. Currently, there are thirty-six (36) in-state programs and five (5) out of state programs with a board approved designation.

(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;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Jennifer Putnam, Assistant General Counsel, Department of Health.

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

Jennifer Putnam, Assistant General Counsel, Department of Health.

(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

Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, 37243, (615)741-1611, Jennifer.Putnam@tn.gov.

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

None.

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Sequence Number: 01-27-17
Rule ID(s): 6419
File Date: 1-31-17
Effective Date: 5-1-17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Dentistry
Division:	
Contact Person:	Jennifer Putnam
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Jennifer.Putnam@tn.gov

Revision Type (check all that apply):
X 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**
0460-05	General Rules Governing Schools, Programs and Courses for Dentists, Dental Hygienists, and Registered Dental Assistants
Rule Number	**Rule Title**
0460-05-.03	Schools, Programs and Courses for the Registered Dental Assistant

(Rule 0460-05-.02, continued)

(h) Failure to adhere to the rules governing the certification course or to provide access to inspection, pursuant to subparagraph (5) (c) of this rule, may subject the course provider and students to invalidation of the course results and withdrawal of course approval issued by the Board.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-108, 63-5-115, and 63-5-116.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed August 26, 1980; effective December 1, 1980. Repeal and new rule filed December 11, 1991; effective January 25, 1992. Repeal filed February 12, 1996; effective April 27, 1996. New rule filed September 17, 2003; effective December 1, 2003. Amendments filed August 3, 2005; effective October 17, 2005. Amendment filed October 12, 2007; effective December 26, 2007. Amendment filed September 25, 2008; effective December 9, 2008. Amendments filed September 30, 2014; effective December 29, 2014.*

0460-05-.03 SCHOOLS, PROGRAMS AND COURSES FOR THE REGISTERED DENTAL ASSISTANT.

(1) Registered Dental Assisting Programs.

~~(a) Board-Approved Programs.~~

~~1. Reserved.~~

~~2. Reserved.~~

(a) Approval and Re-approval of Program

1. The owner and/or director of a dental assistant program seeking board approval shall make application for approval to operate a program on forms provided by the Tennessee Board of Dentistry Administrative Office. The completed application along with program information required by this rule must be received by the Board office at least thirty days (30) days prior to the next regularly scheduled meeting in order for the Board to review the application. The owner and/or director of the program will be notified in writing of the Board's action(s).

2. The program shall be subject to on-site inspections by representatives of the Board and/or required to complete paper surveys, as requested.

3. The Board shall be notified immediately of any changes made in the operation of the program, such as changes of location, directorship, and/or instructors.

4. Approval granted by the Board of Dentistry is only valid for two (2) years from the date the approval is granted (ratified) by the Board.

5. Should approval be removed by the Board or not renewed after the expiration of the two (2) year time period, the program shall cease using the language 'board approved' on all materials and advertisements.

6. Resumes must be submitted on each instructor.

(Rule 0460-05-.03, continued)

7. The application must also include a detailed curriculum which lists the outline of the subjects covered in the program and the learning objectives for each subject.

8. The program must inform the Board if the program will be taught in person or online. If any portion of the program is taught online, the subjects and number of hours taught online must be included with the application.

9. In order to obtain and/or retain Board approval, the program shall maintain compliance with all minimum standards for admissions, facilities, instructor(s), equipment, and curriculum that are in effect upon application or re-application for approval.

~~(b) ADA-Accredited Programs.~~

~~1. Reserved.~~

~~2. Reserved.~~

(b) Minimum Standards for Admissions, Facilities, Instructor(s), Equipment and Curriculum.

1. The curriculum must be structured on the basis of a minimum of 116 hours instructional hours and must include at least 14 hours in the subject of dental radiology.

2. Instructional hours should include didactic and laboratory instruction.

3. Students should generally be at least 18 years old before admittance to the program; however students must be 18 years old before any exposure to x-rays begins. Students must have high school diploma or equivalent.

4. The program must demonstrate that student enrollment numbers are proportionate to the number of faculty, and to the availability of appropriate classroom, laboratory, and clinical facilities, equipment, instruments, and supplies. Student to instructor ratio should not exceed 10/1.

5. A program must have access to dental operatories, sterilization equipment, x-ray machines (processing and/or digital equipment), and dental laboratory equipment.

6. The students must be provided a program syllabus at the beginning of each program. The syllabus must include a program outline, learning objectives for each topic and the amount of time to be spent on each topic. A sample dental assistant registration applicant form must be included when applying for board approval.

7. Program grading policies must be included in the information provided to each student.

8. Skills assessments where needed must be performed.

(Rule 0460-05-.03, continued)

9. Students need to be informed that any conviction must be explained to the Board of Dentistry with their application for registration and that all court documents regarding an conviction must be submitted. The Board of Dentistry reviews all court documents required to be submitted with the application for registration and they may deny registration or require an appearance before the Board before deciding to issue or deny the registration.

10. Suggested materials to be utilized in the course include but are not limited to, the most recent editions of the following:

    (i) Modern Dental Assisting; Doni L. Bird, CDA, RDA, RDH, MA and Debbie S. Robinson, CDA, MS

    (ii) Tennessee Dental Practice Act -- available at http://tn.gov/health/article/Dentistry-statutes;

    (iii) Review of Dental Assisting; Betty Ladley Finkbeiner CDA Emeritus RDA BS MS

    (iv) The Dental Assisting Workbook; Doni L. Bird, CDA, RDA, RDH, MA and Debbie S. Robinson, CDA, MS

11. The minimum of 14 hours in the subject of dental radiology required to be covered in the curriculum for the dental assistant registration must include, at a minimum, the same subjects as required for the dental radiology certification courses. (see Rule 0460-05-.03(7)(d)4.)

12. The program syllabus must be approved by the Board and shall include instruction in all of the following subject matters:

    (i) The dental health team;

    (ii) The dental office, including a review of equipment commonly found in treatment areas;

    (iii) Ethics and jurisprudence;

    (iv) Applied psychology and communication skills;

    (v) A review of the teeth and supporting tissues;

    (vi) Assisting with soft tissue oral examination;

    (vii) Dental charting;

    (viii) Microbiology and oral pathology;

    (ix) Dental materials;

    (x) Preventive dentistry;

    (xi) Disease transmission and infection control;

    (xii) Special and disabled patients;

(Rule 0460-05-.03, continued)

(xiii) Medical emergencies;

(xiv) Pharmacology and pain control;

(xv) Dental instruments;

(xvi) Delivering dental care and moisture control;

(xvii) The dental dam;

(xviii) Oral diagnosis and treatment planning;

(xix) General dentistry and restorations;

(xx) Pediatric dentistry;

(xxi) Orthodontics;

(xxii) Periodontics;

(xxiii) Endodontics;

(xxiv) Fixed prosthodontics;

(xxv) Removable prosthodontics; and

(xxvi) Oral surgery.

13. The curriculum content must include instruction in the following dental assisting skills and functions:

(i) Maintaining patient treatment records;

(ii) Reviewing and recording medical and dental histories;

(iii) Taking and recording vital signs;

(iv) Seating and dismissing patients;

(v) Preparing tray set-ups for operative procedures;

(vi) Managing infection and hazard control protocols consistent with current guidelines;

(vii) Operating oral evacuation systems and air/water syringes;

(viii) Maintaining a clear field of vision including various isolation techniques;

(ix) Performing a variety of instrument transfers;

(x) Utilizing appropriate chairside assistant ergonomics;

(xi) Providing patient preventive education and oral hygiene instruction;

(Rule 0460-05-.03, continued)

(xii) Identifying and responding to medical and dental emergencies;

(xiii) Providing pre and post-operative instructions prescribed by a dentist;

(xiv) Applying topical anesthetic and desensitizing agents;

(xv) Placing and removing a rubber dental dam;

(xvi) Applying fluoride agents;

(xvii) Applying bases, liners, and bonding agents;

(xviii) Fabricating, placing and removing provisional restorations;

(xix) Placing and selecting matrix retainers, matrix bands, and wedges;

(xx) Removing of excess cement;

(xxi) Fabricating bleaching trays, mouth guards, and custom trays;

(xxii) Taking preliminary impressions (alginate impressions);

(xxiii) Placing and removing retraction materials;

(xxiv) Removing sutures;

(xxv) Performing pulp vitality tests;

(xxvi) Placing and removing periodontal dressing; and

(xxvii) Performing orthodontic functions as stated in Rule 0460-04-.08.

14. Time and attendance records must be kept on each student. The student must make up any missed hours. Usually, each program has extra hours added to the 116 total hours to facilitate makeup lessons.

15. Each program must have at least two (2) examinations during the program; one mid-term examination and a final examination.

16. Examinations must have a passing score of at least 75%.

17. Within thirty (30) days of program completion, the program director must certify in writing to the Board office that the student has completed all program requirements, including the requirements for the dental radiology certification.

18. Within thirty (30) days of program completion, a list of students must be submitted to the Board office along with the program completion letter for each student.

* 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)
Nadim J. Jubran, D.D.S	X				
Mary R. Warner, R.D.H.	X				
Katherine N. Hall, D.D.S	X				
Ernest J. DeWald, D.D.S	X				
Donald D. Henson	X				
Airica Brooke Puckett	X				
Stephen J. Maroda, Jr., D.M.D	X				
Randall P. Prince, D.D.S.	X				
Dan T. Meadows, D.D.S.	X				
Bettye Lynn Richert	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Dentistry (board/commission/ other authority) on 10/13/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/22/16

Rulemaking Hearing(s) Conducted on: (add more dates). 10/13/16

Date: 10/14/16

Signature: Jennifer L. Putnam

Name of Officer: Jennifer Putnam

Title of Officer: Assistant General Counsel
Department of Health

LOYCE JEFFERY PAYNE
STATE OF TENNESSEE NOTARY PUBLIC
MARSHALL COUNTY

Subscribed and sworn to before me on: 10/14/16

Notary Public Signature: Loyce Jeffery Payne

My commission expires on: June 29, 2020

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

1/23/2017
Date

Department of State Use Only

Filed with the Department of State on: 1-31-17

Effective on: 5-1-17

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Mineral Test Holes / Permit Fee Increase
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 60-1-501 et seq. and 4-5-201 et seq.
EFFECTIVE DATES:	April 4, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule renumbers the Mineral Test Hole rules by repealing Chapters 0950-01-01, 0950-01-02, 0950-01-03, 0950-01-04, 0950-01-05, and 0950-01-06 and moving the rules into Chapter 0400-43-01. In addition, the rules are amended to broaden and clarify the financial assurance and technical compliance options for mineral test hole drillers; to increase the permit fee from $10 to $100 (this fee has not been increased in approximately thirty years); limiting a blanket bond to 25 test holes; and to establish a two-year permit term.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

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

The types of businesses applying for Mineral Test Hole permits are coal and mineral mining companies. Over the past five years, it is estimated that 25%, or four, of the businesses receiving Mineral Test Hole permits were 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.

It is projected that there will be no additional reporting, recordkeeping or other administrative costs and no new professional skills needed as a result of this rulemaking.

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

These rules will not impact consumers. The rules will not impact small businesses in a disproportionate manner to other businesses. The financial assurance and technical compliance options for mineral test hole drillers are clarified and broadened. There is a fee increase from $10 to $100; however, the fee has not been increased in approximately thirty years. The rules also establish a two-year permit term. This change is not expected to have a negative impact on small businesses as companies should be able to complete exploration within that time period.

(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.

As this rulemaking was being developed, the regulated community was involved in giving input on the best methods to correct existing shortcomings in the existing rules. The methods in this rulemaking are the least burdensome, less intrusive and less costly alternative that met the objectives of this program. As a result, there were no comments or suggestions received during the public comment period.

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

There is no known federal counterpart. This is an update of existing state rules promulgated in 1976. These rules are similar to surrounding states with test hole rules in that the primary objective is to prevent pollution of aquifers.

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

The primary objective of these rules is to permit mineral exploration drilling using methods that prevent cross-contamination between aquifers. Exempting small businesses from these requirements would not prevent pollution of aquifers.

Impact on Local Governments

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

The Department does not anticipate that these rules will have a financial impact on local governments.

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;

This rulemaking renumbers the Mineral Test Holes rules by repealing Chapters 0950-01-01, 0950-01-02, 0950-01-03, 0950-01-04, 0950-01-05, and 0950-01-06 and moving the rules into Chapter 0400-43-01. In addition, the rules are amended to broaden and clarify the financial assurance and technical compliance options for mineral test hole drillers; to increase the permit fee from $10 to $100 (this fee has not been increased in approximately thirty years); limiting a blanket bond to 25 test holes; and to establish a two-year permit term.

(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 amendments are being promulgated under the authority of T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

(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;

The coal and mineral mining industries constitute the entities most affected by this rule. The Tennessee Mining Association, consulting companies and mining companies were contacted during the formulation of the updated rules and many of their suggestions were incorporated into the final version. No comments were received during the public comment period.

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

The Department is not aware of any.

(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 should be no fiscal impact to local government. The Department will experience a minimal increase in permit income of approximately $360 annually.

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

Bruce Ragon
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, Tennessee 37921-6538
(865) 594-5547
Bruce.Ragon@tn.gov

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

Lucian Geise
Senior Counsel for Legislative Affairs
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
Lucian.Geise@tn.gov

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

The Department is not aware of any additional relevant information requested.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-01-17
Rule ID(s): 6387-6393
File Date: 1/4/17
Effective Date: 4/4/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Environment and Conversation
Division: Water Resources
Contact Person: Bruce Ragon
Address: Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, Tennessee
Zip: 37921-6538
Phone: (865) 594-5547
Email: Bruce.Ragon@tn.gov

Revision Type (check all that apply):
___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-43-01	Mineral Test Holes
Rule Number	**Rule Title**
0400-43-01-.01	Definitions
0400-43-01-.02	Bond
0400-43-01-.03	Permits
0400-43-01-.04	Hole Location Maps
0400-43-01-.05	Hole Abandonment
0400-43-01-.06	Rules of Procedure for Hearing Contested Cases

Chapter Number	**Chapter Title**
0950-01-01	Definitions
Rule Number	**Rule Title**
0950-01-01-.01	Definitions

Chapter Number	Chapter Title
0950-01-02	Bond
Rule Number	**Rule Title**
0950-01-02-.01	Amount of Bond
0950-01-02-.02	Blanket Bond
0950-01-02-.03	Relief of Responsibility
0950-01-02-.04	Execution of Bond
0950-01-02-.05	Notice of Noncompliance
0950-01-02-.06	Forfeiture

Chapter Number	Chapter Title
0950-01-03	Permits
Rule Number	**Rule Title**
0950-01-03-.01	Permit Required
0950-01-03-.02	Drilling Permits

Chapter Number	Chapter Title
0950-01-04	Well Location Plats
Rule Number	**Rule Title**
0950-01-04-.01	Preparing Plats

Chapter Number	Chapter Title
0950-01-05	Well Abandonment
Rule Number	**Rule Title**
0950-01-05-.01	Plugging Wells
0950-01-05-.02	Suggested Plugging Procedure for Middle Tennessee
0950-01-05-.03	Suggested Plugging Procedure for the Cumberland Plateau
0950-01-05-.04	Suggested Plugging Procedure for East Tennessee
0950-01-05-.05	Plug and Abandon Report

Chapter Number	Chapter Title
0950-01-06	Rules of Procedure for Hearing Contested Cases

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Repeals

Chapters 0950-01-01 Definitions, 0950-01-02 Bond, 0950-01-03 Permits, 0950-01-04 Well Location Plats, 0950-01-05 Well Abandonment, and 0950-01-06 Rules of Procedure for Hearing Contested Cases are repealed.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

New Rules

0400-43-01
Mineral Test Holes

Table of Contents

0400-43-01-.01 Definitions
0400-43-01-.02 Bond
0400-43-01-.03 Permits
0400-43-01-.04 Hole Location ~~Plats~~ Maps
0400-43-01-.05 Hole Abandonment
0400-43-01-.06 Rules of Procedure for Hearing Contested Cases

~~0950-1-1-.01 DEFINITIONS.~~ 0400-43-01-.01 Definitions

As used in this chapter, unless the context clearly requires otherwise:

(1) "Act" means the Mineral Test Hole Regulatory Act, T.C.A. Title 60, Chapter 1, Part 5.

~~(1)~~(2) "Board" ~~the State Mineral Test Hole Regulatory Board herein established~~ means the Tennessee Board of Water Quality, Oil and Gas.

(3) "Department" means the Tennessee Department of Environment and Conservation.

~~(2) For exploratory purposes drilling of mineral test holes for the specific purpose of exploring for minerals, excluding oil and gas.~~

~~(3)~~(4) "Mineral" means any substance with economic value whether organic or inorganic that can be extracted from the earth, but excluding oil and gas.

~~(4)~~(5) "Mineral test hole" or "test hole" means any hole in excess of one hundred (100) feet drilled during the exploration for minerals but ~~shall exclude~~ excludes auger drilling in surficial or otherwise unconsolidated material, drilling in conjunction with mining or quarrying operations (i.e., blast holes), and drill holes for the exploration of oil and/or gas, water, structural foundations, and seismic surveys.

~~(5)~~(6) "Natural brine" means naturally occurring mineralized water other than potable or fresh water.

~~(6)~~(7) "Operator" means the person, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of ~~mineral~~ test holes subject to this chapter.

~~(7)~~(8) "Owner" means the person who has or attains the right to drill, convert or operate any ~~mineral~~ test hole subject to this chapter.

~~(8)~~(9) "Person" means any individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization of any kind.

~~(9)~~(10) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters, soils, animal, fish and aquatic life or surface property of this state, as will:

(a) ~~as will result~~ Result or will likely result in harm, potential harm, or detriment to the public health, safety, or welfare; ~~or~~

(b) ~~as will result~~ Result or will likely result in harm, potential harm, or detriment to the health of animals, birds, fish or aquatic life; ~~or~~

(c) ~~as will result~~ Render or will likely render the waters, soils, animal, fish and aquatic life or surface property substantially less useful for domestic municipal, industrial, agricultural, recreational, or other reasonable uses; or

(d) ~~as will leave~~ Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the ~~Water Quality Control~~ Board.

~~(10)~~(11) "Supervisor" means the ~~director of the Division of Geology in~~ Commissioner of the Tennessee Department of Environment and Conservation or ~~his authorized agents~~ the Commissioner's designee.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

~~0950-1-2-.01 AMOUNT OF BOND~~ 0400-43-01-.02 Bond

(1) Amount of bond

A bond is required to be in force for a ~~well~~ test hole in the name of the owner or operator from the time a drilling permit is granted until the ~~well~~ test hole is abandoned in accordance with ~~the rules and regulations of the Board~~ this chapter. The bond for an individual test hole shall be for the sum of one thousand dollars ($1,000) ~~in favor of the Board~~. An individual ~~well~~ test hole bond shall be released upon the proper plugging of the ~~well~~ test hole and the filing with the Supervisor of a Plug and Abandon Report.

~~0950-1-2-.02 BLANKET BOND.~~

(2) Blanket bond

In lieu of an individual bond, any ~~well~~ owner or operator may file with the Supervisor a blanket bond in the sum of ten thousand dollars ($10,000) covering ~~all wells drilled or~~ up to twenty-five (25) test holes to be drilled by the principal in the bond with the acceptance and approval by the Supervisor ~~of such blanket bond being predicated on its full compliance with the requirements of an individual well bond~~. A blanket bond shall be released upon the proper plugging of all ~~wells of the operator (principal)~~ test holes covered by the bond, and the filing of Plug and Abandon Reports with the Supervisor ~~of Plug and Abandon Reports~~. ~~A blanket bond may be canceled by the~~ A surety~~,~~ may ~~notifying~~ notify the Supervisor in writing~~, delivered personally or~~ by registered mail, that the owner or operator is no longer authorized by the surety to obtain permits under said bond. If or when all ~~wells~~ test holes permitted under said bond have been abandoned ~~according to the rules and regulations of the Board~~ in accordance with this chapter, ~~or existing permits have been canceled,~~ the Supervisor shall release the bond.

~~0950-1-2-.03 RELIEF OF RESPONSIBILITY.~~

(3) Relief of Responsibility

~~A permittee's~~ An owner or operator's bond and other responsibilities to a ~~well or wells~~ test hole or test holes shall be relieved upon approval by the Supervisor of a successor's application for a bond and the tendering of authorization by the permittee requesting the Supervisor to approve the successor's application.

~~0950-1-2-.04 EXECUTION OF BOND-EXCEPTION.~~

(4) Execution of bond-exception

~~The~~ Acceptable bond instruments include: a bond or bonds ~~referred to shall be~~ executed by ~~the well operator as principal or by~~ a corporate surety authorized to do business in Tennessee and that is among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, irrevocable letters of credit, personal bonds supported by certificates of deposit or personal bonds supported by ~~A deposit in~~ cash or certified check ~~shall serve in lieu of either of the above bonds~~. The wording of all instruments must be identical to the wording furnished by the Department's Division of Financial Responsibility.

(a) Certificates of deposit used to meet the requirements of this rule must meet the following requirements:

1. The certificate of deposit shall be registered as follows, except that the phrase "Corporation XYZ" should be replaced by the name of the owner/operator: "Corporation XYZ and Tennessee Department of Environment and Conservation or Tennessee Department of Environment and Conservation".

2. The institution holding the funds shall be a commercial financial institution regulated by a federal agency or regulated by the Tennessee Department of Financial Institutions.

3. The certificate of deposit shall be automatically annually renewed with the earned interest released to the principal as accrued.

4. The original certificate of deposit or documentation of the deposit approved by the Department's Division of Financial Responsibility shall be submitted to and held by the Department.

5. Accompanying the certificate of deposit or approved documentation shall be a letter from an officer of the issuing financial institution on the institution's letterhead that contains the certificate of deposit number, the name of the owner/operator, the date the certificate of deposit was issued, and the following statement:

   "Notwithstanding any contrary term or condition of the above described Certificate of Deposit, [INSERT NAME OF FINANCIAL INSTITUTION] (the "Financial Institution") hereby covenants, warrants and represents that said Certificate of Deposit shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Financial Institution. The Financial Institution further agrees that it shall not release the Certificate of Deposit or the proceeds thereof to anyone other than to the Tennessee Department of Environment and Conservation (the "Department") without the written consent of the Department."

(b) Letters of credit used to meet the requirements of this rule must be issued by an institution which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

~~0950-1-2-.05 NOTICE OF NONCOMPLIANCE.~~

(5) Notice of noncompliance

If the requirements with respect to proper plugging upon abandonment and submission of all required records and data on a ~~well or wells~~ test hole or test holes have not been ~~complied with~~ met within the time limit set by the ~~Board~~ Department, the Supervisor shall cause a Notice of Noncompliance to be served upon the operator or owner and to the surety, if any, executing the bond filed by said operator or owner. Said Notice shall be mailed by certified mail to the owner or operator's address as set out in the application for a permit, to the agent for the surety, if any, at ~~his~~ the agent's address, if known, and to the surety company, if any, at the ~~Address~~ address provided to the Tennessee Department of Commerce and

Insurance for receipt of notices. The Notice shall specify in what respects the operator or owner has failed to comply with this ~~Chapter or the regulations~~ rule or orders of the ~~Board~~ Department and shall order said operator or owner to comply in accordance therewith within sixty (60) days after service of said Notice. The surety, if any, shall be afforded the opportunity to act on behalf of the operator or owner within the time set forth in the Notice with regard to the proper plugging of the ~~well or wells~~ test hole or test holes and submission of required ~~well~~ drilling records.

~~0950-1-2-.06 FORFEITURE.~~

(6) Forfeiture

Should the operator or owner, or surety, fail to comply fully with the order of the Notice of Noncompliance within the sixty (60) day requirement, then ~~said~~ the bond shall be forfeited to the ~~Board~~ Department. Where possible, the ~~Board~~ Department, at its election, may use the monies so forfeited to plug ~~properly~~ the affected ~~well or wells~~ test hole or test holes.

(7) Cancelation of Bond

(a) An owner or operator must provide that their financial assurance mechanism may not cancel, terminate or fail to renew except for failure to pay for such financial instrument. If there is a failure to pay for the financial instrument, the issuing institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Department. The cancellation must not be final for one hundred eighty (180) days after the Department's and owner or operator's receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility mechanism within ninety (90) days of receipt of notice of cancellation.

(b) If the owner or operator fails to provide alternate financial assurance and obtain written approval of such assurance from the Department during the ninety (90) days following receipt by both the owner or operator and the Department of a notice of cancellation of this bond, the Supervisor shall collect the full amount of the financial assurance instrument from the financial institution and deposit this amount in a fund within the state treasury reserved for financial assurance cash bonds. If the owner or operator subsequently replaces the financial instrument with an alternate third-party financial instrument and obtains the Supervisor's written approval of such instrument, the amount held as a cash bond will be returned to the owner or operator.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

~~950-1-3-.01 PERMIT REQUIRED.~~ 0400-43-01-.03 Permits

(1) Permit required

~~(1)~~(a) A permit is required from the Supervisor before any person ~~shall drill~~ drills a ~~mineral~~ test hole as described in the Act.

~~(2)~~(b) No ~~work shall~~ activity related to a test hole may be commenced ~~on a well~~ pursuant to this ~~chapter~~ rule before a permit for such ~~work on the well~~ activity has been issued by the Supervisor. Furthermore, any ~~work the operator~~ activity related to a test hole that a person may do, or may have done, will be at ~~his~~ the person's own risk.

~~(3)~~(c) Permits shall not in any way be construed as a certification by the ~~State~~ state of Tennessee that any property interest in the premises covered by a permit is vested in the permittee; they are issued solely ~~under the regulatory powers vested in the State Mineral Test Hole Board~~ under the provisions of ~~Title 58 of the Tennessee Code Annotated~~ the Act for the purposes recited in ~~said Code section and the rules and regulations promulgated by the Board pursuant to said Code section~~ the Act and this chapter.

~~(4)~~(d) ~~Exclusions for permit requirements in mining and quarrying districts must be obtained from the Supervisor~~

1. Any permit issued on or after the effective date of this rule shall expire two (2) years from the date the permit is issued.

2. Except as provided in paragraph (6) of Rule 0400-43-01-.05, a Plug and Abandon Report, or a certification that a test hole was not drilled, must be submitted to the Department for each test hole covered by a permit no later than sixty (60) days after the expiration date of the permit, unless a new permit for the test hole is issued by the Supervisor.

~~0950-1-3-.02 DRILLING PERMITS.~~

(2) Drilling permits

~~(1)~~(a) Single test hole permit applications for a permit to drill a test hole shall be made on the Application for Permit to Drill and submitted to the ~~Supervisor's office~~ Department for approval by the Supervisor. The application shall be accompanied by: ~~one (1) copy of a location plat, and a fee of ten dollars ($10.00). The application shall give the name and address of the drilling contractor, if known; otherwise notification by letter to the Supervisor as soon as determined~~

1. A map indicating the location of the test hole proposed in the application;

2. An application fee of one hundred dollars ($100); and

3. A comprehensive Bond Identification Form.

The application shall also include the name and address of the drilling contractor, if any. If the contractor is unknown at the time of application, then the information must be provided by letter to the Supervisor as soon as determined but prior to beginning drilling operations.

~~(2)~~(b) ~~Blanket Permit~~ Applications for a blanket permit must be submitted to the Supervisor for approval and shall include all of the information required by subparagraph (a) of this paragraph, including a map that indicates the location of all test holes proposed. ~~Blanket Permit shall~~ A blanket permit may cover ~~numerous wells being drilled by an operator in a drilling program in an area approximately the size of a county~~ up to a maximum of twenty-five (25) holes.

~~(3)~~(c) A drilling permit can only be amended with the prior written approval of the Supervisor.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

~~0950-1-4-.01 PREPARING PLATS.~~ 0400-43-01-.04 Hole Location Maps

~~Well~~ Test hole locations shall be plotted on the appropriate topographic map or maps. A copy of that portion of the map showing the ~~drill~~ test hole location is acceptable provided the topographic map name and/or number is shown on the copy; each proposed hole shall have a discrete identifier. ~~A~~ If required by the Supervisor, a plat must accompany the application for a permit.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

~~0950-1-5-.01 PLUGGING WELLS.~~ 0400-43-01-.05 Hole Abandonment

(1) Plugging Holes

All ~~wells~~ test holes which are to be abandoned shall be plugged in accordance with the procedures outlined herein.

~~0950-1-5-.02 SUGGESTED PLUGGING PROCEDURE FOR MIDDLE TENNESSEE.~~

(2) Plugging procedure for Middle Tennessee

~~(1)~~(a) In all areas where exploration may encounter gas, set NX casing (3½" OD) at least six (6) feet into bedrock. Procedure: fill test hole with cement, drive in casing, let set up and then drill out cement. Drill hole with gate valve at surface in order to control ~~well~~ the test hole if gas is encountered.

~~(2)~~(b) ~~After considerable experimentation by industry, they now find~~ Based on industry experience, the following method has been found to be most satisfactory for protecting fresh water zones:

~~(a)~~1. Place an effective plug at top of Knox formation and one (1) bag cement across unconformity = + 40' plug.

~~(b)~~2. Come up test hole to a depth of approximately two hundred (200) ~~Feet~~ feet below lowest adjacent surface terrain. Place effective plugs every sixty (60) ~~Feet~~ feet followed by cement all the way to surface.

~~0950-1-5-.03 SUGGESTED PLUGGING PROCEDURE FOR THE CUMBERLAND PLATEAU.~~

(3) Plugging procedure for the Cumberland Plateau

Shallow ~~drill~~ test holes less than four hundred (400) feet deep or less than one thousand (1,000) feet from the outcrop not encountering underground water shall be plugged by filling or covering the test hole adequately with surface material as a safety precaution. ~~Drill~~ Test holes more than four hundred (400) feet deep or more than one thousand (1,000) feet from the outcrop shall set effective plugs twenty-five (25) feet below~~,~~ each coal seam encountered and fill the test hole with cement to twenty-five (25) feet above ~~each~~ the coal seam ~~encountered~~. Sufficient plugs must be efficiently placed in number and properly located as to prevent commingling of oil, gas, salt water, and fresh water from one zone to another.

~~0950-1-5-.04 SUGGESTED PLUGGING PROCEDURE FOR EAST TENNESSEE.~~

(4) Plugging procedure for East Tennessee

Use six (6) to nine (9) bags of cement poured into the bottom of a ~~drill~~ test hole and extending upward at the rate of sixty (60) feet per bag of cement up to the chert matrix layer. This will bring the cemented test hole above any potential contaminated water in the East Tennessee District. Then one (1) bag of cement will be used to case the top of the ~~drill~~ test hole.

(5) Alternative plugging procedures for all areas

The entire test hole bore may be filled with suitable grout or cement from the bottom of the test hole to the ground surface or by other methods approved, in writing, by the Supervisor on a case by case basis.

~~0950-1-5-.05 PLUG AND ABANDON REPORT.~~

(6) Plug and Abandon Report

~~Work performed under the permit must be reported to the Supervisor in the~~ A Plug and Abandon Report ~~(Form M-P + A)~~ reporting all activity associated with the test hole performed under the permit must be filed with the Department for approval by the Supervisor within ~~ninety (90)~~ thirty (30) days after completing the ~~work~~ activity unless permission has been obtained by the Supervisor to keep a ~~well~~ test hole open.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

~~CHAPTER 0950-1-6 RULES OF PROCEDURE FOR HEARING CONTESTED CASES~~ 0400-43-01-.06 Rules of Procedure for Hearing Contested Cases

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter ~~1360-1-7~~ 1360-04-01.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 09/20/2016, 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: 02/11/16

Rulemaking Hearing(s) Conducted on: (add more dates). 04/12/16

Date: 9-20-16

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

CAROL L. GRICE STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: 9-20-16

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/12/2016
Date

Department of State Use Only

Filed with the Department of State on: 1/4/17

Effective on: 4/4/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	Construction and Operating Permits
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 60-201-101 et seq.
EFFECTIVE DATES:	April 5, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

This rulemaking hearing rule is in response to a petition filed by the Tennessee Chamber of Commerce & Industry with the Tennessee Air Pollution Control Board seeking these amendments to the state rules. The petition related to the need for clarification of the state rules as to the nature of the obligations created by rules requiring sources of air contaminants to obtain a construction permit for a new or modified source and to require emissions limitations consistent to the use and operation of the Best Available Control Technology (BACT). The effect of this rulemaking is that a violation of these portions of the rule occur at a time when there is construction or modification at a source and that this rule does not impose an obligation of a continuing nature to apply for a permit and receive a BACT determination.

Public Hearing Comments

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

Comment: The Tennessee Chamber of Commerce and Industry (TCC&I) was supportive of these rule amendments, as they are an outgrowth of a petition for rulemaking filed by TCC&I.

Response: The Board agrees that the rule amendments would allow the Tennessee State Implementation Plan (SIP) to be interpreted in a different manner for the purpose of making a failure to obtain a construction permit a single violation as opposed to the prior interpretation by the Sixth Circuit Court of Appeals in the 2007 *National Parks Conservation Association v. TVA* case of the failure as a "continuing series of discrete violations".

Regulatory Flexibility Addendum

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

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

This rulemaking would generally not affect small businesses since it does not affect state enforcement, and small business are generally not targets for federal citizen action or enforcement by EPA.

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

There are no additional requirements imposed by this rulemaking.

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

The effect would be inconsequential to both groups.

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

There is none.

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

The state rule was interpreted by a federal court as broader than the board intended and the amendment adjusts the language to be consistent with rules in other states and EPA's regulation in states in which it runs the New Source Review (NSR) program.

(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.

While it is unlikely that a small business would be targeted by a federal citizen action, if it was, it would be a disadvantage to the small businesses if they were not covered by this rulemaking, leaving them subject to potentially expensive litigation.

Impact on Local Governments

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

The Department anticipates that this amended rule will not have a financial impact on local governments.

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;

This rulemaking responds to a petition filed by the Tennessee Chamber of Commerce & Industry with the Tennessee Air Pollution Control Board seeking these amendments to the state rules. The petition related to the need for clarification of the state rules as to the nature of the obligations created by rules requiring sources of air contaminants to obtain a construction permit for a new or modified source and to require emissions limitations consistent to the use and operation of the Best Available Control Technology (BACT). The effect of this rulemaking is to say that a violation of these portions of the rule occur at a point in time when there is construction or modification at a source and that this rule does not impose an obligation of a continuing nature to apply for a permit and receive a BACT determination.

(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 amendment is being promulgated under the authority of T.C.A. § 68-201-101 et seq., and is consistent with 40 CFR Part 51.

(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;

Companies that are considered major sources for the purposes of construction permits under the Prevention of Significant Deterioration (PSD) program would be most affected by this rule. The rule would now allow these companies to assert a defense based on the general five-year federal Statute of Limitations on enforcement similar to what other companies in other states with similar air pollution programs can do. These companies are most likely to be the focus of actions under federal law for enforcement or citizen actions.

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

None are directly related although this rulemaking is heavily influenced by application of the rule being amended in a particular case. The United States Court of Appeals for the Sixth Circuit in *National Parks Conservation Association v. TVA*, has interpreted the rule being amended to cause a new violation to arise each day a source operates no matter how many years have passed since the original date of construction or modification, hence creating a "continuing series of discrete violations". The rule being corrected deprived Tennessee companies of the benefit of a defense based on the federal statute of limitations of five years from the construction or modification. The Statute of Limitations defense is supported by public policy, and without fixing this rule Tennessee companies are being placed at a competitive disadvantage in contrast to most states with similar separate construction and operating permit schemes as explained in several other federal court decisions. This rule still allows enforcement action by the State but would even the playing field for Tennessee companies having to defend stale actions in federal courts.

(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 significant impact in state and local government revenues and expenditures resulting from the promulgation of these amendments.

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

Steven R. Stout

Office of General Counsel
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243

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

Jenny Howard
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) 532-8685
Jenny.Howard@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-06-17
Rule ID(s): 6394
File Date: 1/5/17
Effective Date: 4/5/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee 37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):
X 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**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits

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

Chapter 1200-03-09
Construction and Operating Permits

Amendments

Subparagraph (e) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(e) No construction permit shall be issued by the Technical Secretary if the approval to construct or modify an air contaminant source would result in a violation of the ambient air quality standards specified in Chapter 1200-03-03, would cause a violation of any other regulatory requirement under this Division, 1200-03, would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a national ambient air quality standard in a neighboring state. In the case where a source or modification was constructed without first obtaining a construction permit~~, a construction permit may be issued to the source or modification to establish as conditions of the permit, the necessary emission limits and requirements to assure that these regulatory requirements are met. The~~ the appropriate enforcement action shall be pursued to ~~insure~~ ensure that ambient air quality standards and other regulatory requirements will be met. All emission limits and requirements of ~~the~~ any applicable construction permit must be met prior to issuance of an operating permit for the source or modification.

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

Part 3 of subparagraph (j) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

3. ~~A~~ At the time of construction permitting, a major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

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

Item (II) of subpart (iii) of part 2 of subparagraph (b) of paragraph (5) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

(II) ~~A~~ At the time of construction permitting, a new major stationary source shall apply the lowest achievable emission rate for each contaminant for which the area is designated nonattainment that it would have the potential to emit in an amount sufficient to make the source or modification a major stationary source or modification. This provision applies to each new emissions unit at which emissions would occur.

Authority: T.C.A. §§ 68-201-101 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)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests				X	
Chris Moore Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer				X	
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				
Vacant Working in Municipal Government					
Vacant Involved with Institution of Higher Learning on air pollution evaluation and control					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/14/2016, 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: *09/10/15*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/02/15*

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: 12/14/2016

Signature: Quincy N. Styke III

Name of Officer: Quincy N. Styke III

Title of Officer: Acting Technical Secretary

Subscribed and sworn to before me on: 12/14/2016

Notary Public Signature: Malcolm H. Butler

My commission expires on: January 11, 2017

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

1/4/2017
Date

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PUBLICATIONS

Filed with the Department of State on: 1/5/17

Effective on: 4/5/17

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Water and Wastewater Operator Certification / Renewal Application Fee Increase
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 68-221-901 et seq. and 68-203-101 et seq.
EFFECTIVE DATES:	April 18, 2017 through June 30, 2018
FISCAL IMPACT:	The promulgation of this rule will have a negligible effect on local government revenues, if any, but will increase the revenue available to the Fleming Training Center by approximately $120,000 annually to serve stakeholders.

STAFF RULE ABSTRACT:

The proposed changes to the Rules Governing Water and Wastewater Certification (Chapter 0400-49-01) clarify and simplify the rules. The amendments propose to eliminate the need for applicants to have their signature notarized, to support giving examinations in written and electronic formats, and to increase the renewal application fees.

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 Tennessee Water and Wastewater Operator Certification Board received comments from the Tennessee Municipal League (TML) in the form of questions as follows:

Comment: TML wanted to know how much money is the proposed increase in fees estimated to generate and how the money from the increase will be spent.

Response: The proposed increase in fees will generate approximately $120,000 which will be spent on upgrades to outdated computer systems, increased staffing, increased services offered to water and wastewater operators, and general improvements to the program's ability to serve its stakeholders.

Comment: TML requested a workload analysis report for at least the last three years covering activities affecting the proposed fees and any related grants or other type of funding, including any backlog or pending matters.

Response: The proposed fees relate to renewals of water and wastewater operator certificates. Each year, operators are required to renew their certifications. As the number of operators in Tennessee grows, processing these renewals has become more time-consuming for the limited staff at the Fleming Training Center (FTC). Specifically, the workload for FTC staff has increased from a ratio of 587.15 certificates per staff member in 2010 to 993.7 per staff member in 2015. Any backlog that results from the increased number of renewals that staff must process also results in a delay issuing these renewals to operators. The proposed fees will help lessen delays in processing time. Grant opportunities for funding were explored, but no applicable grants were available.

Comment: TML pointed out that the proposed amendment increases the discounted annual renewal fee for each operator certificate to $50 from $30, for payment prior to February 1st. It also increases the standard annual renewal fee for each operator certificate to $100 from $60, for payment from February 1st through June 30th. This is approximately a 67% increase in the fees. The commenter requested an explanation of why such a substantial increase is needed and asked for the date of the last fee increase for this service and if the Department has considered whether or not a smaller increase would be sufficient.

Response: The last operator fee increase was effective in FY2009-2010. The Department considered the amount of revenue currently needed, the amount of the current fee, and what increase would be necessary to effectively and efficiently provide services demanded by Tennessee municipalities, industries and utility districts. The proposed increase is the minimum increase that can generate the revenue required to ensure that the program can provide these services.

Comment: TML believes that the amount of fees charged should have a direct correlation to the services that municipalities receive; if fees increase, service levels should also increase. How will the increase in fees improve services to municipalities?

Response: The fee increase will improve overall services to municipalities including, but not limited to, general oversight responsibilities, training programs and materials, administrative tasks, such as record-keeping and processing applications and renewals, and administering the water and wastewater operation certification examination. The proposed increase will also allow for increased staffing, which would ease the administrative burden on existing staff and help ensure efficient and effective application and renewal processing.

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

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

No Public Water Systems or Wastewater Treatment and Collection Systems that meet the definition of small businesses are directly affected by the proposed rule. These systems are not required to bear the cost of the proposed fee. However, a system could choose to cover the renewal fees for the operator(s) in its employ, in which case the system would be choosing to bear some of the cost of this proposed rule.

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

No additional reporting, recordkeeping, or other administrative costs are required for compliance with this proposed rule. The requirements associated with an application for certification or reciprocity will be decreased under the proposed rule, as the applications will no longer require notarization.

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

There is no anticipated impact on consumers resulting from this rulemaking. However, as stated above, Public Water Systems and Wastewater Treatment and Collection Systems may be affected if those systems choose to pay operator certification renewal fees for the operator(s) in their employ.

(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.

One of the purposes of the proposed rule is to make the application process less burdensome on any person seeking operator certification under this rule, as well as to ensure that TDEC has the resources to effectively and efficiently administer the operator certification program. No available alternatives exist that can likewise meet that goal.

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

Federal law requires the states to establish an appropriate training and certification program and certain grants to TDEC are contingent on the establishment of this program. The proposed changes to the program in this rule change will not affect TDEC grant eligibility.

State programs for water and wastewater operator certification vary widely. Programs can be structured differently with respect to certificate renewal cycles and requirements, as well as training opportunities and number of applicants. Nonetheless, a review of other states' programs shows that Tennessee currently has some of the lowest fees compared to its state counterparts, even with the proposed fee increase. For example, in Alabama, operator certification renewals cost $80, if submitted in paper format, or $60, if submitted online. Likewise, in Kentucky, a paper renewal is $100, whereas an online renewal is $50. In Georgia, the renewal fee is $65, regardless of submittal format. In Florida, renewal fees range from $50 to $250, based on type of renewal and/or expiration date of the certification.

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

The rule change affects certified operators and those seeking to apply for licensure as a certified operator rather than directly affecting any businesses. As stated above, small businesses would only be affected indirectly, and only if those businesses elect to assist operators in their employ by paying renewal fees.

Impact on Local Governments

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

The Department anticipates that this rulemaking may have an impact on local governments.

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 proposed changes to the Rules Governing Water and Wastewater Certification (Chapter 0400-49-01) clarify and simplify the rules. The amendments propose to eliminate the need for applicants to have their signature notarized, to support giving examinations in written and electronic formats, and increase the renewal application fees.

(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 is being promulgated under the authority of Tenn. Code Ann. §§ 68-221-901 et seq., and 68-203-101 et seq.

(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;

Certified Water and Wastewater Operators would be directly affected by this rule. Several organizations that represent this group of individuals have urged the adoption of this rule.

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

The Department is not aware of any.

(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;

The promulgation of this rule will have a negligible effect on local government revenues, if any, but will increase the revenue available to the Fleming Training Center by approximately $120,000 annually to serve stakeholders.

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

Alan Schwendimann
J. R. Fleming Environmental Training Center
2022 Blanton Drive
Murfreesboro, TN 37129
(615) 532-0766
Alan.Schwendimann@tn.gov

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

Lucian Geise
Senior Counsel for Legislative Affairs
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
Lucian.Geise@tn.gov

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

The Department is not aware of any additional relevant information.

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Sequence Number: 01-19-17
Rule ID(s): 6409
File Date: 1/18/17
Effective Date: 4/18/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Environment and Conservation
Division: Water Resources
Contact Person: Alan Schwendimann
Address: J. R. Fleming Environmental Training Center
2022 Blanton Drive
Murfreesboro, Tennessee
Zip: 37129
Phone: (615) 532-0766
Email: Alan.Schwendimann@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0400-49-01	Rules Governing Water and Wastewater Operator Certification
Rule Number	**Rule Title**
0400-49-01-.01	Application for Certificate
0400-49-01-.02	Examinations
0400-49-01-.03	Fees

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0400-49-01
Rules Governing Water and Wastewater Operator Certification

Amendments

Part 1 of subparagraph (b) of paragraph (1) of Rule 0400-49-01-.01 Application for Certificate is amended by deleting it in its entirety and substituting instead the following:

1. A sworn ~~and notarized~~ application signed by the applicant.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (2) of Rule 0400-49-01-.01 Application for Certificate is amended by deleting it in its entirety and substituting instead the following:

1. A sworn ~~and notarized~~ application signed by the applicant.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-49-01-.02 Examinations is amended by deleting it in its entirety and substituting instead the following:

(1) All examinations shall be ~~written except that~~ taken in a manner provided by the Board~~.~~; however, the Board may approve alternate examination methods if an applicant has a disability which would prevent him/her from taking ~~a written~~ the provided methods of examination. The Board may provide examinations in written or electronic formats.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (1) of Rule 0400-49-01-.03 Fees is amended by deleting it in its entirety and substituting instead the following:

(a) Fees for certification shall be required of each applicant and paid in advance as follows:

1. Application fee for each operator examination or reciprocity request applied for..... $100

2. Discount annual renewal fee for each operator certificate:
(Payment prior to February 1).....~~$30~~ $50

3. Standard annual renewal fee for each operator certificate:
(Payment from February 1 through June 30.).....~~$60~~ $100

Authority: T.C.A. §§ 68-221-901 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)
Alan C. Cranford Municipal Government	X				
Jennifer Dodd Commissioner's Designee	X				
J. Darryl Green Certified Operator	X				
Dr. Larry W. Moore Faculty Member				X	
Gregory L. Morgan Certified Operator	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Water and Wastewater Operator Certification Board on 07/21/2016, 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: *05/03/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/28/16*

Date: July 26, 2016

Signature: Alan C. Cranford

Name of Officer: Alan C. Cranford

Title of Officer: Chairman

KATI HICKS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: July 26, 2016

Notary Public Signature: Kati Hicks

My commission expires on: 11/5/18

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

1/12/2017
Date

Department of State Use Only

Filed with the Department of State on: 1/18/17

Effective on: 4/18/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Osteopathic Examination
DIVISION:	Council of Certified Professional Midwifery
SUBJECT:	Fee Decreases
STATUTORY AUTHORITY:	No federal or state law or regulation mandated the promulgation of the rule
EFFECTIVE DATES:	May 1, 2017 through June 30, 2018
FISCAL IMPACT:	None

STAFF RULE ABSTRACT:

These rulemaking hearing rule amendments decrease the application fee from one thousand dollars ($1000) to five hundred dollars ($500) and decrease the biennial renewal fee from one thousand dollars ($1000) to seven hundred dollars ($700).

Public Hearing Comments

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

There were no public comments, either written or oral.

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

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

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not contain compliance or reporting requirements for small businesses.

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

This rule amendment does not contain compliance or reporting requirements for small businesses.

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

This rule amendment does not contain compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Council of Certified Professional Midwifery

Rulemaking hearing date: 04/07/2016

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

   These rule amendments will affect all applicants for midwifery licensure and current midwifery licensees. Applicants and current licensees will benefit from the reduction in the application fee and the biennial renewal fee.

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

   These rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

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

   The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reductions. These rule amendments should not have any impact on consumers.

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

   There are no less burdensome, less intrusive, or less costly methods of achieving the purpose and/or objectives of these rule amendments.

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

   Federal: None.

   State: Many boards, currently operating at a surplus, are reducing some licensure fees.

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

   These rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

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

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;

These rule amendments decrease the Application Fee from one thousand dollars ($1000.00) to five hundred dollars ($500.00) and decrease the Biennial Renewal Fee from one thousand dollars ($1000.00) to seven hundred dollars ($700.00).

(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;

None.

(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;

These rule amendments will affect all applicants for midwifery licensure and current midwifery licensees. Applicants and current licensees will benefit from the reduction in the application fee and the biennial renewal fee.

(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;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Kyonzté Hughes-Toombs, Office of General Counsel, Department of Health.

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

Kyonzté Hughes-Toombs, Office of General Counsel, Department of Health.

(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, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Kyonzte.Hughes-Toombs@tn.gov.

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

None.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-29-17
Rule ID(s): 6416
File Date: 1-31-17
Effective Date: 5-1-17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Osteopathic Examination
Division:	Council of Certified Professional Midwifery
Contact Person:	Kyonzté Hughes-Toombs
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615)741-1611
Email:	Kyonzte.Hughes-Toombs@tn.gov

Revision Type (check all that apply):

X 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**
1050-05	General Rules Governing Certified Professional Midwives
Rule Number	**Rule Title**
1050-05-.06	Fees

(Rule 1050-5-.05, continued)

3. Loss or restriction of professional licensure/certification.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.

5. Failure of any professional licensure or certification examination.

(g) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's certification application materials, the result of a criminal background check.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-111, 63-29-107, 63-29-114, and 63-29-116.* ***Administrative History:*** *Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed March 8, 2007; effective May 22, 2007.*

1050-5-.06 FEES.

~~(1)~~	~~Application fee~~	~~$1,000.00~~
(1)	Application fee	$500.00
~~(2)~~	~~Biennial renewal fee~~	~~$1,000.00~~
(2)	Biennial renewal fee	$700.00
(3)	Late renewal fee	$ 15.00
(4)	Reinstatement fee	$ 50.00
(5)	Duplicate certificate fee	$ 5.00
(6)	Biennial state regulatory fee	$ 10.00

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(7) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Council of Certified Professional Midwifery.

Authority: *T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-142, 63-9-101, 63-29-101 et seq., 63-29-107, 63-29-108, 63-29-109, 63-29-112, and 63-29-116.* ***Administrative History:*** *Original rule filed August 21, 2001; effective November 4, 2001. Repeal and new rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed February 15, 2006; effective May 1, 2006.*

1050-5-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL. Review, approval and denial of all applications under this chapter of rules shall be governed by rule 1050-2-.05

Authority: *T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., and 63-29-116.* ***Administrative History:*** *Original rule filed February 4, 2002; effective April 20, 2002.*

1050-5-.08 RESERVED.

* 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)
Carolyn Reisman, CPM				X	
Talitha Mills, CPM	X				
Charles B. Rush., M.D.	X				
Margaret Marie Fulmer Brasel, MS, CNM	X				
Sandra E. Tinnin, CPM	X				
Jo Nell Montgomery	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Osteopathic Examination Council of Certified Professional Midwifery (board/commission/ other authority) on 04/07/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jeffrey L. Hamre, D.O.	X				
Dr. Shannon R. Kilkelly, D.O.	X				
J. Michael Wieting, D.O.	X				
Penny Grace Judd	X				
Jan Zieren, DO	X				
Shant H. Garabedian, DO	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Osteopathic Examination Midwifery (board/commission/ other authority) on 08/10/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *10/20/15 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *04/07/16 and 08/10/16 (mm/dd/yy)*

Date: 1-17-17

Signature: Kyonzté Hughes-Toombs

Name of Officer: Kyonzté Hughes-Toombs

Title of Officer: Deputy General Counsel
Department of Health

Board of Osteopathic Examination
Council of Certified Professional Midwifery
Rule: 1050-05-.06
General Rules Governing Certified Professional Midwives
Fees

Subscribed and sworn to before me on: 1-17-17

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

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

1/23/2017
Date

Department of State Use Only

Filed with the Department of State on: 1-31-17

Effective on: 5-1-17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Examiners for Land Surveyors
DIVISION:	Regulatory Boards within the Department of Commerce and Insurance
SUBJECT:	Land Surveyor Licensing
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 4-3-1304
EFFECTIVE DATES:	April 13, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Proposed Rule 0820-01-.02 Applications is amended to clarify that application materials (plats and survey reports) submitted for consideration are recent enough to comply with the Board's current standards of practice. Proposed Rule 0820-01-.03 Examinations is amended to reflect the current status of computer-based examinations as administered by the National Council of Examiners for Engineers and Surveyors. Proposed Rule 0820-01-.04 Syllabus of Examinations is amended by adding the phrase "but not be limited to" in describing the examinations contents in order to allow for alteration of examination subject-matter without amending the rule in the future. Proposed Rule 0820-01-.07 is created to allow for expedited licensing for military spouses and personnel.

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

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

The proposed rules will not directly affect more than 500 licensed land surveying entities, only the individual registrants.

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

The projected reporting, recordkeeping, and other administrative costs will be expected to be kept at minimum in order to be in compliance with the proposed rule. There is no variation in reporting requirements for land surveying entities in Tennessee of any size.

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

The proposed rule is not intended to directly affect small businesses and consumers. However, the amount of competent, licensed land surveyors would increase due to the expedited licensure process for military personnel and their spouses, which would lead to an increased capability for small business land surveying entities to meet consumer demand.

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

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

There will be no conflict with other federal, state or local governmental rules because the Board is the sole authority for establishing minimum requirements for obtaining and maintaining a license for the profession it regulates. The proposed rule shares similarities with the rules and laws of 46 states that have enacted or proposed rules and laws resulting from the initiative of the Obama administration to streamline credentialing and licensing for service members, veterans, and their spouses.

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

The proposed rules will not directly affect the more than 500 licensed land surveying entities, only the individual registrants.

Credits

2007 Pub.Acts, c. 464, § 5, eff. June 21, 2007.

T. C. A. § 4-5-403, TN ST § 4-5-403

Current through end of the 2015 First Reg. Sess.

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 rules will not impact local governments.

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;

- Proposed Rule 0820-01-.02 Applications is amended to clarify that application materials (plats and survey reports) submitted for consideration are recent enough to comply with the Board's current standards of practice.

- Proposed Rule 0820-01-.03 Examinations is amended to reflect the current status of computer-based examinations as administered by the National Council of Examiners for Engineers and Surveyors.

- Proposed Rule 0820-01-.04 Syllabus of Examinations is amended by adding the phrase "but not be limited to" in describing the examinations contents in order to allow for alteration of examination subject-matter without amending the rule in the future.

- Proposed Rule 0820-01-.07 Is created to allow for expedited licensing for military spouses and an personnel.

(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;

Tenn. Code Ann. § 4-3-1304 was passed to comply with a federal mandate to allow military personal and spouses special accommodations in professional license reciprocity when being relocated to new states.

(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;

The new rules will affect all registered licensees of the Board and military applicants and their spouses if licensed in another jurisdiction. Additionally, no parties should reject this rule since it satisfies both a state and federal requirement.

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

None known.

(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 known.

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

Laura Martin, Assistant General Counsel

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

Laura Martin, Assistant 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

500 James Robinson Parkway
Office of Legal Counsel
Nashville, TN 37243
615-741-3072

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

None Known.

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Sequence Number: 01-13-17
Rule ID(s): 6398
File Date: 1/13/17
Effective Date: 4/13/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Board of Examiners for Land Surveyors
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Laura Martin
Address:	500 James Robertson Parkway; Nashville, TN 37243
Phone:	(615) 253-3702
Email:	laura.martin@tn.gov
Agency/Board/Commission:	Tennessee Board of Examiners for Land Surveyors

Revision Type (check all that apply):
x Amendment
x 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
0820-01	Rules of the Tennessee State Board of Examiners for Land Surveyors
Rule Number	Rule Title
0820-01-.02	Applications
0820-01-.03	Examinations
0820-01-.04	Syllabus of Examinations
0820-01-.07	Certification for Military Members and Spouses

Chapter 0820-01
Rules of Tennessee State Board of Examiners for Land Surveyors

Amendments

Table of Contents is amended by adding 0820-01-.07 Certification for Military Members and Spouses so that, as amended, the Table of Contents shall read as follows:

TABLE OF CONTENTS

0820-01-.01 Meetings
0820-01-.02 Applications
0820-01-.03 Examinations
0820-01-.04 Syllabus of Examinations
0820-01-.05 Fees
0820-01-.06 Civil Penalties
~~0820-1-.07 Repealed~~
~~through~~
~~0820-1-.15~~
0820-01-.07 Certification for Military Members and Spouses

Authority: T.C.A. § 62-18-105(d).

Rule 0820-01-.02 Applications is amended by adding language to paragraphs (1) and (4) so that, as amended, the rule in its entirety shall read:

Rule 0820-01-.02 Applications

(1) An application for registration shall be accompanied by two (2) survey plats, each with a written survey legal description, and prepared by the applicant under the individual supervision of a registered land surveyor. Such plats must be recent enough to comply with all current applicable requirements of Chapter 0820-03 Standards of Practice and must bear the seal and signature of the supervising registered land surveyor.

(2) If two (2) or more Board members recommend examination of an applicant, such examination will be required.

(3) An applicant may be requested to appear before the Board if two (2) or more Board members declare that such applicant does not appear to meet educational and/or experience requirements.

(4) An applicant may appear at a regular meeting of the Board to discuss his or her qualifications, provided that he or she makes timely written request to the Administrator of the Board.

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(c).

Rule 0820-01-.03 Examinations is amended by deleting the phrase "on each of the two (2) subparts thereof" within paragraph (2) so that, as amended, the rule in its entirety shall read:

Rule 0820-01-.03 Examinations

(1) Examinations shall be conducted at such times and locations as determined by the Board.

(2) The examination shall consist of two (2) parts. The minimum passing grade on the State Exam ~~part~~ shall be seventy percent (70%). ~~on each of the two (2) subparts thereof.~~ The minimum passing grade on the part prepared by the National Council of Engineering and Surveying (NCEES) shall be as established by the NCEES.

(3) Any applicant who fails to appear for a scheduled examination will be deemed to have failed such examination, unless the applicant:

(a) Notifies the Board in writing at least thirty (30) days in advance that the applicant wishes not to take the examination; or

(b) Shows good cause (such as illness or emergency) satisfactory to the Board for such failure to appear.

(4) Any applicant whose failure to appear for a scheduled examination is excused under paragraph (3) of this rule may take the next scheduled examination without paying an additional examination fee.

Authority: T.C.A. §§ 62-18-105 and 62-18-111.

Rule 0820-01-.04 Syllabus of Examinations is amended by adding the phrase "but not limited to" to paragraph (1) so that, as amended, the rule in its entirety shall read:

Rule 0820-01-.04 Syllabus of Examinations

(1) The examination is designed to test the applicant's knowledge of land surveying and to ascertain if the applicant's judgment, experience, and technical knowledge are sufficient to safeguard life, health, and property. The examination will include, but not be limited to the following subjects:

(a) Mathematics applied to land surveying: The applicant should be able to apply the principles of algebra, plane geometry, and trigonometry to land surveying problems of regular, irregular, and curvilinear boundaries.

(b) Fundamentals of surveying: The applicant should have a thorough knowledge of the legal aspects of land surveying and land surveying terms; consistency of angular and linear measurements, the interrelation of errors; steel tape corrections; instrument care and adjustment, the Tennessee Coordinate System; astronomical observations for azimuth; meridian or longitude and parallel of latitude; magnetic declination; magnetic variation; and magnetic bearings, true bearings, differential leveling; profile leveling; cross sections; cut sheets; the theory and use of stadia; topographic surveying; and control surveys by triangulation and traverse, for both ground and aerial surveys.

(c) Surveying of areas for their correction, determination and description: The applicant should be able to plot and write property descriptions, obtain property descriptions from legal records and lay out and monument such property; he/she should know the relative weights legally to be given monuments, distance, bearings, angles, and areas in the redetermination of old boundaries; he/she should be able to determine the directions of lines of a traverse by the deflection angles and by azimuths; he/she should be able to compute latitudes and departures, determine missing data from descriptions, adjust a traverse for closure error, compute coordinates of traverse points, and compute areas of irregular parcels including those bounded by curvilinear courses.

(d) Surveying of areas for the conveyancing of land and for the establishment and reestablishment of internal and external land boundaries, and the plotting of land and subdivisions thereof: The applicant should be able to divide areas into smaller tracts; determine the internal and external boundaries thereof; determine missing data from descriptions; lay out and plot roads, street and sidewalks, topography, and contours setting forth road grades, and determining drainage on the surface, reducing topographic notes; interpolate contours from elevations; prepare topographic maps using ground surveys and aerial surveys with photogrammetric methods of compiling aerial photographs; and compute horizontal curves and vertical curves.

Authority: T.C.A. §§ 62-18-105 and 62-18-111.

New Rule

Rule 0820-01-.07 Certification for Military Members and Spouses is added to Chapter 0820-01, and shall read as follows:

Rule 0820-01-.07 Certification for Military Members and Spouses

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all fees required for issuance of a regular license of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to the requirements in Tennessee; or

(b) Be issued a temporary license as described herein if the Board determines the applicant's license is not substantially equivalent, pursuant to subsection (a), but that the applicant could satisfy additional requirements, including, but not limited to, education, training, or experience ("applicant's additional requirements"). The Board may issue a temporary license upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient for the applicant to complete applicant's additional requirements.

1. After completion of an applicant's additional requirements and providing the Board with sufficient proof thereof as may be required, a full license may be issued to the applicant with the issuance date being the date of the initial issuance of the temporary license and an expiration date as though the full license had been issued at that time, provided that no compelling reason causes the Board to withhold or deny the issuance of the full license.

2. A temporary license shall be issued for a period of no greater than the length of a renewal cycle for a full license.

3. A temporary license shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of applicant's additional requirements, as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary license cause the license to be in effect longer than the renewal cycle of a permanent license then the holder of the temporary license shall file a renewal application with such documentation and fees, as are required by the Board for all other renewals of a permanent license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without payment of late fees or other penalties.

(a) The license of a person described in paragraph (3) shall be eligible for renewal pursuant to this subsection for one (1) year from the person's release from active duty.

(b) Any person renewing under paragraph (3) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any license pursuant to this subsection.

Authority: T.C.A. §§ 4-3-1304, 62-18-106, 109, 110

* 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)
James Caughman	x				
Gaylon Northcut	x				
Tim Lingerfelt	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 07/28/2016 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 12/16/16

Signature: Laura E. Martin

Name of Officer: Laura E Martin

Title of Officer: Assistant General Counsel

DELORES WILSON STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY

Subscribed and sworn to before me on: December 16, 2016

Notary Public Signature: Delores Wilson

My commission expires on: September 7, 2020

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

Herbert H. Slatery III
Attorney General and Reporter

1/4/2017
Date

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Filed with the Department of State on: 1/13/17

Effective on: 4/13/17

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Financial Institutions
DIVISION:	Credit Union
SUBJECT:	State-Chartered Credit Unions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 4-5-101, et seq., 45-1-107, and 45-4-1001(b)
EFFECTIVE DATES:	April 17, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Deposits with state-chartered credit unions are generally insured by the National Credit Union Administration (similar to the Federal Deposit Insurance Corporation's insurance of deposits at banks). To help to avoid confusion, Rule 0180-09-01-.01 requires that state-chartered credit unions making certain borrowings disclose that the borrowed obligation is not a deposit and is not insured by the National Credit Union Administration or the State Credit Union Share Insurance Corporation (a now defunct private insurer of certain credit union deposits). As the State Credit Union Share Insurance Corporations is no longer in existence, there is no longer any need to indicate that it does not provide insurance for certain debt obligations. The amendment to Rule 0180-09-01-.01 removes the reference to this now defunct entity. Rule 0180-09-01-.02 provides that a state-chartered credit union may not, without the prior approval of the Commissioner, purchase fixed assets if its investments in fixed assets will exceed five percent (5%) of its total assets. A federal rule (at 12 C.F.R. § 701.36) previously contained a similar restriction applicable to federal credit unions, but that rule was recently amended to remove the restriction. Under Tennessee law at T.C.A. § 45-4-501(9), state-chartered credit unions are generally allowed to engage in any activity that they could engage in if they were a federally chartered credit union, subject to the Commissioner's regulation for safety and soundness. Accordingly, the Department no longer applies the restrictions of Rule 0180-09-01-.02 to state-chartered credit unions and thus the rule is no longer necessary.

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.

The amendment to Rule 0180-09-01-.01 and the repeal of Rule 0180-09-01-.02 will not result in any change to the regulated activities of state-chartered credit unions.

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 amendment to Rule 0180-09-01-.01 and the repeal of Rule 0180-09-01-.02 will not have any impact on local governments.

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;

Deposits with state-chartered credit unions are generally insured by the National Credit Union Administration (similar to the Federal Deposit Insurance Corporation's insurance of deposits at banks). To help to avoid confusion, Rule 0180-09-01-.01 requires that state-chartered credit unions making certain borrowings disclose that the borrowed obligation is not a deposit and is not insured by the National Credit Union Administration or the State Credit Union Share Insurance Corporation (a now defunct private insurer of certain credit union deposits). As the State Credit Union Share Insurance Corporation is no longer in existence, there is no longer any need to indicate that it does not provide insurance for certain debt obligations. The amendment to Rule 0180-09-01-.01 removes the reference to this now defunct entity.

Rule 0180-09-01-.02 provides that a state-chartered credit union may not, without the prior approval of the Commissioner, purchase fixed assets if its investments in fixed assets will exceed five percent (5%) of its total assets. A federal rule (at 12 C.F.R. § 701.36) previously contained a similar restriction applicable to federal credit unions, but that rule was recently amended to remove the restriction. Under Tennessee law at T.C.A. § 45-4-501(9), state-chartered credit unions are generally allowed to engage in any activity that they could engage in if they were a federally chartered credit union, subject to the Commissioner's regulation for safety and soundness. Accordingly, the Department no longer applies the restrictions of Rule 0180-09-01-.02 to state-chartered credit unions and thus the rule is no longer necessary.

(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. § 4-5-101 et seq., Uniform Administrative Procedures Act (UAPA), establishes provisions for rulemaking for Tennessee agencies; T.C.A. § 45-1-107 grants the commissioner of the Department of Financial Institutions power to enact reasonable substantive and procedural rules to carry out the purpose of any and all chapters within the commissioner's regulatory authority as conferred by law; T.C.A. § 45-4-1001(b) provides that the commissioner of the Department of Financial Institutions may promulgate rules for the implementation of the credit union laws of this state and the sound operation of state chartered credit unions pursuant to the Uniform Administrative Procedures Act.

(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;

Although these rules apply to state-chartered credit unions, the amendment to Rule 0180-09-01-.01 and the repeal of Rule 0180-09-01-.02 will not significantly impact any such institution. The amendment to Rule 0180-09-01-.01 simply removes a reference to an entity that no longer exists. The repeal of Rule 0180-09-01-.02 removes a restriction that is no longer applied to state-chartered credit unions due to changes in federal rules. State-chartered credit unions are not likely to object to the amendment or repeal, as the impact of these changes is insignificant.

(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;

There are no known attorney general opinions that directly relate to these rules or the necessity to promulgate these rules.

(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;

The Department estimates that there will be no probable increase or decrease in state and local government revenues and expenditures resulting from the amendment to Rule 0180-09-01-.01 and the repeal of Rule 0180-09-01-.02.

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

Tina G. Miller, Deputy Commissioner; Daniel Espensen, Assistant General Counsel

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

Tina G. Miller, Deputy Commissioner; Daniel Espensen, Assistant 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

Tina G. Miller, Deputy Commissioner Tennessee Tower, 26th Floor 312 Rosa L. Parks Avenue Nashville, TN 37243 615-532-1030 Tina.g.miller@tn.gov Daniel Espensen, Assistant General Counsel Tennessee Tower, 26th Floor 312 Rosa L. Parks Avenue Nashville, TN 37243 615-854-6177 daniel.espensen@tn.gov

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

None

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Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-16-17
Rule ID(s): 16408
File Date: 1/17/17
Effective Date: 4/17/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Department of Financial Institutions
Division:	Credit Union
Contact Person:	Daniel Espensen, Assistant General Counsel
Address:	Tennessee Tower, 26th Floor, 312 Rosa L. Parks Avenue
Zip:	37243
Phone:	615-854-6177
Email:	daniel.espensen@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
X 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**
0180-09	Pertaining to State-Chartered Credit Unions
Rule Number	**Rule Title**
0180-09-01-.01	Disclosure Required in Borrowing Transactions of State-Chartered Credit Unions
0180-09-01-.02	Procedure for Purchase of Real Property; Fixed Asset Guidelines

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

0180-09-01-.01. DISCLOSURE REQUIRED IN BORROWING TRANSACTIONS OF STATE-CHARTERED CREDIT UNIONS.

(1) Any state-chartered credit union borrowing funds from an individual who is not a member of the credit union shall make the following disclosure in bold face type on the face of the instrument evidencing the borrowing:

THIS OBLIGATION IS NOT A DEPOSIT, SHARE, OR SPECIAL ACCOUNT IN THE CREDIT UNION AND IS NOT INSURED BY ~~THE STATE CREDIT UNION SHARE INSURANCE CORPORATION OR~~ THE NATIONAL CREDIT UNION ADMINISTRATION.

(2) The foregoing disclosure does not exclude the dissemination of additional information by the credit union in connection with the borrowing transaction; however, any such additional disclosure shall not be in violation of the anti-fraud provisions of state and federal law, T.C.A. § 48-2-101 et seq. and Rule 10b-5 (17 CFR 240. 10b-5), as now or hereafter amended.

(3) The provisions of this Rule shall apply to all instruments evidencing a borrowing from a non-member individual issued after the effective date of this Rule.

Authority: *T.C.A. §§ 45-1-107, 45-4-1001(b) and 45-4-502.*

~~**0180-09-01-.02. PROCEDURE FOR PURCHASE OF REAL PROPERTY; FIXED ASSET GUIDELINES.**~~

~~(1) For the purpose of this rule, the term "fixed assets" means premises and furniture, fixtures and equipment as defined herein. Premises includes real property with any improvements where the state- chartered credit union transacts business. Furniture, fixtures and equipment includes all office furnishings (e.g. tables, chairs, desks, file cabinets, curtains, drapes, rugs, etc.) office machines, word processing equipment, computer hardware and software, automated terminals, heating and cooling equipment. The term "contract for the purchase of fixed assets" includes a contract to purchase real property, a contract to build upon or to improve real property, a lease transferring ownership to the credit union at the end of the lease term or containing a bargain purchase option, or a lease in which the total value of the payments during the lease term equals ninety percent (90%) of the fair market value of the property at the inception of the lease term.~~

~~(2) No state-chartered credit union, without the prior approval of the commissioner, shall purchase fixed assets or enter into a contract for the purchase of fixed assets if the aggregate of all such investments exceeds five percent of assets.~~

~~(3) A state chartered credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of any investment in fixed assets which will cause the aggregate of such~~

~~(Rule 0180-09-01-.02, continued)~~

~~investments held by the credit union to be in excess of the limit stated above. Such reports and statements shall include but not be limited to:~~

~~(a) A description of the proposal in terms of cost, usage, location and method of financing;~~

~~and (b Current and past financial data of the credit union.~~

~~***Authority:*** *T.C.A. § 45-4-1001.*~~

* 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)
Not applicable					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Financial Institutions on 12/2/16, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

PAULA J. CAGLE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires July 2, 2018

Date: 12/2/16

Signature: Greg Gonzales

Name of Officer: Greg Gonzales

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/2/16

Notary Public Signature: Paula J. Cagle

My commission expires on: July 2, 2018

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

12/12/2016
Date

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PUBLICATIONS

Filed with the Department of State on: 1/17/17

Effective on: 4/17/17

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Transportation
DIVISION:	Right-of-Way
SUBJECT:	Relocation Assistance Program
STATUTORY AUTHORITY:	42 U.S.C. § 4061, et seq.; 49 C.F.R. § 24
EFFECTIVE DATES:	April 12, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule chapter details the procedures for relocating residences and businesses when required by a state project. The proposed changes are prompted by corresponding changes in Federal law governing projects that involve Federal financial participation. These changes are adjustments to the existing procedures. They include a reduction in the occupancy period to qualify for assistance, an extension in the amount of time to vacate the property, an increase to the amount of benefits for which they are eligible, and the addition of more eligible costs for reimbursement. The procedures remain functionally the same.

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.

This rule potentially impacts small businesses in a positive manner. Due to updates to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Department proposes to update its corresponding rules, which will provide benefits to small business owners who must be relocated as a result of a State project.

These benefits include a reduction in the occupancy period to qualify for assistance, an extension in the amount of time to vacate the property, an increase to amount of benefits for which they are eligible, and the addition of more eligible costs for reimbursement.

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 potential impact on local governments is minimal. Effects will be limited to Local Programs projects including federal financial assistance, and then only when the local government is acquiring the right-of-way and relocations are required.

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;

This rule chapter details the procedures for relocating residences and businesses when required by a State project. The proposed changes are prompted by corresponding changes in Federal law governing projects that involve Federal financial participation.

These changes are adjustments to the existing procedures. They include a reduction in the occupancy period to qualify for assistance, an extension in the amount of time to vacate the property, an increase to amount of benefits for which they are eligible, and the addition of more eligible costs for reimbursement. The procedures remain functionally the same.

(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;

4061 et. seq.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
42 U.S.C. ~~61~~: Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
49 CFR Part 24: Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs

(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 affects property owners and business owners whose land is affected by State projects requiring relocation. The proposed changes are already in effect under Federal law.

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

N/A

(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;

Minimal fiscal impact estimated.

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

Jeff Hoge
Director, Right-of-Way Division

Gale Wagner
Assistant Director, Right-of-Way Division

John Reinbold
General Counsel

Leslie South
Assistant General Counsel

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

Jeff Hoge
Director, Right-of-Way Division

Gale Wagner
Assistant Director, Right-of-Way Division

John Reinbold
General Counsel

Leslie South
Assistant 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

Jeff Hoge
Director, Right-of-Way Division
James K. Polk Building, 6th Floor
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Leslie South
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615-741-2941

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

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Sequence Number: 01-09-17
Rule ID(s): 6395
File Date: 1/12/17
Effective Date: 4/12/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission: Tennessee Department of Transportation
Division: Right-of-Way
Contact Person: Gale Wagner, Assistant Director
Address: 505 Deaderick Street
J.K. Polk Building, Suite 600
Nashville, TN 37243
Zip: 37243
Phone: 615-253-1154
Email: gale.wagner@tn.gov

Revision Type (check all that apply):
X 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**
1680-06-02	Relocation Assistance Program
Rule Number	**Rule Title**
1680-06-02-.03	Definitions
1680-06-02-.04	Administration - General
1680-06-02-.06	Relocation Notices
1680-06-02-.07	Relocation Assistance Advisory Services
1680-06-02-.10	Moving Payments - Residential
1680-06-02-.11	Moving Payments - Non-Residential
1680-06-02-.13	Replacement Housing Payments
1680-06-02-.14	Mobile Homes

RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION
RIGHT-OF-WAY DIVISION

CHAPTER 1680-6-2
RELOCATION ASSISTANCE PROGRAM

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1680-6-2-.10	Moving Payments - Residential		

1680-6-2-.01 PURPOSE.

(1) The purpose of these Rules is to implement the Uniform Relocation Assistance Act of 1972, as amended, T.C.A. § 13-11-101 et seq., by establishing regulations and procedures for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by the Department with or without federal financial assistance, programs or projects undertaken by local agencies with federal or state financial assistance, and programs or projects undertaken by persons with federal financial assistance, in order that such displaced persons shall not suffer disproportionate injuries as a result of federal or state programs or projects for the benefit of the public as a whole, and to minimize the hardship of displacement on such persons.

(2) It is also the purpose of these Rules to assure compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq., and the implementing regulations at 49 C.F.R., Part 24, where applicable to programs or projects undertaken with federal financial assistance.

Authority: *T.C.A. §§13-11-102, 13-11-113, and 13-11-119.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.01 filed and effective February 1, 2003.*

1680-6-2-.02 APPLICABILITY.

These Rules apply to:

(1) Programs or projects undertaken by the Department with or without federal financial assistance;

(2) Programs or projects undertaken by local agencies with federal or state financial assistance administered by or through the Department; and

(3) Programs or projects undertaken by persons with federal financial assistance administered by or through the Department.

Authority: *T.C.A. §§13-11-102, 13-11-113, and 13-11-119.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.02 filed and effective February 1, 2003.*

1680-6-2-.03 DEFINITIONS.

(1) "Act" means the Uniform Relocation Assistance Act of 1972, as amended and codified in T.C.A. § 13-11-101 et seq.

(2) "Alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 C.F.R. § 103.12, or as amended, and includes the following:

(a) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General; and

(b) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) For assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted; provided, however, that such outdoor advertising shall be considered a business solely for the purpose of obtaining moving and related expenses as provided in T.C.A. § 13-11-105 and these Rules.

(4) "Comparable replacement dwelling" means any dwelling that is:

(a) Decent, safe, and sanitary, as further defined in this Rule;

(b) Adequate in size to accommodate the occupants;

(c) Within the financial means of the displaced person, which means that:

1. A replacement dwelling for a homeowner in occupancy at the displacement dwelling for at least ~~180~~ 90 days prior to the initiation of negotiations (~~180~~90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full replacement housing payment as described in Rule 1680-6-2-.13, Subparagraph (1)(b), all increased mortgage interest costs as described in Rule 1680-6-2-.13, Subparagraph (1)(d), and all incidental expenses as described in Rule 1680-6-2-.13, Subparagraph (1)(e), plus any additional amount required to be paid under Rule 1680-6-2-.15, Last Resort Housing; or

2. A replacement rental dwelling is considered to be within an eligible displaced person's financial means if, after receiving rental assistance under Rule 1680-6-2-.13, Paragraph (2), the displaced person's monthly rent and estimated monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described in Rule 1680-6-2-.13, Subparagraph (2)(b); or

(Rule 1680-6-2-.03, continued)

3. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the displacing agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities; provided, however, that such rental assistance must be paid under Rule 1680-6-2-.15, Last Resort Housing;

(d) Functionally equivalent to the dwelling from which the occupant was displaced, which means that:

1. The replacement dwelling performs the same function, provides the same utility, ~~and is capable of contributing to a comparable style of living;~~ and

2. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principle features must be present; and

3. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used; provided, however, that in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the displacing agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;

(e) In an area not subject to unreasonable adverse environmental conditions;

(f) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment;

(g) On a site that is typical in size for residential development with normal site improvements, including customary landscaping; provided, however, that the site need not include special improvements such as outbuildings, swimming pools, or greenhouses; and

(h) Currently available to the displaced person on the private market; provided, however, that a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.

(5) "Contributing materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period of time as the displacing agency determines to be more equitable, a business or farm operation:

(a) Had average annual gross receipts of at least $5,000; or

(b) Had average annual net earnings of at least $1,000; or

(c) Contributed at least 33 1/3% of the owner's or operator's average annual gross income from all sources; or

(d) If the application of the above criteria creates an inequity or hardship in any given case, the displacing agency may approve the use of other criteria determined to be appropriate.

(Rule 1680-6-2-.03, continued)

(6) "Decent, safe and sanitary dwelling" means a dwelling that meets applicable housing and occupancy codes. Even if not required by applicable housing and occupancy codes, however, the following standards shall apply unless waived for good cause by the agency funding the project. The dwelling shall:

(a) Be structurally sound, weather-tight, and in good repair;

(b) Contain a safe electrical wiring system adequate for lighting and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s), and should contain a sufficient number of bedrooms to ensure that either no two unmarried blood relatives of the opposite sex over the age of six are required to share a bedroom~~;~~ or local occupancy codes are met, whichever is greater.

(e) Contain a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to an appropriate water source and a sewage drainage system;

(f) Contain, in the case of a housekeeping dwelling, a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(g) Contain unobstructed egress to safe, open space at ground level~~, or, if the replacement dwelling unit is on the second story or above with access from or through a common corridor, the common corridor must have at least two means of egress;~~ and

(h) For a displaced person who is handicapped, be free of any barriers that would preclude reasonable ingress, egress or use of the dwelling by such displaced person.

(7) "Department" means the Tennessee Department of Transportation.

(8) "Displaced person" means, except as provided below in Subparagraph (b):

(a) Any person who moves from real property, or moves such person's personal property from real property, including a person who occupies the real property prior to its acquisition but does not meet the length of occupancy requirements described in Rule 1680-6-2-.13, Paragraphs (1) and (2):

1. As a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a displacing agency; or

2. On which such person is a residential tenant or conducts a small business, a farm operation, or an outdoor advertising business defined in Rule 1680-6-2-.03, Subparagraph (2)(d), as a direct result of rehabilitation or demolition for a program or project undertaken by a displacing agency in any case in which the head of the displacing agency determines that such displacement is permanent; and

3. Solely for the purposes of obtaining moving expenses under T.C.A. §§ 13-11-105(a) and (b) and relocation assistance advisory services under T.C.A. § 13-11-108, any person who moves from real property, or moves such person's personal property from real property as a direct result of a written notice of intent to acquire, or the acquisition of,

(Rule 1680-6-2-.03, continued)

other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or as a direct result of rehabilitation or demolition of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the head of the displacing agency determines that such displacement is permanent.

(b) "Displaced person" does not include:

1. A person who is not required to relocate permanently as a direct result of a project, including a person who retains the right of use and occupancy of the real property for life following its acquisition by the displacing agency; or

2. A person whom the displacing agency determines is not displaced as a direct result of a partial acquisition; or

3. A person who moves before the initiation of negotiations, unless the displacing agency determines that the person was displaced as a direct result of the project; or

4. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

5. A person who has occupied the property for the purpose of obtaining assistance under the Act; or

6. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced by the project; provided, however, that such notice shall not be issued unless the person has not moved and the displacing agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the initiation of negotiations for the real property; or

7. An owner-occupant who voluntarily conveys the property after being informed in writing that the property will not be acquired by condemnation in the absence of a mutually satisfactory agreement on the terms of conveyance; provided, however, that any tenant of the property displaced as a direct result of the conveyance shall be considered a displaced person; or

8. A person who is determined to be in unlawful occupancy, as further defined in this Rule, prior to the initiation of negotiations.

9. An alien not lawfully present in the United States, as further defined in this Rule, and who has been determined to be ineligible for relocation benefits in accordance with Rule 1680-6-2-.08.

(9) "Displacing agency" means any state agency undertaking a program or project with or without federal financial assistance, a local agency undertaking a program or project with federal or state financial assistance, or a person undertaking a program or project with federal financial assistance, when any such program or project causes a person to be displaced.

(10) "Dwelling" means the place of permanent or customary and usual residence of a person according to local custom or law, including a single family house; a single family unit in a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(Rule 1680-6-2-.03, continued)

(11) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(12) "Federal financial assistance" means a grant, loan, or contribution provided by the United States government, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(13) "Initiation of negotiations" means the following:

(a) Whenever the displacement results from the acquisition of property by the displacing agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the displacing agency to the owner or the owner's representative to purchase the real property for the project; provided, however, that if the displacing agency issues a notice of its intent to acquire the real property, and the person moves after that notice, but before delivery of the initial written offer of just compensation, the "initiation of negotiations" means the actual move of the person from the property.

(b) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of real property, the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(14) "Local agency" means any political subdivision of the state or any department, agency, or instrumentality of a political subdivision of the state or any department, agency, or instrumentality of two (2) or more political subdivisions of the state when carrying out or undertaking programs or projects with federal or state financial assistance.

(15) "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of this State, together with the credit instruments, if any, secured thereby.

(16) "Nonprofit organization" means an organization incorporated under state law as a non-profit organization, and which is exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 USC § 501).

(17) "Owner" means a person who holds any of the following interests in real property:

(a) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described above; or

(d) Any other interest, including a partial interest, which in the judgment of the displacing agency warrants consideration as ownership.

(18) "Person" means any individual, family, partnership, corporation, or association.

(19) "Salvage value" means the probable selling price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of

(Rule 1680-6-2-.03, continued)

being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(20) "Small business" means a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of Rule 1680-6-2-.11, Paragraph (4), Re-establishment Expenses -- Non-Residential.

(21) "State financial assistance" means a grant, loan, or contribution provided by the State of Tennessee, except any state guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the state.

(22) "Tenant" means a person who has the temporary lawful use and occupancy of real property owned by another.

(23) "Unlawful occupancy" means the occupancy of real property by a person who has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations, or the occupancy of real property by a person determined by the displacing agency to be a squatter who is occupying the property without the permission of the owner and otherwise has no legal rights to occupy the property. A displacing agency, at its own discretion, may consider such a squatter to be in unlawful occupancy.

(24) "Utility costs" means and includes expenses ~~for heat, lights~~ electricity, gas, other heating and cooking fuels, water and sewer.

Authority: *T.C.A. §§13-11-103 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.03 filed and effective February 1, 2003.*

1680-6-2-.04 ADMINISTRATION - GENERAL.

(1) Contracting for Relocation Assistance Services.

To prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of the Act, the Department or other displacing agency may enter into contracts with any individual, firm or corporation for services in connection with a program or project, or may carry out all functions provided for under the Act through any federal agency, or any state agency, or any local agency, or any person having an established organization for conducting the provisions of the Act.

(2) State Share of Costs.

The cost to a local agency of providing payments and assistance under T.C.A. §§ 13-11-109 and 13-11-110 shall be included as part of the cost of a program or project for which state financial assistance is available to such local agency, and such local agency shall be eligible for state financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(3) Assurances, Monitoring and Corrective Action.

(a) The Department shall not approve any grant to, or contract or agreement with, a local agency or other displacing agency under which state or federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person unless the Department receives satisfactory assurances from the local agency or other displacing agency that:

(Rule 1680-6-2-.04, continued)

1. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons in accordance with T.C.A. §§ 13-11-105 through 13-11-107;

2. Relocation assistance programs offering the services described in T.C.A. § 13-11-108 shall be provided to such displaced persons; and

3. There is compliance with the provisions of T.C.A. §§ 13-11-108(c)(3) and 13-11-109.

(b) The Department may monitor compliance with the Act and these Rules and take such corrective action as may be necessary to bring the local agency or other displacing agency into compliance with the Act and these Rules. The Department may also apply sanctions in accordance with any applicable program regulations.

(4) Prevention of Fraud, Waste and Mismanagement.

The displacing agency shall take appropriate measures to carry out the requirements of these Rules in a manner that minimizes fraud, waste and mismanagement.

(5) Civil Rights.

(a) In accordance with federal and state law, it is Department policy that only open housing available to all without regard to race, color, creed, religion, sex, age, handicap, familial status or national origin will be used as replacement housing resources.

(b) It is further Department policy to ensure that no person be excluded from participation in, be denied any benefits of, or be subjected to discrimination under any program or activity of the State because of race, creed, color, religion, sex, age, handicap, familial status or national origin, and to take affirmative action to promote the full implementation of this policy throughout the State.

(c) Upon receipt of a fair housing discrimination complaint, the Department or other displacing agency will instruct the displaced person to write to one of the following:

U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity Compliance
Division Agency of Housing and Urban Development
Richard D. Russell, Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

Or

Tennessee Human Rights Commission
~~Cornerstone Square Building~~ 312 Rosa L. Parks Ave., 23rd Floor
~~530 Church Street, Suite 400~~
Nashville, Tennessee 37243

(d) The letter should contain a statement that the person believes he has been the victim of housing discrimination and a request for appropriate complaint forms. The displacing agency should assist in completing the forms and in having the complaint notarized.

(6) Recordkeeping and Reports.

(a) The displacing agency shall maintain adequate records of its displacement and relocation activities in sufficient detail to demonstrate compliance with the Act and these Rules. These

(Rule 1680-6-2-.04, continued)

records shall be maintained for at least 3 years after each displaced person receives the final payment to which such person is entitled under the Act and these Rules.

(b) Records maintained by the displacing agency in accordance with these Rules are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) The displacing agency shall submit a report of its displacement activities under these Rules if requested by the Department or the federal agency funding the project, if applicable. The report shall be submitted in a form acceptable to the Department or the applicable federal agency.

(7) Notices.

Any notice that a displacing agency is required to provide to a displaced person under the Act or these Rules shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the displacing agency's files. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or additional assistance.

Authority: *T.C.A. §§13-11-112, 13-11-113, 13-11-114, and 13-11-119.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.04 filed and effective February 1, 2003.*

1680-6-2-.05 RELOCATION PLAN.

(1) During the early stages of development, programs or projects subject to these Rules shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farm operations, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning shall precede any action by the displacing agency that will cause displacement. The scope of planning should be commensurate with the complexity and nature of the anticipated displacing activity, and it should include an evaluation of program resources available to carry out timely and orderly relocations.

(2) Planning may involve a relocation survey or study, which may include:

(a) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable;

(b) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental charges) that are expected to be available to fulfill the needs of those households displaced; provided that when an adequate supply of comparable replacement housing is not expected to be available, consideration of housing of last resort actions should be instituted;

(c) An estimate of the number, type and size of the businesses, farm operations and nonprofit organizations to be displaced and the approximate number of employees that may be affected;

(d) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies; and

(e) An estimate of the project lead time needed to accomplish relocation activities.

Authority: *T.C.A. §13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.05 filed and effective February 1, 2003.*

(Rule 1680-6-2-.05, continued)

1680-6-2-.06 RELOCATION NOTICES.

(1) Relocation Information Notice.

As soon as feasible, the displacing agency shall send to each person scheduled to be displaced a written notice generally describing the displacing agency's relocation program and, at a minimum, this notice shall:

(a) Inform the person that he or she may be displaced because of the displacing agency's project and describe generally the relocation benefits for which the person may be eligible, the basic conditions of eligibility and the procedures for obtaining the benefits;

(b) Inform the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing claims and other necessary assistance to help them successfully relocate;

(c) Inform the person that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available, as provided in Rule 1680-6-2-.07, Paragraph (5) below, and that he or she will not be required to move without at least 90 days' advance written notice, except in the case of a major disaster or an emergency as provided in Rule 1680-6-2-.07, Subparagraph (5)(c) below;

(d) Inform the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in Rule 1680-6-2-.08, Paragraph (4) below; and

(e) Describe the person's right to appeal the displacing agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(2) Notice of Eligibility for Relocation Assistance.

(a) A displaced person's eligibility for relocation assistance shall begin on the date of the initiation of negotiations (as defined in Rule 1680-6-2-.03 above) for the occupied property.

(b) Upon the initiation of negotiations, the displacing agency shall provide the displaced person(s) with written notice of eligibility for relocation assistance. This notice shall be hand-delivered to the owner occupants on the date of the initiation of negotiations, and it shall either be hand-delivered to all tenant occupants on that date or hand-delivered or sent by certified mail no later than ten (10) days after the initiation of negotiations.

(c) The Notice of Eligibility for Relocation Assistance may be combined with the Notice of Earliest Vacation Date (Ninety-Day Notice), described below.

(3) Notice of Earliest Vacation Date (Ninety-Day Notice).

(a) No lawful occupant shall be required to move unless he or she has received at least 90 days' advance written notice of the earliest date by which he or she may be required to vacate the property, except in the case of a major disaster or emergency as provided in Rule 1680-6-2-.07, Subparagraph (5)(c) below.

(b) This Notice of Earliest Vacation Date (Ninety-Day Notice) shall either state a specific date, not less than 90 days after the notice, by which the occupant may be required to move, or it shall state that the occupant will receive a subsequent Notice to Vacate, at least ~~30~~ 90 days in

(Rule 1680-6-2-.06, continued)

advance, stating the specific date by which the person will be required to vacate the property. If the Ninety-Day Notice is delivered before a comparable replacement dwelling is made available, the notice shall state that the occupant will not have to move earlier than 90 days after such dwelling is made available, except in the case of a major disaster or emergency as provided in Rule 1680-6-2-.07, Subparagraph (5)(c) below.

(c) The displacing agency may deliver the Ninety-Day Notice 90 days before it expects the person to be displaced or earlier, and this notice may be combined with the Notice of Eligibility for Relocation Assistance, described above.

(4) Notice to Vacate ~~(Thirty-Day Notice).~~

(a) The displacing agency shall give a displaced person at least ~~30~~ 90 days' advance written notice of the specific date by which the person will be required to vacate the property, except in the case of a major disaster or emergency as provided in Rule 1680-6-2-.07, Subparagraph (5)(c), below or under the circumstances described in Subparagraph (f) below.

(b) This Notice to Vacate ~~(Thirty-Day Notice)~~ shall state the specific date, not less than ~~30~~ 90 days after the date on which the notice is received, by which the occupant will be required to vacate the property. The date given to vacate the property shall be at least 90 days after the date on which the displaced person received the Notice of Earliest Vacation Date (Ninety-Day Notice) or, on residential displacements, at least 90 days after the date on which the displaced person received the Notice of Eligibility for Relocation Assistance, whichever is later.

(c) The Notice to Vacate may not be given until after the displacing agency has obtained legal possession of the property.

(d) Before issuing the Notice to Vacate, the displacing agency must verify that comparable replacement housing is available for the displaced person within the amount of the original offer for replacement housing. Also, if requested by the displaced person, the address of at least one comparable dwelling must be provided.

(e) The Notice to Vacate shall either be hand-delivered or sent by certified mail. If sent by certified mail, the specified date to vacate the property must be at least ~~35~~ 95 days after the date on which the notice is mailed, to ensure that the displaced person is provided the full ~~30~~ 90 days to which he or she is entitled.

(f) The Notice to Vacate need not be issued if the displaced person has already relocated to replacement housing.

(5) Subsequent Notice of Non-Displacement.

(a) A displaced person who moves after receiving a Notice of Eligibility for Relocation Assistance is eligible for all applicable relocation assistance benefits regardless of whether the real property is ultimately acquired, unless prior to the move the displacing agency sends written notice that the person will not be displaced by the project.

(b) If, after sending a Notice of Eligibility for Relocation Assistance, the displacing agency determines that the person will not need to be displaced, the displacing agency shall promptly notify the person in writing that there is no need to relocate.

(c) Such person shall be reimbursed for any reasonable relocation costs incurred prior to receipt of the Subsequent Notice of Non-Displacement, including any payments due under a binding written contract for relocation services entered into after the date of the initiation of negotiations.

(Rule 1680-6-2-.06, continued)

Authority: *T.C.A. §13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.06 filed and effective February 1, 2003.*

1680-6-2-.07 RELOCATION ASSISTANCE ADVISORY SERVICES.

(1) General.

The displacing agency shall provide relocation assistance advisory services in accordance with the Act and these Rules, and in accordance with applicable federal statutes and regulations where the program or project is conducted with federal financial assistance. The purpose of these services is to minimize the impact of displacement by providing information and other assistance to help displaced persons, businesses and farm operations to relocate.

(2) Coordination of Relocation Activities.

Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, displaced persons receive consistent treatment and duplication of functions is minimized.

(3) Eligibility for Relocation Assistance Advisory Services.

(a) The displacing agency shall provide relocation assistance advisory services, as described below, to all displaced persons.

(b) If the displacing agency determines that any person occupying real property immediately adjacent to real property where the displacing activity occurs will be caused substantial economic injury as a result of the displacing activity, the displacing agency may make relocation assistance advisory services available to such person.

(c) Any person who occupies property acquired by the displacing agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for the project, shall be eligible for relocation assistance advisory services to the extent determined by the displacing agency.

(d) Aliens not lawfully present in the United States shall not be eligible for relocation assistance advisory services or relocation payments, except as may be provided in accordance with Rule 1680-6-2-.08 below.

(4) Relocation Assistance Advisory Services To Be Provided.

(a) The displacing agency shall personally interview each displaced person to determine, and make timely recommendations on, the person's relocation assistance needs and preferences, if any. The displacing agency shall also explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements and the procedures for obtaining such assistance.

(b) The displacing agency shall assure the displaced person that he or she cannot be required to move permanently from his or her displacement dwelling unless at least one comparable replacement dwelling is made available, as set forth in Rule 1680-6-2-.07, Paragraph (5) below.

(c) Where applicable, the displacing agency shall provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings.

(Rule 1680-6-2-.07, continued)

1. As soon as feasible, the displacing agency shall provide the displaced person with a written notice of the specific comparable replacement dwelling and the price or rent used to determine the maximum replacement housing payment or rental assistance payment for which the displaced person may qualify, with the basis for that determination.

2. Where feasible, housing should be inspected before being made available to assure that it meets applicable standards for a decent, safe and sanitary dwelling. If such an inspection is not made, the displacing agency shall notify the displaced person that a replacement housing payment or rental assistance payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary.

3. Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the displacing agency to provide a person a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

~~4. All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.~~

(d) Where applicable, the displacing agency shall assist any person displaced from a business or farm operation to obtain and become established, if possible, in a suitable replacement location. Accordingly, the displacing agency shall provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial and farm properties and locations.

(e) The displacing agency shall offer to assist in providing transportation~~, especially for the elderly and the handicapped,~~ to inspect comparable replacement dwellings to which displaced persons are referred.

(f) The displacing agency shall minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available and such other help as may be appropriate.

(g) The displacing agency shall supply persons to be displaced with appropriate information concerning federal and state housing programs, loan and other management programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced.

(5) Availability of Comparable Replacement Dwelling Before Displacement.

(a) No displaced person shall be required to move from his or her dwelling unless at least one comparable replacement dwelling has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available.

(b) A comparable replacement dwelling shall be considered to have been made available to a person, if:

1. The person is informed of its location; and

2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(Rule 1680-6-2-.07, continued)

3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person may be entitled in sufficient time to complete the purchase or lease of the property.

(c) The Department or, where applicable, the federal agency funding the project, may waive the requirement to make at least one comparable replacement dwelling available prior to displacement, as provided in Subparagraph (a) above, where it is demonstrated that a person must move because of:

1. A major disaster as defined in the Disaster Relief Act of 1974, 42 U.S.C. § 5121 et seq.; or

2. A national emergency as declared by the President of the United States; or

3. Any other emergency that requires the person to move immediately from the displacement dwelling because continued occupancy of that dwelling would create a substantial danger to the health of the occupants or the public.

(d) In any case where a person is required to move for a temporary period because of an emergency, as described in Subparagraph (c) above, the displacing agency shall:

1. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

3. As soon as feasible, make available to the displaced person at least one comparable replacement dwelling; and

4. For the purposes of filing a claim and meeting the eligibility requirements for a relocation payment, consider the date of displacement as the date the person moves from the temporarily occupied dwelling.

Authority: *T.C.A. §§13-11-108 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.07 filed and effective February 1, 2003.*

1680-6-2-.08 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES.

(1) Certification Requirement.

Each person seeking relocation payments or relocation assistance advisory services shall, as a condition of eligibility, certify:

(a) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(b) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. This certification may be made by the head of the household on behalf of other family members.

(c) In the case of an unincorporated business, farm operation or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in

(Rule 1680-6-2-.08, continued)

the United States. This certification may be made by the principal owner, manager or operating officer on behalf of other persons with an ownership interest.

(d) In the case of an incorporated business, farm operation or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(2) Content of Certification.

The certification required under Subparagraphs (1)(a), (1)(b) and (1)(c) of this Rule shall indicate whether such person is a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the content of the certification in addition to those contained in this Paragraph shall be within the discretion of the federal funding agency, where applicable, or the displacing agency.

(3) Review of Validity of Certification.

(a) The displacing agency shall consider the certification provided under Paragraph (1) of this Rule to be valid, unless the displacing agency determines in accordance with Subparagraph (c) below that it is invalid based on a review of an alien's documentation or other information that the displacing agency considers reliable and appropriate.

(b) Any review of a certification shall be conducted by the displacing agency in a non-discriminatory manner. The displacing agency shall apply the same standard of review to all such certifications, except that the standard may be revised periodically.

(c) If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid and, therefore, that such person may be an alien not lawfully present in the United States, the displacing agency shall obtain the following information before making a final determination:

1. If the displacing agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. Any request for INS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation.

2. If the displacing agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(4) Eligibility for Relocation Assistance or Relocation Payments.

(a) No relocation assistance advisory services or relocation payments shall be provided to a person who has not provided the certification required in Paragraph (1) of this Rule or who has been determined to be an alien not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent or child who is an alien lawfully admitted for permanent residence in the United States, as provided in Subparagraph (c) below.

(b) In computing relocation payments under this Chapter, the displacing agency shall not include relocation payments for any member of a household or any owner of an unincorporated business, farm operation or nonprofit organization that is determined to be ineligible for such

(Rule 1680-6-2-.08, continued)

payments as an alien not lawfully present in the United States. The amount of any such relocation payments for which such household or unincorporated business, farm operation or nonprofit organization would otherwise be eligible shall be computed for the household based on the number of eligible household members and for the unincorporated business, farm operation or nonprofit organization based on the ratio of ownership between eligible and ineligible owners.

(c) For the purposes of Subparagraph (a) of this Paragraph, "exceptional and extremely unusual hardship" to the spouse, parent or child of an alien not lawfully present in the United States means that denial of relocation payments and relocation assistance advisory services to such person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of such spouse, parent or child;

2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent or child is a member; or

3. Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent or child.

Authority: *T.C.A. §13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.08 filed and effective February 1, 2003.*

1680-6-2-.09 RELOCATION PAYMENTS GENERALLY.

(1) Time for Filing Claims.

(a) Claims for relocation payments shall be filed with the displacing agency within 18 months after:

1. For tenants, the date of displacement;

2. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

3. The date of displacement, as used in this Subparagraph, means the date the person actually moves or, if later, the date a comparable replacement dwelling is made available.

(b) The displacing agency shall extend the time for filing a claim upon good cause being shown.

(2) Documentation.

(a) Any claim for a relocation payment shall be supported by sufficient documentation to prove the expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. Specific documentation requirements are identified elsewhere in these Rules.

(b) The displacing agency shall provide the displaced person with reasonable assistance as needed to complete and file a claim for payment.

(3) Prompt Review and Payment.

(a) The displacing agency shall review claims for relocation payments in an expeditious manner. The claimant shall be promptly notified if additional documentation is required to support the claim.

(Rule 1680-6-2-.09, continued)

(b) The displacing agency shall pay a claim as soon as feasible following receipt of sufficient documentation to support the claim.

(4) Advance Payments.

If a displaced person demonstrates a need for an advance relocation payment to avoid a hardship, the displacing agency shall issue the payment, subject to such safeguards as the displacing agency may require to ensure that the objective of the payment is accomplished.

(5) Multiple Occupants of One Displacement Dwelling.

(a) If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the displacing agency, of any relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling.

(b) However, if the displacing agency determines that two or more occupants maintained separate households within the same displacement dwelling, such occupants shall have separate entitlements to relocation payments.

(6) Notice of Denial of Claim.

If the displacing agency disapproves all or part of a claim for a relocation payment or refuses to consider the claim on its merits because of untimely filing or other grounds, the displacing agency shall promptly notify the claimant in writing of its decision, the basis for the decision, and the procedures for appealing the decision.

(7) Eviction for Cause.

(a) Any person who lawfully occupies the real property on the date of the initiation of negotiations is presumed to be entitled to any relocation payments or benefits available under the Act and these Rules unless the displacing agency determines that:

1. The person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted; or

2. The person is evicted after the initiation of negotiations for serious or repeated violations of material terms of a lease or occupancy agreement; and

3. In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance available under the Act or these Rules.

(b) Any eviction for cause must conform to applicable state and local law.

(c) This Paragraph applies only to persons who would otherwise have been displaced by the displacing agency's program or project.

(8) Deductions from Relocation Payments.

(a) The displacing agency may deduct from relocation payments any rent that the displaced business, displaced person or farm operation owes to the displacing agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining comparable replacement housing.

(Rule 1680-6-2-.09, continued)

(b) The displacing agency shall not withhold any part of a relocation payment to a displaced person to satisfy any other creditor. No relocation payment made under the Act or these Rules shall be subject to attachment or execution at law or equity.

(9) No Duplication of Payments.

No person shall receive any payment under the Act or these Rules if that person receives a payment under Federal, State or local law that is determined by the displacing agency to have the same purpose and effect as a payment under the Act or these Rules.

(10) Relocation Payments Not Considered Income.

No relocation payment received by a displaced person under the Act or these Rules shall be considered as income for any tax purposes under Federal or State law, or for the purpose of determining eligibility or the extent of eligibility for public assistance under Federal or State law, except for any Federal law providing low-income housing assistance.

Authority: *T.C.A. §§13-11-113, 13-11-115, and 13-11-117.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.09 filed and effective February 1, 2003.*

1680-6-2-.10 MOVING PAYMENTS - RESIDENTIAL.

(1) Payment for Actual and Reasonable Moving Expenses.

A displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to reimbursement for actual moving and related expenses, as the displacing agency determines to be reasonable and necessary. Expenses eligible for reimbursement include the following:

(a) The costs of transporting the displaced person and the displaced person's personal property to a replacement dwelling within a 50-mile radius of the displacement dwelling. Transportation costs for any distance beyond 50 miles are not eligible for reimbursement, unless the displacing agency has made a prior determination that relocation beyond 50 miles is justified.

1. The displaced person may be reimbursed for the use of a personal vehicle at the standard mileage reimbursement rate provided in the displacing agency's own travel regulations, if any, or the current Standard Mileage Rate established by the Tennessee Department of Finance and Administration in the Comprehensive Travel Regulations, General Reimbursement Rate Schedule, and/or for the actual, reasonable fees charged by a commercial moving service.

2. Upon prior approval of the displacing agency, a displaced person may be reimbursed for special transportation services, such as an ambulance, as may be required for medical reasons.

3. Upon a showing of need, the actual, reasonable costs of meals and lodging may be reimbursed if pre-approved by the displacing agency.

(b) The costs of packing, crating, unpacking and uncrating personal property.

(c) The costs of disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. This includes fees or charges for reinstalling telephone or utility services.

(Rule 1680-6-2-.10, continued)

(d) The costs of storage for personal property, if previously approved by the displacing agency, but not for any period greater than 12 months unless the displacing agency expressly determines that a longer period is necessary.

(e) The cost of insurance for the replacement value of personal property moved or stored in connection with the relocation, or the reasonable replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person or his or her agent or employee), where insurance covering such loss, theft or damage is not reasonably available.

(f) Other moving-related costs, excluding ineligible moving expenses identified in Rule 1680-6-2-.12 below, as the displacing agency may determine to be reasonable and necessary.

(2) Direct Payment to a Moving Company.

If requested by the displaced person, payments for moving costs may be paid directly to a licensed commercial moving service in lieu of payment to the displaced person. When a commercial moving service willing to accept direct payment has been selected by the displaced person and approved by the displacing agency, the displaced person shall sign a written statement assigning the relocation payment to the moving company.

(3) Fixed Payment for Moving Expenses.

(a) As an alternative to payment for actual moving and related expenses under paragraph (1) of this Rule, a displaced person may choose to receive a fixed expense and dislocation allowance. When this method of payment is chosen, the displacing agency shall pay the full amount of the allowance to the displaced person after the relocation has been completed without any need for documentation of moving expenses actually incurred.

(b) The amount of this allowance shall be determined by reference to the applicable schedule approved by the Federal Highway Administration, as amended from time to time. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who occupies a dormitory style room shared by two or more unrelated persons, or to a person whose residential move is performed by an agency at no cost, shall be limited to ~~$50~~$100.

Authority: *T.C.A. §§13-11-105 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.10 filed and effective February 1, 2003.*

1680-6-2-.11 MOVING PAYMENTS - NON-RESIDENTIAL.

(1) Payment for Actual and Reasonable Moving Expenses.

Any business or farm operation that qualifies as a displaced person is entitled to reimbursement for actual moving and related expenses, as the displacing agency determines to be reasonable and necessary. Expenses eligible for reimbursement include the following:

(a) The costs of transporting personal property within a 50-mile radius of the displaced dwelling or farm operation. Transportation costs for any distance beyond 50 miles are not eligible for reimbursement, unless, in exceptional cases, the displacing agency has made a prior determination that relocation beyond 50 miles is justified.

(b) The costs of packing, crating, unpacking and uncrating personal property.

(Rule 1680-6-2-.11, continued)

(c) The costs of disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property, including substitute personal property as described in Subparagraph (~~k~~j) below. This includes fees or charges for reinstalling telephone or utility services. It also includes modifications necessary to adapt personal property to the replacement structure, the replacement site or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. ~~Expenses for providing utilities from the right-of-way to the building or improvement are excluded~~.

(d) The costs of storage for personal property, if previously approved by the displacing agency, but not for any period greater than 12 months unless the displacing agency expressly determines that a longer period is necessary.

(e) The cost of insurance for the replacement value of personal property moved or stored in connection with the relocation, or the reasonable replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person or his or her agent or employee), where insurance covering such loss, theft or damage is not reasonably available.

(f) The cost of obtaining any license, permit or certification required of the displaced person at the replacement location; provided, however, that the reimbursement shall be limited to the remaining useful life of the existing license, permit or certification. Any costs associated with transferring existing licenses, permits or certifications are also eligible for reimbursement.

(g) The cost of professional services necessary for:

1. Planning the move of the personal property;

2. Moving the personal property; and

3. Installing the relocated personal property at the replacement location.

These services may include fees paid to architects, engineers and other consultants for such services as supervising the move, designing the plant layout for an existing replacement building and scheduling the move.

(h) The costs of relettering signs and replacing stationery on hand at the time of displacement to the extent that they are made obsolete as a result of the move. The displaced person must turn over to the displacing agency all such materials for which the displaced person is seeking reimbursement, and the amount of reimbursement shall be limited to the costs of replacing these materials.

(i) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. Except for advertising signs as provided in Part 3 below, the amount of the payment shall include the reasonable cost incurred in attempting to sell the item(s) that are not to be relocated plus the lesser of:

1. The fair market value of the item(s) for continued use at the displacement site, less the proceeds from its sale; provided that:

(i) To be eligible for payment, the displaced person must make a good faith effort to sell the personal property, unless the displacing agency determines that such effort is not necessary, and

(Rule 1680-6-2-.11, continued)

(ii) When payment for property loss is claimed held for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item(s), but with no allowance for storage; provided that, if the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.

3. The amount of a payment for direct loss of an advertising sign, as personal property, shall be the lesser of:

(i) The depreciated reproduction cost of the sign, as determined by the displacing agency, less the proceeds from its sale; or

(ii) The estimated cost of moving the sign, but with no allowance for storage.

(j) The costs of purchasing substitute personal property to replace an item at the displacement site that is not moved, provided that the substitute item performs a comparable function at the replacement site. The payment shall be for the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. At the displacing agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(k) The actual costs incurred in searching for a replacement location as the displacing agency determines to be reasonable, but not to exceed ~~$1,000~~$2,500, including the costs for:

1. Transportation, based on the standard mileage reimbursement rate provided in the displacing agency's own travel regulations, if any, or on the current Standard Mileage Rate established by the Tennessee Department of Finance and Administration in the Comprehensive Travel Regulations, General Reimbursement Rate Schedule;

2. Meals and lodging away from home, based on the reimbursement rates provided in the displacing agency's own travel regulations, if any, or on the currently applicable rates for lodging and meals established by the Tennessee Department of Finance and Administration in the Comprehensive Travel Regulations, General Reimbursement Rate Schedule;

3. Time spent searching, obtaining permits, attending zoning hearings, and negotiating the purchase of a replacement site, based on reasonable salary or earnings; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(l) ~~Other moving-related costs, excluding ineligible moving expenses identified in Rule 1680-6-2-.12 below, as the displacing agency may determine to be reasonable and necessary.~~If the agency determines that the personal property to be moved is of low value and high bulk (e.g. stockpiled sand, gravel, mulch, etc.), and the cost of moving the property would be disproportionate to its value, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location.

(Rule 1680-6-2-.11, continued)

(m) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(n) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees for the purchase or lease of such site).

(o) Other moving-related costs, excluding ineligible moving expenses identified in Rule 1680-06-02-.12 below, as the displacing agency may determine to be reasonable and necessary.

(2) Self Moves.

(a) If the displaced person chooses to take full responsibility for all or part of the move of the business or farm operation, the displacing agency shall pay the displaced person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the displacing agency. At the displacing agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate. No further documentation of expenses shall be required prior to payment except as provided in Paragraph (3) below.

(b) The displaced person shall provide the displacing agency with an inventory of all personal property actually moved. If the personal property actually moved is less than the amount included in the bid or estimate, the displacing agency may reduce the amount paid to the displaced person in proportion to the lesser amount of property moved.

(3) Notification and Inspection.

(a) To be reimbursed for actual moving expenses or for a self move, as provided in Paragraphs (1) or (2) above, the dislocated business or farm operation must:

1. Unless waived by the displacing agency, provide the displacing agency with reasonable advance written notice of:

(i) The approximate date of the start of the move or disposition of the personal property, and

(ii) A certified list of the items to be moved (inventory); and

2. Permit the displacing agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(b) The displacing agency shall notify the displaced person in writing regarding the obligations in Subparagraph (a) above as soon as possible after the initiation of negotiations. This notice may be included with the Notice of Eligibility for Relocation Assistance as set forth in Rule 1680-6-2-.06.

(4) Reestablishment Expenses - Non-Residential.

(a) In addition to the payments available under Paragraphs (1) or (2) of this Rule, a small business, as defined in Rule 1680-6-2-.03 above, farm operation, or nonprofit organization is entitled to receive a payment for eligible expenses actually incurred in reestablishing such small business, farm operation or non-profit organization. The total amount of any payment for reestablishment expenses shall not exceed ~~$10,000~~$25,000.

(Rule 1680-6-2-.11, continued)

(b) Eligible Reestablishment Expenses. To be eligible for reimbursement, reestablishment expenses must be reasonable and necessary, as determined by the displacing agency, and such payments shall not duplicate any payment made to the displaced person as a moving expense under Paragraphs (1) or (2) of this Rule. Eligible expenses include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance;

2. Modifications to the replacement property to accommodate the business or farm operation or to make replacement structures suitable for conducting the operation;

3. Construction and installation costs for exterior signing to advertise the business;

~~4. Provision of utilities from right-of-way to improvements on the replacement site;~~

~~5~~4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting;

~~6~~5. Licenses, fees and permits when not paid as part of moving expenses;

~~7~~6. Feasibility surveys, soil testing and marketing studies when not paid as part of moving expenses;

~~8~~7. Advertisement of replacement location;

~~9~~8. Professional services in connection with the purchase or lease of a replacement site when not paid as part of moving expenses;

~~10~~9. Estimated increased costs of operation at the replacement site during the first two years for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees;

~~11~~10. Impact fees or one-time assessments for anticipated heavy utility usage; and

~~12~~11. Other items that may be essential to the reestablishment of the business or farm operation, as determined by the displacing agency.

(c) Ineligible Reestablishment Expenses. The following is a non-exclusive listing of reestablishment expenses that shall not be considered reasonable, necessary or otherwise eligible for reimbursement:

1. The purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. The purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation;

(Rule 1680-6-2-.11, continued)

3. Interest on money borrowed to make the move or purchase the replacement property; and/or

4. Payment to a part-time business in the home that does not contribute materially to the household income.

(5) Fixed Payment for Moving Expenses.

(a) Business. A displaced business, other than a nonprofit organization, may be eligible to choose a fixed payment, in lieu of payments for actual moving and related expenses and for reasonable reestablishment expenses as provided in Paragraphs (1) through (4) of this Rule.

1. The displaced business is eligible for a fixed payment if the displacing agency determines that:

(i) The business owns or rents personal property that must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site;

(ii) The business cannot be relocated without a substantial loss of its existing patronage (meaning either its clientele or net earnings); provided that the business shall be presumed to meet this test unless the displacing agency determines that the business will not suffer a substantial loss of its existing patronage;

(iii) The business is not part of a commercial enterprise having more than three other entities that are under the same ownership and engaged in the same or similar business activities and which are not being acquired by the displacing agency;

(iv) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(v) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(vi) The business contributed materially to the income of the displaced person during the two taxable years prior to displacement.

2. The amount of such fixed payment shall equal the average annual net earnings of the business, as computed in accordance with Subparagraph (e) below, but in any case the amount of such fixed payment shall not be less than $1,000 nor more than ~~$20,000~~$40,000.

(b) Determining the Number of Businesses. In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered by the displacing agency, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or inter-related business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, and to those customarily dealing with them, as one business; and

(Rule 1680-6-2-.11, continued)

4. The same person or closely related persons own, control or manage the affairs of the entities.

(c) Farm Operation. A displaced farm operation may choose a fixed payment in lieu of payments for actual moving and related expenses and for reasonable reestablishment expenses as provided in Paragraphs (1) through (4) of this Rule.

1. In the case of a partial acquisition of land that contained a farm operation before the acquisition, the fixed payment shall be made only if the displacing agency determines that:

(i) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(ii) The partial acquisition caused a substantial change in the nature of the farm operation.

2. The amount of such fixed payment shall equal the average annual net earnings of the farm operation, as computed in accordance with Subparagraph (e) below, but in any case the amount of such fixed payment shall not be less than $1,000 nor more than ~~$20,000~~$40,000.

(d) Nonprofit Organization. A displaced nonprofit organization may be eligible to choose a fixed payment in lieu of payments for actual moving and related expenses and for reasonable reestablishment expenses as provided in Paragraphs (1) through (4) of this Rule.

1. A nonprofit organization is eligible for a fixed payment if the displacing agency determines that the nonprofit organization cannot be relocated without a substantial loss of existing patronage (meaning membership or clientele). A nonprofit organization is presumed to meet this test unless the displacing agency demonstrates otherwise.

2. The amount of such fixed payment shall be the average of two years' annual gross revenues less administrative expenses, but not less than $1,000 nor more than ~~$20,000~~$40,000. Any payment in excess of $1,000 must be supported with financial statements, including either certified financial statements or financial documents required by public agencies, for the two 12-month periods prior to the acquisition.

(i) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate.

(ii) Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses.

(e) Determining Average Annual Net Earnings. The displacing agency shall determine the average annual net earnings of a displaced business or farm operation in accordance with the following criteria:

1. The average annual net earnings shall be equal to one-half of the net earnings of the business or farm operation before the payment of any applicable income taxes during the two taxable years immediately prior to the taxable year in which the business or farm operation was displaced; or

(Rule 1680-6-2-.11, continued)

2. If the business or farm operation was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate; or

3. If the displacing agency determines, for well documented reasons, that a different period of operation should be used because the two taxable years prior to displacement are not fairly representative of the business or farm operation, the displacing agency may choose two other consecutive taxable years of operation.

4. Net earnings shall include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependants.

5. To support any payment in excess of $1,000, the displaced person shall furnish the displacing agency with proof of net earnings through income tax returns or certified financial statements.

Authority: *T.C.A. §§13-11-105 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.11 filed and effective February 1, 2003.*

1680-6-2-.12 INELIGIBLE MOVING EXPENSES.

A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership, except for the cost of moving a displacement dwelling as provided in Rule 1680-6-2-.13, Subpart (1)(c)1(ii);

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees; or

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new locations, except as provided in Rule 1680-6-2-.11, Paragraph (4), Reestablishment Expenses -- Non-Residential, at Subparagraph (c), Part 10;

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the displacing agency;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm operation or nonprofit organization, except as provided in Rule 1680-6-2-.11, Moving Payments -- Non-Residential, at Paragraphs (1)(c) and (4); or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

(Rule 1680-6-2-.12, continued)

Authority: *T.C.A. §§13-11-105 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.12 filed and effective February 1, 2003.*

1680-6-2-.13 REPLACEMENT HOUSING PAYMENTS.

(1) Payments for ~~180~~90-Day Owner-Occupants.

(a) Eligibility.

A displaced person is eligible for replacement housing payments as an owner-occupant under this paragraph if:

1. The person has actually owned and occupied the displacement dwelling for not less than ~~180~~ 90 days immediately prior to the initiation of negotiations; and

2. The person purchases and occupies a decent, safe and sanitary dwelling within one year after the later of the following dates:

(i) The date the person receives final payment for the displacement dwelling where the acquisition is by settlement or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(ii) The date on which the displacing agency meets its obligation to make a comparable replacement dwelling available to the person, as provided in Rule 1680-6-2-07, Paragraph (5).

3. If the displaced person purchases a replacement dwelling before the one-year deadline but is unable to occupy the dwelling for reasons beyond the displaced person's control, the requirement to occupy the replacement dwelling within the one-year period may be waived.

(b) Amount of Payment (Basic Computation).

The replacement housing payment made to an eligible ~~180~~90-day owner-occupant shall be in an amount, not to exceed ~~$22,500~~$31,000, necessary to relocate the owner-occupant to a comparable replacement dwelling within the one-year eligibility period, as defined in Subparagraph (a) above. Such payment shall be determined by calculating the sum of:

1. The amount, if any, by which the acquisition cost of the replacement dwelling exceeds the base compensation received for the displacement dwelling, with such cost differential to be determined in accordance with Subparagraph (c) below;

2. The amount of any increased interest costs and other debt service costs that are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Subparagraph (d) below; and

3. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Subparagraph (e) below.

(c) Determining the Cost Differential Between the Replacement Dwelling and the Displacement Dwelling.

1. Acquisition Cost of the Replacement Dwelling.

(Rule 1680-6-2-.13, continued)

(i) Replacement Dwelling. For the purposes of calculating the replacement housing payment for a ~~180~~90-day owner-occupant under this Rule, the acquisition cost of the replacement dwelling shall be the lesser of:

(I) The reasonable cost of a comparable replacement dwelling, as determined in accordance with Subparagraph (3)(a) below; or

(II) The purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(ii) Retention of Displacement Dwelling. In the alternative, if the owner-occupant retains ownership of his or her displacement dwelling and moves it from the displacement site to reoccupy it at the replacement site, the acquisition cost of the replacement dwelling shall be the sum of:

(I) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(II) Any additional cost necessary to make the unit a decent, safe and sanitary replacement dwelling;

(III) The current fair market value for residential use of the replacement site, as determined by appraisal or any other reasonable method, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(IV) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

2. Adjustments to Base Compensation for Displacement Dwelling.

(i) Mixed-Use and Multi-Family Properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the compensation payment actually attributable to the displacement dwelling shall be considered when computing the cost differential.

(ii) Insurance Proceeds. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a disaster (fire, flood, etc.) shall be included in the base compensation for the displacement dwelling when computing the cost differential.

(d) Increased Mortgage Interest Costs.

1. The payment for increased mortgage interest costs shall be the amount that will reduce the mortgage balance on a new mortgage, if any, to an amount that could be amortized with the same monthly payments for principal and interest as that for the mortgage(s) on the displacement dwelling. It shall also include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

(Rule 1680-6-2-.13, continued)

2. The computation of the increased mortgage interest costs payment shall be based on the following:

   (i) The payment shall be based on the unpaid mortgage balance(s) on the displaced dwelling. In the event, however, that the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment shall be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

   (ii) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

   (iii) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages charged by mortgage lending institutions in the area in which the replacement dwelling is located.

   (iv) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent that:

      (I) They are not paid as incidental expenses;

      (II) They do not exceed rates normal to similar real estate transactions in the area;

      (III) The displacing agency determines them to be necessary; and

      (IV) The computation of such points and fees shall be based on the unpaid mortgage balance(s) on the displacement dwelling, less the amount determined for the reduction of such mortgage balance(s) under this part.

   (v) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) Incidental Expenses.

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including the following:

1. Legal, closing and related costs, including those for title search, title insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

2. Lender, FHA or VA application and appraisal fees;

3. Loan origination or assumption fees that do not represent prepaid interest;

4. Certification of structural soundness, and termite inspection when required;

5. Credit report;

(Rule 1680-6-2-.13, continued)

6. Owner's and mortgagee's evidence or assurance of title, e.g., title insurance (not to exceed the costs for evidence or assurance of title for a comparable replacement dwelling);

7. Escrow agent's fee;

8. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling);

9. Mortgage default insurance (based on the unpaid mortgage balance(s) on the displacement dwelling or the new mortgage amount, whichever is less); and

10. Such other costs as the displacing agency determines are normally incidental to the purchase of similar real estate in the area.

(f) Rental Assistance Payment for ~~180~~90-Day Owner-Occupant.

A displaced ~~180~~90-day owner-occupant eligible for a replacement housing payment under Paragraph (1) of this Rule may choose to rent a replacement dwelling. In such case, the displaced person is entitled to receive a rental assistance payment, not to exceed ~~$5,250~~$7,200, in lieu of a replacement housing payment. The amount of the rental assistance payment shall be calculated and disbursed in accordance with Subparagraph (2)(b) of this Rule.

(2) Replacement Housing Payments for 90-Day Occupants.

(a) Eligibility.

A tenant or owner-occupant displaced from a dwelling is entitled to a payment, not to exceed ~~$5,250~~$7,200, for rental assistance, as computed in accordance with Subparagraph (b) below, or down payment assistance, as computed in accordance with Subparagraph (c) below , if the displaced person:

1. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

2. Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within one year (unless the displacing agency extends this period for good cause based on occurrences beyond the displaced person's control) after:

(i) In the case of a tenant, the date the person moves from the displacement dwelling, or

(ii) In the case of an owner-occupant, the later of:

(I) The date the person receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court, or

(II) The date the person moves from the displacement dwelling.

(b) Rental Assistance Payment.

1. Amount of Payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment, not to exceed ~~$5,250~~$7,200, for rental assistance. Such payment

shall be 42 times the amount obtained by subtracting the base monthly rent for the displacement dwelling, as calculated in accordance with Part 2 below, from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly costs of utilities for the decent, safe and sanitary dwelling actually occupied by the displaced person.

2. Base Monthly Rent For Displacement Dwelling. The base monthly rent for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the displacing agency, except that:

(I) For an owner-occupant, the monthly rent shall be the fair market rent for the displacement dwelling, or

(II) For a tenant who paid little or no rent, the monthly rent shall be the fair market rent, unless its use would create a hardship because of the person's income or other circumstances;

(ii) Thirty (30%) percent of the person's average gross monthly income, ~~except that~~if their income is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for Public Housing and Section 8 Programs (http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm). ~~if~~ If the person refuses to provide appropriate evidence of income or is a dependent (a full time student or resident of an institution may be assumed to be a dependant unless the person demonstrates otherwise), the base monthly rent shall be established solely on the criteria in Subpart 2(i) above; or

(iii) The total of the amounts designated for shelter and utilities if the person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

3. Manner of Disbursement. A rental assistance payment may, at the displacing agency's discretion, be disbursed either in a lump sum or in installments. However, except as limited by Subparagraph (3)(~~k~~h) below, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) Down Payment Assistance Payment.

1. Eligibility. A displaced person eligible for a rental assistance payment under Paragraph (2) of this Rule is also eligible to receive a down payment assistance payment if the person chooses to purchase a replacement dwelling. Any displaced person eligible to receive a replacement housing payment as a ~~180~~90-day owner-occupant is not eligible for this payment.

2. Amount of Payment. The amount of the down payment assistance payment shall be equal to the amount the person would receive under Subparagraph (2)(b) of this Rule if the person rented a comparable replacement dwelling. At the discretion of the displacing agency, the down payment assistance payment may be increased to any amount not to

(Rule 1680-6-2-.13, continued)

exceed ~~$5,250~~$7,200, or the amount the person would receive as a replacement housing payment if the person met the ~~180~~90-day occupancy requirement, whichever is less. The displacing agency's discretion to provide the maximum shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally.

3. Application of Payment. The full amount of the down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

(3) Additional Rules Governing Replacement Housing Payments.

(a) Determining the Acquisition Cost of Comparable Replacement Dwelling.

The upper limit of a replacement housing payment shall be based on the cost (asking price) of a comparable replacement dwelling identified for the displaced person.

1. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. ~~An adjustment shall be made to the asking price of any dwelling to the extent justified by local market data.~~ An obviously overpriced dwelling may be ignored.

~~If an adjustment is made in the replacement housing payment computation and the displaced person purchases the selected comparable dwelling but at a price higher than the adjusted price, the replacement housing payment will be adjusted upward to reflect the actual purchase price of the replacement dwelling.~~

2. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, e.g., the site is significantly smaller or does not contain a swimming pool, the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

3. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the displacing agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the displacing agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

4. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) Inspection of Replacement Dwelling.

Before making a replacement housing payment or releasing a payment from escrow, the displacing agency or its designated agent shall inspect the replacement dwelling and determine whether it is a decent, safe and sanitary dwelling.

(c) Statement of Eligibility to Lending Agency.

If the displaced person qualifies for a replacement housing payment but has not yet purchased or occupied a replacement dwelling, the displacing agency shall, upon the request of the displaced person, provide a written statement to any interested party, financial institution or lending

(Rule 1680-6-2-.13, continued)

agency, that the displaced person is eligible for the payment of a specific sum subject to the displacing agency's requirements.

(d) Revisions to the Replacement Housing Payment.

When replacement housing, similar in price and comparability to the dwelling used in the original replacement housing computation, is no longer available, the displacing agency shall make any necessary referrals to comparable housing currently available, and the displacing agency shall revise the replacement housing payment subject to the following requirements:

1. The revised offer may not be less than the original offer merely because a less expensive comparable becomes available.

2. A replacement housing payment offer shall be revised and may be less than the original offer if:

   (i) The appraisal is updated and the offer for the displacement dwelling and site is increased;

   (ii) In condemnation cases, the final award is greater than the acquisition offer for the displacement dwelling and site; or

   (iii) In the case of an administrative settlement, the initial acquisition offer for the displacement dwelling and site is increased.

3. Except in those cases where the acquisition offer is increased, the primary purpose of a revised replacement housing payment offer is to provide the displaced person with information regarding currently available replacement housing. Therefore, if replacement dwellings similar in price and comparability to the dwelling used in the original replacement housing payment computation are available, a revised offer is not necessary. However, current listings must be provided to the displaced person if requested.

(e) Purchase of Replacement Dwelling.

A displaced person shall be considered to have met the requirement to purchase a replacement dwelling under any one of the following conditions:

1. The displaced person purchases an existing decent, safe and sanitary dwelling.

2. The displaced person purchases and rehabilitates a substandard dwelling; provided, that in such a case the displacing agency shall pay the person an amount, not to exceed the amount offered as a replacement housing payment, to the extent that the sum of the following exceeds the acquisition price for the displacement dwelling:

   (i) The purchase price of the substandard dwelling; plus

   (ii) The costs of undertaking any actions pre-approved by the displacing agency as being necessary to make the dwelling decent, safe, and sanitary, but not to make the dwelling comparable.

3. The displaced person relocates a dwelling that the displaced person owns or purchases; provided, that in such a case the displacing agency shall pay the person an amount, not to exceed the amount offered as a replacement housing payment, to the extent that the sum of the following exceeds the acquisition price for the displacement dwelling:

(Rule 1680-6-2-.13, continued)

(i) The retention value or current fair market value of the relocated dwelling; plus

(ii) The cost of moving the relocated dwelling; plus

(iii) The cost of undertaking any actions pre-approved by the displacing agency as being necessary to restore the relocated dwelling to a condition comparable to that prior to the move; plus

(iv) The cost of undertaking any actions pre-approved by the displacing agency as being necessary to make the relocated dwelling a decent, safe and sanitary dwelling; plus

(v) The cost of purchasing the replacement site, up to an amount not to exceed the cost of an available suitable replacement site, or the current fair market value of the replacement site, in any case where the relocated dwelling is moved to remainder land adjacent to the site of the displacement dwelling or on other land previously owned by the displaced person.

4. The displaced person constructs a decent, safe, and sanitary dwelling on a site which the displaced person owns or purchases; provided, that in such a case the displacing agency shall pay the person an amount, not to exceed the amount offered as a replacement housing payment, to the extent that the sum of the following exceeds the acquisition price for the displacement dwelling:

(i) The cost of constructing a decent, safe and sanitary dwelling; plus

(ii) The cost of purchasing the replacement site, up to an amount not to exceed the cost of an available suitable replacement site, or the current fair market value of the replacement site, in any case where the relocated dwelling is constructed on remainder land adjacent to the site of the displacement dwelling or on other land previously owned by the displaced person.

5. The displaced person contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

6. The displaced person occupies a decent, safe, and sanitary dwelling that the displaced person previously owned, in which case the acquisition cost for the replacement dwelling shall be the current fair market value of that dwelling.

(f) Occupancy Requirements for Displacement or Replacement Dwelling.

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements for a displacement or replacement dwelling set forth in these Rules for a reason beyond the displaced person's control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the agency funding the project, or the displacing agency; or

2. Another reason, such as delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the displacing agency.

(g) Conversion of Payment.

(Rule 1680-6-2-.13, continued)

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Rule 1680-6-2-.13, Subparagraph (2)(b), is eligible to receive a replacement housing payment under Rule 1680-6-2-.13, Paragraph (1), or a down payment assistance payment under Rule 1680-6-2-.13, Subparagraph (2)(c), if the displaced person meets the applicable eligibility requirements for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the replacement housing payment or down payment assistance payment.

(h) Payment After Death.

A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid;

2. The full payment shall be disbursed in any case in which a member of the displaced family dies and the other family members continue to occupy a decent, safe, and sanitary replacement dwelling; and

3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Authority: *T.C.A. §§13-11-106, 13-11-107, and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.13 filed and effective February 1, 2003.*

1680-6-2-.14 MOBILE HOMES.

(1) Applicability.

This Rule describes the requirements governing relocation payments to any person displaced from a mobile home or mobile home site who meets the basic eligibility requirements of the Act and these Rules. Except as modified by this Rule, such a displaced person is entitled to a moving expense payment in accordance with Rule 1680-6-2-.10 and a replacement housing payment in accordance with Rule 1680-6-2-.13 to the same extent and subject to the same requirements as persons displaced from other dwellings.

(2) Moving and Related Expenses.

(a) General.

A homeowner-occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Rule 1680-6-2-.10 (Moving Payments -- Residential Moves). However, if the mobile home is not acquired by the displacing agency, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in Paragraph (3) of this Rule, the owner is not eligible for any payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home. A non-occupant owner of a mobile home rented to other persons is eligible for actual cost reimbursement under Rule 1680-6-2-.11 (Moving Payments -- Non-Residential Moves).

(Rule 1680-6-2-.14, continued)

(b) Actual Moving Expenses.

For mobile homes, the following provisions apply to payments for actual moving expenses under Rule 1680-6-2-.10:

1. A displaced mobile homeowner who moves the mobile home to a replacement site is eligible for the reasonable costs of disassembling, moving and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, that were not acquired by the displacing agency. In addition, the mobile homeowner is eligible for the reasonable costs of anchoring the unit and utility "hook up" charges.

2. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the displacing agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

3. If a mobile homeowner is displaced from a mobile home park and the displacing agency determines that there are no comparable mobile home parks available that do not require a mobile home park entrance fee, such entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park. To the extent that any part of an entrance fee (such as a security deposit) is refundable, it shall not be reimbursable. In order to be reimbursed for an entrance fee as provided in this Part, the displaced mobile homeowner must provide the displacing agency with both a lease agreement for the replacement site and a receipt for payment of the entrance fee.

(3) Replacement Housing Payment for ~~180~~90-Day Mobile Homeowner- Occupants.

(a) Eligibility.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed ~~$22,500~~$31,000, under Rule 1680-6-2-.13 if:

1. The person both owned the displacement mobile home and occupied it on the displacement site for at least ~~180~~ 90 days immediately prior to the initiation of negotiations;

2. The person meets the other basic eligibility requirements under Rule 1680-6-2-.13, Subparagraph (1)(a); and

3. The displacing agency either:

(i) Acquires the mobile home and/or mobile home site as real property; or

(ii) If not acquired, the displacing agency determines that the mobile home:

(I) Is not and cannot economically be made decent, safe and sanitary,

(II) Cannot be relocated without substantial damage or unreasonable cost,

(III) Cannot be relocated because there is no available comparable replacement site, or

(IV) Cannot be relocated because it does not meet mobile home park entrance requirements.

(Rule 1680-6-2-.14, continued)

(b) Computation of Payment.

If the mobile home is not acquired, the base compensation for the displacement dwelling used for the purpose of computing the cost differential amount, described in Rule 1680-6-2-.13, Subparagraph (1)(c), shall include either the salvage value or the trade-in value of the mobile home, whichever is higher.

(4) Replacement Housing Payments for 90-Day Mobile Home Occupants.

(a) Tenants.

A displaced tenant of a mobile home is eligible for a replacement housing payment, not to exceed ~~$5,250~~$7,200, under Rule 1680-6-2-.13, Paragraph (2), if:

1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations; and

2. The person meets the other basic eligibility requirements under Rule 1680-6-2-.13, Subparagraph (2)(a).

(b) Owner-Occupants.

A displaced owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed ~~$5,250~~$7,200, under Rule 1680-6-2-.13, Paragraph (2), if:

1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

2. The person meets the other basic eligibility requirements under Rule 1680-6-2-.13, Subparagraph (2)(a); and

3. The displacing agency either:

(i) Acquires the mobile home and/or mobile home site as real property; or

(ii) If not acquired, the displacing agency determines that the mobile home:

(I) Is not and cannot economically be made decent, safe and sanitary,

(II) Cannot be relocated without substantial damage or unreasonable cost,

(III) Cannot be relocated because there is no available comparable replacement site, or

(IV) Cannot be relocated because it does not meet mobile home park entrance requirements.

(5) Additional Rules Governing Relocation Payments to Mobile Home Occupants.

(a) Replacement Housing Payment Based On Dwelling and Site.

Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may choose to purchase a replacement mobile home

(Rule 1680-6-2-.14, continued)

and rent a replacement site, or the person may choose to rent a replacement mobile home and purchase a site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable paragraph of Rule 1680-6-2-.13 (Replacement Housing Payments). However, the total replacement housing payment under Rule 1680-6-2-.13 shall not exceed the maximum payment (either ~~$22,500~~$31,000 or ~~$5,250~~$7,200) permitted under the paragraph that governs the computation for the dwelling.

(b) Cost of Comparable Replacement Dwelling.

1. In general, when computing the amount of a replacement housing payment for a person displaced from a mobile home, the acquisition cost of a replacement dwelling shall be the reasonable cost of a comparable replacement mobile home. This applies whether the displaced person's actual replacement dwelling is another mobile home or some other dwelling. However, if a comparable mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

2. If the displacing agency determines that it would be practical to relocate the mobile home but the owner-occupant chooses not to do so, the displacing agency may determine that, for purposes of computing the cost differential under Rule 1680-6-2-.13, Subparagraph (1)(c), the acquisition cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) Initiation of Negotiations.

If the mobile home is not actually acquired, but the occupant is considered displaced under this Rule, the initiation of negotiations shall be the date of initiation of negotiations to acquire the land, or, if the land is not acquired, the date that the occupant is provided with written notification that he or she is a displaced person.

(d) Person Moves Mobile Home.

If the owner is reimbursed for the cost of moving the mobile home under this Rule, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) Partial Acquisition of Mobile Home Park.

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the displacing agency determines that a mobile home located on the remaining part of the property must be moved as a direct result of the project, the owner and tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this Rule.

Authority: *T.C.A. §13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.14 filed and effective February 1, 2003.*

1680-6-2-.15 LAST RESORT HOUSING.

(1) Determination to Provide Last Resort Housing.

If the displacing agency determines that a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the maximum payments specified under Rule 1680-6-2-.13, Paragraphs (1) or (2), as applicable, the displacing agency may provide additional assistance as necessary under this Rule. Before deciding to provide last resort housing assistance under this Rule, the displacing agency must determine either:

(a) That there is good cause to provide such assistance to a displaced person in a particular case based on:

1. The lack of availability of comparable replacement housing within the project area;

2. The resources available to provide comparable replacement housing; and

3. The individual circumstances of the displaced person; or

(b) That there is good cause to provide such assistance to displaced persons within an entire project area based on:

1. The lack of availability of comparable replacement housing for any displaced persons within the project area;

2. The inability to complete the project in a timely manner without last resort housing assistance; and

3. The selection of a method for providing last resort housing assistance that is cost effective when compared to the costs of delaying the project until less expensive comparable replacement housing may become available.

(2) Basic Rights of Persons to Be Displaced.

(a) No person shall be required to move from a displacement dwelling under this Rule until after comparable replacement housing has been made available to such person, except temporarily in the case of a major disaster or emergency as described in Rule 1680-6-2-.07, Subparagraph (5)(c).

(b) The displacing agency shall not require any displaced person to accept a dwelling provided by the displacing agency under this Rule (unless the displacing agency and the displaced person have entered into a written contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) Nothing in this Rule shall deprive a person of any rights such person may otherwise have under the Act or these Rules.

(3) Methods of Providing Last Resort Housing.

(a) Generally.

The displacing agency shall have wide latitude in determining the method for providing last resort housing assistance on a case-by-case basis, or on a project-wide basis, where justified under Paragraph (1) of this Rule, but the implementation shall not exceed a reasonable cost. The methods of providing last resort housing may include, but are not limited to:

(Rule 1680-6-2-.15, continued)

1. A replacement housing payment in excess of the limits set forth in the Act and Rule 1680-6-2-.13, Paragraphs (1) and (2). A rental assistance payment under this Rule may be provided in installments or in a lump sum at the displacing agency's discretion.

2. Rehabilitation of and/or additions to an existing replacement dwelling.

3. The construction of new replacement housing.

4. The relocation and, if necessary, rehabilitation of a dwelling.

5. The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

6. The removal of barriers to the handicapped.

7. The change in status of the displaced person, with his or her concurrence, from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(b) Special Circumstances.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling, provided that the replacement dwelling is functionally equivalent to the displacement dwelling (as described in the definition of "comparable replacement dwelling" set forth in Rule 1680-6-2-.03). Examples include:

1. Providing smaller, but superior, replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing, only a portion of which is being used as living quarters, and where no comparable large dwellings are available in the area.

2. Providing a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

(c) Otherwise Ineligible Displaced Persons.

The displacing agency shall provide assistance under this Rule to a displaced person who is not eligible to receive a replacement housing payment under Rule 1680-6-2-.13, Paragraph (1) or (2), because of failure to meet the length of occupancy requirements when comparable replacement housing is not available at rental rates within the person's financial means, which is 30 % of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Authority: *T.C.A. §§13-11-109 and 13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.15 filed and effective February 1, 2003.*

1680-6-2-.16 APPEALS.

(1) Actions That May Be Appealed.

A displaced person may appeal to the head of the displacing agency if the person believes that the displacing agency has:

(a) Improperly determined the person's eligibility for relocation benefits; or

(b) Improperly determined the amount of a relocation payment.

(2) Form and Time for Initiating an Appeal.

(a) The appeal shall be in writing in any form sufficient to identify the displacing agency action that is being appealed.

(b) The appeal must be submitted to head of the displacing agency within 60 days after the displaced person receives written notice of the displacing agency action being appealed, unless the displacing agency has expressly identified another person to receive the appeal or allowed a longer period of time for filing the appeal.

(3) Displacing Agency Official to Review Appeal.

The appeal shall be reviewed by the head of the displacing agency, or such other agency official(s) as the head of the displacing agency may designate, with authority to affirm, reverse or modify the displacing agency action under review; provided, however, that the official(s) reviewing the appeal shall not have been directly involved in the action being appealed.

(4) Scope of Review of Appeal.

In deciding an appeal, the head of the displacing agency, or other designated official(s), shall consider any relevant information submitted by the displaced person and the displacing agency, and such additional information as the official(s) may request or require as needed to conduct a fair and full review of the appeal.

(5) Representation.

The displaced person may be assisted in the appeal by legal counsel or other representative, but solely at the displaced person's own expense.

(6) Notification of Decision on Appeal.

Within 30 days after hearing the displaced person's appeal, or after the receipt of all relevant information submitted by or requested from the displaced person, the head of the displacing agency, or designee(s), shall send the displaced person a written notice of the decision on the appeal, including an explanation of the basis on which the decision was made. The time for making the decision may be extended for good cause upon written notice to the displaced person.

(7) Review of Decision on Appeal.

The decision of the head of the displacing agency, or authorized designee(s), shall be final and is not subject to judicial review except as the law may allow under a common law writ of certiorari.

Authority: *T.C.A. §13-11-113.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal and new rule filed October 31, 2002; effective January 14, 2003. Rule has been assigned a new control number from 1680-2-4-.16 filed and effective February 1, 2003.*

(Rule 1680-6-2-.16, continued)

1680-6-2-.17 THROUGH 1680-6-2-.37 REPEALED.

Authority: *T.C.A. §§13-11-102, 13-11-113, and 13-11-119.* ***Administrative History:*** *Original rule filed August 12, 1974; effective September 11, 1974. Repeal filed October 31, 2002; effective January 14, 2003. Rules have been assigned a new control number from 1680-2-4-.17 through 1680-2-4-.37 filed and effective February 1, 2003.*

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 11-28-16 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 11-28-16

Signature:

Name of Officer: JOHN C. SCHROER

Title of Officer: COMMISSIONER

ANGELA P. MARTIN NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TN

Subscribed and sworn to before me on: 11-28-16

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

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

Herbert H. Slatery III
Attorney General and Reporter

1/4/2017
Date

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Filed with the Department of State on: 1/12/17

Effective on: 4/12/17

Tre Hargett
Secretary of State