

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Animal Health

SUBJECT: Health Requirements for Admission and Transportation of Livestock and Poultry

STATUTORY AUTHORITY: This rule is consistent with federal guidelines for the movement of animals susceptible to contagious diseases.

EFFECTIVE DATES: April 1, 2020 through June 30, 2021.

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Chronic Wasting Disease (CWD), which is fatal to deer and other cervids, was discovered in the wild deer population in Tennessee. This rulemaking hearing rule was adopted to control its spread. The owners of captive herds have the potential to spread the disease as well as suffer the greatest loss if their herd becomes infected. The rule sets standards for the import and movement of susceptible animals and establishes a protocol for maintaining CWD-free herds.

Public Hearing Comments

The department of Agriculture held a public rulemaking hearing on September 12, 2019. David Waddell served as the hearing officer for the rulemaking hearing on 0080-02-01 Health Requirements for Admission and Transportation of Livestock and Poultry. No questions or comments from the public were presented at the hearing.

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) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Owners of captive deer and other cervidae are subject to these rules. All of them are small businesses.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 100 captive deer herds exist in the state. There are 10 herds enrolled as a certified status herd under the rule.

- (3) 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:

Additional reporting requirements will be imposed by this rule, such as an annual inventory of all susceptible deer and information to track these animals if they move in the state.

- (4) Statement of the probable effect on impacted small businesses and consumers:

Since Chronic Wasting Disease (CWD) was discovered in the wild deer population in the state, these rules were adopted to prevent the spread of the disease into the captive cervid populations. In the best interest of the businesses that hold captive cervids this rule imposes import restrictions and record keeping requirements to maintain the survival of these herds.

- (5) 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:

A less burdensome program could not be implemented without jeopardizing the deer and other cervid populations in the state.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Although no specific federal rules exist on CWD, these rules are consistent with federal import and transportation rules for the control of contagious diseases.

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

Any exemption of a holder of CWD susceptible animal could endanger the entire population of those animals.

Impact on Local Governments

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

These rules have no effect on local government.

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;

Chronic Wasting Disease (CWD), which fatal to deer and other cervids, was discovered in the wild deer population in Tennessee. This rule was adopted to control its spread. The owners of captive herds have the potential to spread the disease as well as suffer the greatest loss if their herd becomes infected. The rule sets standards for the import and movement of susceptible animals as well as establishes a protocol for maintaining CWD free herds.

- (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 is consistent with federal guidelines for the movement of animals susceptible to contagious diseases.

- (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 those persons interested in a healthy wild and captive cervid population, including TWRA, support this rule.

- (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 relevant opinions or rulings 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;

The fiscal impact of this rule is minimal.

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

David Waddell, Director of Law and Policy, Tennessee Department of Agriculture

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

David Waddell, Director of Law and Policy, Tennessee Department of Agriculture

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

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

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Sequence Number: 01-01-20
Rule ID(s): 9289
File Date: 1/2/20
Effective Date: 4/1/20

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:	Agriculture
Division:	Animal Health
Contact Person:	David Waddell
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0080-02-01	Health Requirements for Admission and Transportation of Livestock and Poultry
Rule Number	Rule Title
0080-02-01-.12	Bison and Cervidae

0080-02-01-.12 BISON AND CERVIDAE.

~~(1) Bison shall comply with the requirements for cattle as set forth under 0080-02-01-.05 above and as ordered by the state veterinarian.~~

~~(2) Requirements for Cervidae~~

~~(a) Tuberculosis~~

- ~~1. All cervidae under the jurisdiction of the Department of Agriculture shall have originated from herds that have tested negative on a whole herd test for tuberculosis, using the USDA approved single cervical test or other USDA approved tests, not more than twelve (12) months prior to entering the state. In addition, individual imported animals shall have tested negative on the USDA approved single cervical test or other USDA approved tests not more than thirty (30) days prior to entry; or~~
- ~~2. Shall have originated from an accredited herd, and individual imported animals shall have tested negative on the USDA approved single cervical test or other USDA approved test not more than thirty (30) days prior to entry; or~~
- ~~3. Animals that have not originated from tested herds as described above must have tested negative on two (2) single cervical tests at least ninety (90) days apart, with the second test conducted not more than thirty (30) days prior to entry.~~

~~(b) Brucellosis~~

- ~~1. All sexually intact cervidae six months of age or older shall:
 - ~~(i) Have tested negative for brucellosis within 30 days prior to entry;~~
 - ~~or~~
 - ~~(ii) Have originated directly from a certified brucellosis-free cervid herd.~~~~

~~(3) Other Requirements for Captive, Chronic Wasting Disease Susceptible Cervidae.~~

~~(a) Definitions.~~

- ~~1. Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards.~~
- ~~2. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals.~~

3. ~~CWD susceptible cervidae means any member of the following species: Rocky Mountain Elk (Cervus canadensis); Red Deer (Cervus elaphus); Mule Deer or Black-tailed Deer (Odocoileus hemionus); Sika Deer (Cervus nippon); or Moose (Alces alces); or any species determined by USDA to be CWD susceptible.~~

~~(b) Import Requirements.~~

1. ~~No person shall import CWD susceptible cervidae from an area where CWD has ever been diagnosed in wildlife. The control zone around such area shall be 25 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.~~
2. ~~No person shall import CWD susceptible cervidae into the state unless,~~
 - (i) ~~The cervidae originated from a certified status herd that has had no loss or reduction in status during its program enrollment; and,~~
 - (ii) ~~The person importing the cervidae has in his possession a certificate of veterinary inspection, completed in full—including signature of the owner/agent section—and a prior entry permit for the cervidae obtained by the issuing veterinarian from the state veterinarian's office.~~

(1) Bison. Import and movement of bison shall comply with all requirements for cattle under 0080-02-01-.05.

(2) Cervidae.

(a) Definitions.

1. Certified status herd means a cervidae herd enrolled in a CWD surveillance program for a period of five years during which time no evidence of CWD or trace back or trace forward concerns were identified for the herd by a state or federal animal health control official. Certified status is contingent on continued compliance with annual inspections and CWD surveillance program standards;
2. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy in cervidae that causes weight loss and death in infected animals;
3. CWD surveillance program means a program approved by a state or federal animal health official for monitoring and control of CWD;
4. CWD susceptible cervidae means any member of a species identified under United States Department of Agriculture (USDA) CWD Program Standards, as they may be amended from time to time and published by USDA, Animal and Plant Health Inspection Service, Veterinary Services; and,
5. Move, ship, transport, or similar words mean to relocate in any manner an item from one real property to another.

(b) Import.

1. A person shall not import cervidae from an origin within 50 miles of a location where CWD has been detected by a state or federal animal health control official.
2. A person shall not import cervidae unless the animals are identified by two forms of identification, one of which must be USDA official identification.
3. Any person who imports cervidae shall have in his possession:
 - (i) Proof showing each cervid is negative for tuberculosis, by either:
 - (I) One USDA-approved tuberculosis test within 90 days prior to import, and proof the cervid originated from a herd that tested negative on a whole herd test for tuberculosis within 12 months prior to import; or,
 - (II) Two USDA-approved tuberculosis tests conducted at least 90 days apart and the second of which was conducted within 90 days prior to import.
 - (ii) A completed certificate of veterinary inspection (CVI);
 - (iii) An entry permit obtained by the veterinarian who issued the CVI for the cervidae; and,
 - (iv) Proof that any CWD susceptible cervid originated from a certified status herd.

(c) In-state movement.

1. For movement of any CWD susceptible cervidae from a county, where any portion of the county lies within ten miles of a location where CWD has been detected by a state or federal animal health control official, a person must prior to the movement receive written authorization from the state veterinarian's office. The state veterinarian's office may authorize or deny movement of cervidae based on the likelihood to spread CWD within the state, as assessed on various factors, such as, but not limited to; seclusion from CWD detected areas by barrier or distance, herd testing, or the existence of CWD in the region.
2. A person shall not move CWD susceptible cervidae unless the animals are identified by two forms of identification, one of which must be USDA official identification.
3. A person shall not move non-CWD susceptible cervidae to a livestock market unless the animals are identified by two forms of identification, one of which must be USDA official identification.

(d) CWD susceptible herd maintenance.

1. Any person who holds CWD susceptible cervidae within the state must:
 - (i) Annually report to the department on or before July 1 of each year the herd inventory, including location, number, and species of cervidae;
 - (ii) Immediately report to the department any cervid illness or death within 24 hours of discovery; and,

(iii) Make the carcass of any dead cervid available to the department for testing ordered by the state veterinarian.

Authority: T.C.A. §§ 4-3-203 and 44-2-102

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

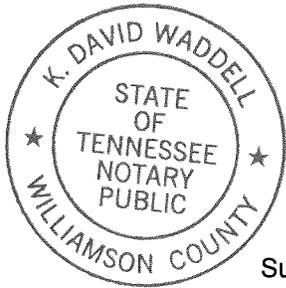
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 09/12/19, 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: 07/22/19

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/19



Date: 11/21/19

Signature: [Handwritten Signature]

Name of Officer: Charlie Hatcher, DVM

Title of Officer: Commissioner

Subscribed and sworn to before me on: 11/21/19

Notary Public Signature: KD Waddell

My commission expires on: 10/11/2021

Agency/Board/Commission: Department of Agriculture

Rule Chapter Number(s): 0080-02-01-12

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

[Handwritten Signature]
 Herbert H. Slattery III
 Attorney General and Reporter
12/13/2019
 Date

Department of State Use Only

Filed with the Department of State on: 1/2/20

Effective on: 4/1/20

[Handwritten Signature]
 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Tennessee Student Assistance Corporation
<u>DIVISION:</u>	Higher Education
<u>SUBJECT:</u>	Tennessee Education Lottery Scholarship Program
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 49-4-903, 49-4-924, and 49-4-930
<u>EFFECTIVE DATES:</u>	April 28, 2020 through June 30, 2021
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>Programs under the Tennessee Education Lottery Scholarship (TELS) are lottery-funded scholarships for qualified Tennessee students attending postsecondary institutions in Tennessee.</p> <p>These rulemaking hearing rules include housekeeping items and clarifications based on feedback from postsecondary financial aid offices as well as TSAC staff. Additionally, information was added to allow TSAC to administer dual enrollment grant awards for high-need courses and programs, as outlined in the GIVE Act, 2019 Public Chapter 203, which is codified in T.C.A. § 49-4-930. Specific changes include adding definition for high-need course or program, Tennessee resident, and unofficial withdrawal, and deleting a definition for resident. TSAC also added clarification about maintenance fee coverage for a student in the senior year if their course or programs to eligible postsecondary institutions, and which maintenance fees included in the programs will be covered. Clarification was also added about calculation of cumulative grade point average and the appeal process for loss of TELS eligibility.</p>

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 is not projected to affect small 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule is not projected to 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;

Programs under the Tennessee Education Lottery Scholarship (TELS) are lottery-funded scholarships for qualified Tennessee students attending postsecondary institutions in Tennessee.

These proposed rules include housekeeping items and clarifications based on feedback from postsecondary financial aid offices as well as TSAC staff. Additionally, information was added to allow TSAC to administer dual enrollment grant awards for high-need courses and programs, as outlined in the GIVE Act, 2019 Public Chapter 203, which is codified in T.C.A. § 49-4-930. Specific changes include adding definitions for high-need course or program, Tennessee resident, and unofficial withdrawal, and deleting a definition for resident. TSAC also added clarification about maintenance fee coverage for a student in the senior year if their course or program is no longer determined to be a high-need course or program, instructed how TSAC will make determinations about high-need programs and instructing TSAC staff to disseminate the list of high-need programs to eligible postsecondary institutions, and which maintenance fees included in the programs will be covered. Clarification was also added about calculation of cumulative grade point average and the appeal process for loss of TELS eligibility.

- (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. § 49-4-903 authorizes the Tennessee Student Assistance Corporation (TSAC) to administer the TELS Program and Tenn. Code Ann. § 49-4-924 authorizes TSAC to promulgate rules and regulations relative to such program. Additionally, Tenn. Code Ann. § 49-4-930 codified the GIVE Act, 2019 Public Chapter 203, which creates dual enrollment grant awards for high-need courses and 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;

TSAC, the Tennessee Higher Education Commission (THEC), the University of Tennessee System, the Board of Regents System, the Tennessee Independent Colleges and Universities Association, and the Tennessee Association of Student Financial Aid Administrators institutions are directly affected by and support the changes reflected in these proposed rules.

- (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 opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed 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 is no impact to state or local government revenues and expenditures under the proposed changes in these rules.

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

Peter Abernathy, Chief Aid and Compliance Officer, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

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

Peter Abernathy, Chief Aid and Compliance Officer, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

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

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

There have been no requests for additional information.

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Rulemaking Hearing Rule(s) Filing Form

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Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Shauna Jennings, Associate General Counsel
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1640-01-19	Tennessee Education Lottery Scholarship Program
Rule Number	Rule Title
1640-01-19-.01	Definitions
1640-01-19-.02	Scholarship Award Amounts and Classifications
1640-01-19-.03	Application Process
1640-01-19-.11	Eligibility – Dual Enrollment Grant
1640-01-19-.22	Calculation of Postsecondary Cumulative Grade Point Average
1640-01-19-.28	Appeal and Exception Process

**RULES
OF
TENNESSEE STUDENT ASSISTANCE**

**CHAPTER 1640-01-19
TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM**

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1640-01-19-.14	Retention of Awards – Dual Enrollment Grant	1640-01-19-.28	Appeal and Exception Process

1640-01-19-.01 DEFINITIONS.

- (1) Academic requirement: The term is defined in T.C.A. § 49-4-902.
- (2) Academic Year: The term is defined in T.C.A. § 49-4-902.
- (3) ACT: The ACT Assessment administered by ACT, Inc., exclusive of the essay and optional subject area battery tests.
- (4) Adjusted gross income attributable to the student: The term is defined in T.C.A. § 49-4-902.
- (5) Alternative Study program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) An eligible postsecondary institution; or
 - (b) An eligible postsecondary institution in conjunction with either another eligible postsecondary or a postsecondary institution that is accredited by a regional accrediting association.
- (6) ASPIRE Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE Scholarship and whose adjusted gross income attributable to the student does not exceed the amount as described in T.C.A. § 49-4-915(a)(2).
- (7) Award Year: A period of time, typically nine (9) months, in which a full-time student is expected to complete the equivalent of a minimum of two (2) semesters of academic study.

(Rule 1640-01-19-.01, continued)

- (8) Board of Regents: The board of regents of the state university and community college system of Tennessee.
- (9) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.
- (10) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
- (11) Continuous Enrollment: The term is defined in T.C.A. § 49-4-902.
- (12) Cost of Attendance: The term is defined in T.C.A. § 49-4-902.
- (13) Credit Hours Attempted: The number of semester hours for which a degree-seeking or diploma/certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-01-19-.22.
- (14) Degree: A two-year associate degree or four-year baccalaureate degree conferred on students by an eligible postsecondary institution.
- (15) Dependent Child of a Military Parent: A natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.
- (16) Dependent Child of a Full-time Religious Worker: A natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work.
- (17) Distance Education: An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.
- (18) Dual Enrollment Grant: The term is defined in T.C.A. § 49-4-902.
- (19) Eligible High School: The term is defined in T.C.A. § 49-4-902.
- (20) Eligible Independent Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (21) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (22) Eligible Public Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (23) Entering Freshman: The term is defined in T.C.A. § 49-4-902.
- (24) FAFSA: The term is defined in T.C.A. § 49-4-902.
- (25) Foster Child: A child who was in the custody of the Tennessee Department of Children's Services as described in T.C.A. § 49-4-933(b).

(Rule 1640-01-19-.01, continued)

- (26) Full-Time Student: The term is defined in T.C.A. § 49-4-902.
- (27) GED: The term is defined in T.C.A. § 49-4-902.
- (28) General Assembly Merit Scholarship: The term is defined in T.C.A. § 49-4-902.
- (29) Gift Aid: The term is defined in T.C.A. § 49-4-902.
- (30) Grade Point Average (GPA): The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- ~~(30)~~(31) High-Need Course or Program: Courses or programs annually selected by the TSAC Board using the criteria outlined in T.C.A. § 49-4-930(h), for which the Dual Enrollment Grant may be used.
- ~~(34)~~(32) HiSET: The term is defined in T.C.A. § 49-4-902.
- ~~(32)~~(33) Home School Student: The term is defined in T.C.A. § 49-4-902.
- ~~(33)~~(34) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- ~~(34)~~(35) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.
- ~~(35)~~(36) Immediate Family Member: Spouse, parents, grandparents, legal guardians, children or siblings.
- ~~(36)~~(37) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- ~~(37)~~(38) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- ~~(38)~~(39) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- ~~(39)~~(40) Medical Disability: A documented condition, as certified by a licensed physician, which requires a HOPE Scholarship recipient to attend part time at an eligibility postsecondary institution.
- ~~(40)~~(41) Military Parent: The term is defined in T.C.A. § 49-4-926(b)(2).
- ~~(41)~~(42) Nonacademic requirement: The term is defined in T.C.A. § 49-4-902.
- ~~(42)~~(43) Non-Traditional student: The term is defined in T.C.A. § 49-4-902.
- ~~(43)~~(44) Parent: The term is defined in T.C.A. § 49-4-902.
- ~~(44)~~(45) Part-time Student: The term is defined in T.C.A. § 49-4-902.
- ~~(45)~~(46) Regional Accrediting Association: The term is defined in T.C.A. § 49-4-902.
- ~~(46)~~(47) Religious Worker: The term is defined in T.C.A. § 49-4-934(b)(2).
- ~~(47)~~ Resident: A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-03.

(Rule 1640-01-19-.01, continued)

- (48) SAT: The SAT administered by the College Board, exclusive of the essay and optional subject area battery tests.
- (49) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution at which the student is currently enrolled.
- (50) Semester: The term is defined in T.C.A. §49-4-902.
- (51) Semester grade point average: The grade point average for the semester as calculated by the postsecondary institution utilizing its institutional grading policy.
- (52) Semester Hour: The term is defined in T.C.A. §49-4-902.
- (53) Study Abroad Program: Programs of study for which college credit is earned that include travel outside the United States.
- (54) TCAT: Tennessee College of Applied Technology.
- (55) TELS (Tennessee Education Lottery Scholarship) Award: Any scholarship and/or grant provided for by these rules that a student is eligible to receive, excluding the Dual Enrollment Grant.
- (56) Tennessee HOPE Access Grant: The term is defined in T.C.A. § 49-4-902.
- (57) Tennessee HOPE Foster Child Tuition Grant: A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.
- (58) Tennessee HOPE Scholarship: The term is defined in T.C.A. § 49-4-902.
- (59) Tennessee National Guard: The term is defined in T.C.A. § 49-4-926(b)(3).
- ~~(59)~~(60) Tennessee Resident: A student classified as a resident of Tennessee pursuant to the provisions of §49-8-104.
- ~~(60)~~(61) Test Date: The date designated for the ACT test administered by ACT, Inc., or the date designated for the SAT test administered by the College Board at national and state test centers. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship, as well as a statewide test date established by the State Department of Education that is sanctioned by the respective test entities.
- ~~(61)~~(62) Title IV: The term is defined in T.C.A. §49-4-902.
- ~~(62)~~(63) Transient Student: A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which the student was previously enrolled.
- ~~(63)~~(64) TSAC: Tennessee Student Assistance Corporation.
- ~~(64)~~(65) Undergraduate Student: A student attending an eligible postsecondary institution and enrolled in a program leading to a diploma/certificate, an associate degree, or a bachelor's degree.
- ~~(65)~~(66) Unofficial Withdrawal: The determination by an institution that a student has ceased to be

(Rule 1640-01-19-.01, continued)

academically engaged and otherwise failed to officially withdraw from a course prior to the institution's established deadline or other applicable institutional guidelines.

(65)(67) Unweighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.

(66)(68) Weighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.

(67)(69) Wilder-Naifeh Technical Skills Grant: The term is defined in T.C.A. § 49-4-902.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-912, 49-4-913, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-933, 49-4-934, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendment filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed August 27, 2014; effective November 25, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) Award amounts for the following programs shall be determined in accordance with T.C.A. § 4-51-111 and shall be set in the General Appropriations Act:
 - (a) Tennessee HOPE Scholarship Award pursuant to T.C.A. § 49-4-914(a) and (b);
 - (b) Tennessee ASPIRE supplemental award pursuant to T.C.A. § 49-4-915;
 - (c) General Assembly Merit Scholarship supplemental award pursuant to T.C.A. § 49-4-916;
 - (d) Tennessee HOPE Access Grant award pursuant to T.C.A. § 49-4-920; and
 - (e) Wilder-Naifeh Technical Skills Grant pursuant to T.C.A. § 49-4-921.
- (3) The Dual Enrollment Grant award amounts shall be determined by TSAC, in accordance with guidelines in T.C.A. § 49-4-930, and ~~submitted to the Department of Finance and Administration annually for publication in the general appropriations act.~~
 - (a) Students who receive the award amount of maintenance fees as described in T.C.A. § 49-4-930(h) during their junior year of high school shall continue to receive the award amount of maintenance fees in their senior year even if the course or program is no longer determined to be a high-need course or program by the TSAC Board.
- (4) Tennessee HOPE Foster Child Tuition Grant amounts shall be pursuant to T.C.A. § 49-4-933.
- (5) Recipients of any TELS award as provided by these rules, except for the Dual Enrollment Grant and the Wilder-Naifeh Technical Skills Grant may enroll as a full-time or part-time

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- student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six (6), seven (7), or eight (8) hours will receive half (1/2) of the award of full-time students. Students enrolled in nine (9), ten (10), or eleven (11) hours will receive three quarters (3/4) of the award of a full-time student.
- ~~(5)~~(6) Except for approved medical or personal leaves of absence as provided in Rule 1640-01-19-.20 or emergency military duty as provided in Rule 1640-01-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.
- ~~(6)~~(7) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, TSAC shall determine the appropriate manner in which the various awards shall be reduced.
- ~~(7)~~(8) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student's total aid package.
- ~~(8)~~(9) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Dual Enrollment Grant is contingent upon admission and enrollment at an eligible postsecondary institution. Academically qualifying for any of these awards programs does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-930, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed January 30, 2009; effective May 29, 2009. Repeal and new rule filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.03 APPLICATION PROCESS.

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA, or Renewal FAFSA, shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the adjusted gross income attributable to the student, the student is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.
- (2) Students applying for a TELS award must have a FAFSA received by the U.S. Department of Education on or before September 1 for fall enrollment and February 1 for spring and summer enrollment in determining awards for that academic year. Students enrolling in a TCAT shall have a FAFSA received by the U.S. Department of Education on or before July 1 for the summer trimester, November 1 for the fall trimester and March 1 for the spring trimester. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is received by the above deadlines.
- (3) Students shall apply for the Dual Enrollment Grant during their junior and senior high school

(Rule 1640-01-19-.02, continued)

years by completing the Dual Enrollment Grant Application online. The student must renew the Dual Enrollment Grant application each postsecondary academic year.

- (a) The application deadlines for eligible two-year and four-year institutions are September 15 for the fall semester, February 1 for the spring semester, and May 15 for the summer semester. The application deadlines for the TCATs are November 1 for the fall term, March 1 for the spring term, and May 15 for the summer term.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.04 GENERAL ELIGIBILITY.

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident as required by T.C.A. § 49-4-905(a)(1); and
 - (c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-01-19-.03, and
 - (d) Be admitted to an eligible postsecondary institution; and
 - (e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and
 - (f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (g) Meet each qualification relating to the relevant TELS award and applicable to the student; and
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (j) Not be incarcerated.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-904, 49-4-905, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Amendment filed January 30, 2009; effective May 29, 2009. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP.

(Rule 1640-01-19-.03, continued)

- (1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall meet the requirements of T.C.A. § 49-4-907.
- (2) To be eligible for a Tennessee HOPE scholarship as an entering freshmen, a student who completes high school in a Tennessee home school program after December 1, 2003, who obtains a GED or HiSET after December 1, 2003, or who graduates from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall meet the requirements of T.C.A. § 49-4-908.
- (3) To be eligible for a TELS award, students entering active duty in the United States Armed Services within two (2) years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED or HiSET, shall meet the requirements of T.C.A. § 49-4-918.
- (4) A student who is a Tennessee citizen and a dependent child of a full-time military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.
 - (a) Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:
 1. While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED or HiSET.
 - (b) Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:
 1. Operated by the United States; or
 2. Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 3. Accredited by an accrediting association recognized by the foreign nation in which the school is located.
 - (c) Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (b) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED or HiSET.
 - (d) Paragraph (4) shall only apply to:
 1. Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and
 2. Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.
- (5) A student who is a Tennessee citizen and a dependent child of a full-time religious worker

(Rule 1640-01-19-.05, continued)

may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.

- (a) Such student must meet all Tennessee HOPE Scholarship eligibility requirements except that:
 1. While the student's parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED or HiSET.
 - (b) To be eligible for the Tennessee HOPE Scholarship under this paragraph (5), the student must:
 1. Graduate from a high school in the foreign nation where the student's parent is a religious worker that is accredited by a regional accrediting association as defined in T.C.A. § 49-4-902 and meet the academic eligibility requirements of T.C.A. § 49-4-907(3); or
 2. Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of T.C.A. § 49-4-908(2)(A).
 - (c) Paragraph (5) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.
- (6) In addition to the requirements of T.C.A. §§ 49-4-902 and 49-4-931, to be eligible for a Tennessee HOPE Scholarship, a non-traditional student shall meet the general eligibility requirements of Rule 1640-01-19-.04 and:
- (a) Enroll in the semester immediately succeeding the semester in which eligibility is established; and
 - (b) If the student fails to maintain continuous enrollment, wait two (2) consecutive calendar years from the end of the semester of attending any postsecondary institution, before attempting to establish eligibility.
- (7) To be eligible for a Tennessee HOPE Scholarship, students graduating from a high school located in a neighboring state in a county contiguous to Tennessee shall meet the requirements of T.C.A. § 49-4-935.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-905, 49-4-907, 49-4-908, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-934, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19- through 1640-01-19- 26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; effective May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2008; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009;

(Rule 1640-01-19-.05, continued)

rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 1, 2009; effective May 31, 2010. Amendments filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.06 ELIGIBILITY – TENNESSEE ASPIRE AWARD.

- (1) Except as provided in T.C.A. § 49-4-931, any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2) will receive the ASPIRE award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE award. Notwithstanding the provisions of Rule 1640-01-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously receive both awards.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-915, 49-4-917, 49-4-924, 49-4-930, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19- through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-1-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP.

- (1) To be eligible for the General Assembly Merit Scholarship the student shall meet the requirements of T.C.A. § 49-4-916.
- (2) Students eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously be awarded both.
- (3) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-01-19-.05(7) shall not be eligible for a General Assembly Merit Scholarship supplemental award under T.C.A. § 49-4-916.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-916, 49-4-917, 49-4-924, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19- through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-1-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed December 19, 2014; effective March 19, 2015.

1640-01-19-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall meet the requirements of T.C.A. § 49-4-920.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity

(Rule 1640-01-19-.06, continued)

rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.09 ELIGIBILITY – TENNESSEE HOPE FOSTER CHILD GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for the Tennessee HOPE Foster Child Grant a student shall meet the requirements of T.C.A. § 49-4-933.
- (2) The Tennessee HOPE Foster Child Tuition Grant shall be the cost of attendance less any gift aid, with the total HOPE Foster Child Tuition Grant amount not to exceed the cost of tuition and mandatory fees at the eligible postsecondary institution attended. Additionally, at an eligible independent postsecondary institution, the Tennessee HOPE Foster Child Tuition Grant shall not exceed the statewide average public tuition and mandatory fee rate for the type of institution (two-year or four-year) attended.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.10 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Wilder-Naifeh Technical Skills Grant a student shall meet the requirement of T.C.A. § 49-1-921.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-921, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.11 ELIGIBILITY – DUAL ENROLLMENT GRANT.

- (1) To be eligible for a Dual Enrollment Grant a student shall meet the requirements of T.C.A. § 49-4-930.
- (2) The student must have completed all of the academic requirements of the 10th grade (high school sophomore) and be classified as an 11th grader (high school junior) or 12th grader (high school senior) by the student's high school or home school program.
- (3) The student must not have already received a high school diploma or GED or HiSET diploma.
- (4) A student's participation in the Dual Enrollment Grant program is limited to the remaining

amount of time normally required to complete the high school diploma, from the time of initial participation in the program. The grant is available for the regular fall and spring semester, and for summer semesters prior to graduation from high school for those students who did not exceed the maximum award during the regular school year.

- (5) The Related to the dual enrollment grant award for high-need courses and programs outlined in the GIVE Act as codified in T.C.A. § 49-4-930:
- (a) The TSAC Board of Directors shall annually determine the high-need courses or programs for the subsequent academic year based on a recommendation by TSAC staff using available information as outlined in T.C.A. § 49-4-930;
 - (b) TSAC staff shall disseminate the list of high-need programs to eligible postsecondary institutions as soon as practicable upon approval by the TSAC Board; and
 - (c) An eligible postsecondary institution shall be paid the maintenance fee on behalf of a student for courses taken in a high-need program. A general education course is not considered a high-need course even if the course is listed in the high-need program of study.

- ~~(4)~~(6) Any deduction to a student's HOPE Scholarship as a result of taking additional Dual Enrollment Grant courses provided for under T.C.A. § 49-4-930 shall be applied in full against the amount of the student's HOPE Scholarship in the first semester of enrollment at an eligible postsecondary institution.

If the student's HOPE award in the first semester is less than the amount of the total deduction, then the remaining deduction amount will be applied against the second semester, and subsequent semesters if necessary, until the deduction is eliminated.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.12 RETENTION OF AWARDS – GENERAL REQUIREMENTS.

- (1) To retain a TELS award authorized by this chapter, a student, including a non-traditional student, at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA pursuant to Rule 1640-01-19-.03 for the applicable award for each academic year.
- (2) Eligibility for the HOPE Scholarship shall be reviewed in accordance with T.C.A. § 49-4-911.
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-01-19-.20 and 1640-01-19-.21, a student may receive a Tennessee HOPE Scholarship until a terminating event as described in T.C.A. § 49-4-913 occurs.
- (4) The attempted credit hour includes remedial and developmental studies and all regular college credit courses attempted after high school graduation.
- (5) A student who meets all other requirements for fourth or fifth year eligibility except that the

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student is classified at the professional level rather than as an undergraduate, and has not met a terminating event in accordance with T.C.A. § 49-4-913, is eligible if the student was accepted into the professional level program of study that is an extension of the student's bachelor's degree program.

- (6) If a student ceases to be eligible for any TELS award, except the General Assembly Merit Scholarship, due to failure to achieve the required cumulative grade point average, the student may regain the applicable award or awards by:
 - (a) Continuing to meet all applicable non-academic requirements for the applicable award or awards;
 - (b) Maintaining continuous enrollment at an eligible postsecondary institution without the applicable award or awards;
 - (c) Attaining grade point average requirements as described in T.C.A. § 49-4-911 at the end of any semester in which eligibility would have been reviewed, had the student not lost the award or awards; and
 - (d) Reapplying for the scholarship as provided in Rule 1640-01-19-.03.
- (7) No retroactive awards shall be made for semester hours attempted in order to regain the scholarship.
- (8) A student can utilize the option outlined in paragraph (6) of this rule only one time. A student who, after regaining the award or awards pursuant to paragraph (6) of this rule, subsequently fails to retain any TELS award due to failure to achieve the cumulative grade point average at a regular credit hour checkpoint shall not be eligible to regain the TELS award or become eligible for another TELS award.
- (9) Except as provided by Rule 1640-01-19-.20 or 1640-01-19-.21, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010. Repeal and new rule filed December 19, 2014; effective March 19, 2015.

1640-01-19-.13 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT.

- (1) In addition to the general requirements for retention of award in Rule 1640-01-19-.12:
 - (a) A Tennessee HOPE Access Grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A student who is eligible for a Tennessee HOPE Scholarship shall be ineligible for a Tennessee HOPE Access Grant.

(Rule 1640-01-19-.12, continued)

- (b) If a student receiving a Tennessee HOPE Access Grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student shall be eligible for a Tennessee HOPE Scholarship. The student will also receive the ASPIRE award referenced in Rule 1640-01-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed the amount described in T.C.A. § 49-4-915(a)(2).
- (c) If a student ceases to be eligible due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student may be eligible to regain the HOPE Scholarship by following the procedure outlined in Rule 1640-01-19-.12(6).
- (d) A student may receive a Tennessee HOPE Scholarship after having received a Tennessee HOPE Access Grant until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-913, 49-4-915, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.14 RETENTION OF AWARDS – DUAL ENROLLMENT GRANT.

- (1) To be eligible for a Dual Enrollment Grant the student must meet the minimum requirements pursuant to T.C.A. § 49-4-930.
- (2) The Dual Enrollment cumulative grade point average used to determine eligibility for a renewal of a Dual Enrollment Grant must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all dual enrollment credit hours attempted under this rule.
- (3) Distance education courses and independent studies courses are eligible for payment with a Dual Enrollment Grant and shall be included in the calculation of the postsecondary cumulative grade point average for continued eligibility of the Dual Enrollment Grant.
- (4) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a Dual Enrollment Grant.
- (5) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a Dual Enrollment Grant, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the award may be adjusted in the current award year.
- (6) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for award payment for distance education courses.
- (7) The grant will pay only for lower division (courses numbered 100-200 or 1000-2000) postsecondary credit for general education courses and courses in the disciplines. The grant will not pay for upper division courses (numbered 300-400 or 3000-4000).

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective

(Rule 1640-01-19-.13, continued)

through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 19, 2014; effective March 19, 2015.

1640-01-19-.15 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS.

- (1) On or before June 30 of each year, all eligible high schools shall submit the name, social security number, grade point averages, and highest composite ACT/SAT score on any single test date, for academically eligible students, cumulative through the eighth semester. Students who graduate from summer school shall have their information reported to TSAC on or before August 15 of each year.
- (2) Eligible postsecondary institutions that enroll students receiving scholarships or grants shall assist in providing and certifying student information necessary for administering, receiving, and evaluating such programs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.16 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD.

- (1) All students receiving a TELS award shall reapply for the award by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-01-19-.03 for each subsequent year.
 - (a) During the certification process, all eligible postsecondary institutions shall certify the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award at the end of the semester, as described in T.C.A. § 49-4-911(a).
 - (b) Notwithstanding the provisions of subparagraph (1)(a) above to the contrary, only those grades earned and credit hours attempted by a non-traditional student, while receiving the TELS award, shall count toward the benchmark requirements.
- (2) To remain eligible for the HOPE Scholarship, the student must meet the minimum requirements pursuant to T.C.A. § 49-4-911.
- (3) Students who reach a benchmark during the summer semester shall have their continuing eligibility determined based upon the cumulative grade point average and semester grade point average, if required, as of the end of the summer semester.
- (4) Students entering into the provisions of T.C.A. § 49-4-911(a)(2) may enter into these provisions as a part-time student. However, upon receiving the award based on the provisions of T.C.A. § 49-4-911(a)(2), the student must maintain continuous enrollment each semester.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-911, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18,

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2006. *Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.17 AWARD MADE IN ERROR.

- (1) If a student receives a TELS award and it is later determined that the award or some portion of the award was made in error, the student or the postsecondary institution may be required to repay the amount awarded in error.
- (2) If TSAC determines that the error was through no fault of the student, the student will not be required to repay the amount of the payment made in error.
- (3) Repayment from the student will be required if TSAC determines that fraud was committed or the error was through fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (4) Repayment from the postsecondary institution will be required if TSAC determines that the error was through the fault of the postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. *Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.18 REFUND POLICY.

- (1) If a recipient of a TELS award or a Dual Enrollment Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. *Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.*

1640-01-19-.19 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT.

- (1) Students enrolled in a full-time or part-time status, as of institutionally defined census date, may not convert to part-time or less than part-time status within the same semester and receive a scholarship award for the succeeding semesters unless the student requests and the institution approves the change to part-time or less than part-time status.

(Rule 1640-01-19-.17, continued)

- (2) An institution may allow a change from full-time to part-time or from part-time to less than part-time status within the same semester only when there are documented medical or personal grounds, in accordance with Rule 1640-01-19-.20.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time or from part-time to less than part-time status within the semester. In the event an institution denies a student's request to change enrollment status within a semester, the student may appeal the decision pursuant to Rule 1640-01-19-.28.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time or less than part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the charge back, which shall be noted on the student's record.
- (6) For the purposes of this rule, only courses that are included in the calculation of the grade point average pursuant to Rule 1640-01-19-.22 are to be considered in determining full-time status.
- (7) In the event the student is eligible for the HOPE Scholarship as defined in T.C.A. § 49-4-911(a), the student shall maintain continuous full-time enrollment on a semester-by-semester basis.

Authority: T.C.A. §§ 49-4-911, 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-911, 49-4-912, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendments filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.20 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment encouraged of students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which the student is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-01-19-.28.
- (2) Students granted a medical or personal leave of absence who resume their education at an

(Rule 1640-01-19-.19, continued)

eligible postsecondary institution shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed December 19, 2014; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.21 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS.

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.
- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- (3) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.
- (4) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.
- (5) Tennessee residents attending an out-of-state institution, otherwise eligible, shall not have their TELS award eligibility negatively impacted by military mobilization upon their return to the state as a transfer student attending an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendments filed November 20, 2007; effective March 28, 2008. Amendment filed December 19, 2014; effective March 19, 2015.

1640-01-19-.22 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE.

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation and calculated on an A through F grading scale, except as otherwise provided in this rule and as described in T.C.A. § 49-4-911. Unique grades associated with the failure of a class due to an unofficial withdrawal must also be included in calculations of attempted credits and grade point average.
 - (a) Notwithstanding the provisions of paragraph (1) above to the contrary, grades earned

(Rule 1640-01-19-.20, continued)

and credit hours attempted by a non-traditional student, in accordance with T.C.A. § 49-4-931, shall count toward the benchmark requirements.

- (2) All credit hours attempted at all postsecondary institutions the student has attended after graduating from high school and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Except as provided in subparagraph (a) of this paragraph, credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation.
 - (a) A student shall have a one-time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the overall number of attempted hours for determining HOPE Scholarship eligibility.
 - (b) It shall be the responsibility of the student to advise the appropriate official of the eligible postsecondary institution when this option is being exercised.
- (3) Grades received for courses attempted prior to high school graduation, completion of a home school program in Tennessee or GED or HiSET attainment, including those attempted with the Dual Enrollment Grant, do not count in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and in the attempted hours for determining HOPE Scholarship eligibility.
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award or included in the attempted hours for determining HOPE Scholarship eligibility.
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (9) A student who obtains a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his or her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded a TELS award retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over-award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, the student may appeal the decision in accordance with Rule 1640-01-19-.28.

(Rule 1640-01-19-.22, continued)

- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance education courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance education courses shall be made in the same manner as transient students as provided in Rule 1640-01-19-.24
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The semester hours shall be included in the postsecondary cumulative grade point average.
- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.
- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted, except as noted in Rules 1640-01-19-.21(2) and 1640-01-19-.21(4). The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
 - (a) If the student fails to retain eligibility for a TELS award as a result of the calculation of an incomplete, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, the student may appeal the decision in accordance with Rule 1640-01-19-.28.
 - (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.
- (14) Courses in which a student withdraws shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.
- (15) Courses in which a student takes a pass/fail course shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-911, 49-4-913, 49-4-919, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity

(Rule 1640-01-19-.22, continued)

rule filed November 20, 2007; effective through May 3, 2008. Amendments filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendment filed December 1, 2009; effective May 31, 2010. Amendments filed December 19, 2015; effective March 19, 2015. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.23 TRANSFER STUDENTS.

- (1) To be eligible for a Tennessee HOPE scholarship as a transfer student from a regionally accredited postsecondary institution located outside of Tennessee, a student shall meet the requirements of T.C.A. §49-4-929.
- (2) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a TCAT and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-902, 49-4-903, 49-4-910, 49-4-911, 49-4-924, 49-4-929, and 49-4-937. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendments filed October 31, 2018; effective January 29, 2019.

1640-01-19-.24 TRANSIENT STUDENTS.

- (1) A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions.
- (2) Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester, the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.
- (3) If the home institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.
- (4) If, through collaboration with the home institution, the host institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the host institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.
- (5) If the host institution chooses not to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.
- (6) If the eligible student is concurrently enrolled at the home institution and a host institution, then the home institution shall certify the student at the award amount of the home institution.

(Rule 1640-01-19-.23, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Repeal and new rule filed December 19, 2014; effective March 19, 2015.

1640-01-19-.25 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL.

- (1) A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-01-19-.05 may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons, in accordance with Rule 1640-01-19-.20. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to Rule 1640-01-19-.28

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Repeal and new rule filed December 19, 2014; effective March 19, 2015.

1640-01-19-.26 EXTENSION OF FIVE-YEAR TERMINATING EVENT DUE TO MEDICAL DISABILITY.

- (1) As outlined in T.C.A. § 49-4-913, a HOPE recipient who has a documented medical disability, as verified by a licensed physician, which requires the student to attend part-time, may petition TSAC to receive an extension to the five (5) year period. Such extension may not exceed ten (10) years from the student's date of initial enrollment at any postsecondary institution.
- (2) Documentation from the licensed physician must include a statement that affirms the student's medical disability and reason(s) the student must attend part-time. The extension will be granted one (1) year at a time and documentation must be provided to TSAC prior to the beginning of the academic term in which the part-time status is being applied for. The extension will be reviewed on an annual basis and a determination made of the student's eligibility for the extension.
- (3) A student with a medical disability whose five (5) year period has expired may appeal to TSAC to have the award reinstated, provided the student has maintained eligibility for the HOPE Scholarship. A student whose eligibility has expired may receive up to an additional five (5) years, or the number of years remaining that will equal ten (10) years from initial enrollment, whichever is less.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, 49-4-904, 49-4-905, and 49-4-913. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendments filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Repeal and new rule filed August 27, 2014; effective November 25, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.

1640-01-19-.27 WILDER-NAIFEH RECONNECT.

- (1) To be eligible for a Wilder-Naifeh Reconnect Grant, a student shall meet the requirements of T.C.A. § 49-4-923.
- (2) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.
- (3) Each TCAT shall be responsible for certifying to TSAC that the student has met all eligibility requirements. The TCAT will certify each student's eligibility for a financial award for the Wilder-Naifeh Reconnect Grant after gift aid has first been credited to the student's tuition and mandatory fees.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-923. **Administrative History:** Original rule filed December 19, 2014; effective March 19, 2015.

1640-01-19-.28 APPEAL AND EXCEPTION PROCESS.

- (1) ~~Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) which shall review student appeals for the loss of TELS eligibility, as set forth in T.C.A. § and these rules for the purposes of rendering a decision in order to deny or revoke an applicant's TELS award. Each eligible postsecondary institution shall establish written procedures for the submission of an appeal to the IRP following the denial or revocation of a TELS award an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures for submitting an appeal to the TSAC Appeals Panel (Appeals Panel) following a decision made by the IRP. to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate as a voting member in the appeal process for the same award. in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a meeting and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a meeting is required, the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven (7) calendar days after meeting to consider an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the IRP decision letter to the appellant as soon as practicable. If the IRP determines that an appeal shall be reviewed, a hearing shall be held no later than fourteen (14) calendar days after the appeal is properly filed. The IRP shall notify the appellant in writing of its decision no later than five (5) business days after ruling on the appeal. The notification shall include the date of the decision and pertinent facts and issues of the IRP's decision.~~
- (2) ~~The TELS Award Appeals Panel shall be appointed by TSAC's Executive Director for the purpose of meeting to consider appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with TSAC within forty-five (45) calendar days from the date of the IRP decision letter. A complete record of the institutional IRP ruling shall be provided to TSAC by the student. The Appeals Panel may award or reinstate the student's TELS award without a meeting. This decision shall be made no later than thirty (30) calendar days after an appeal is properly filed and the record from the IRP meeting is received. If the Appeals Panel~~

(Rule 1640-01-19-.27, continued)

~~determines that a meeting is required the Appeals Panel shall consider the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant prior to the expiration of the forty-five (45) day time period and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after ruling on an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal. The TSAC Appeals Panel shall be appointed by TSAC's Executive Director for the purpose of meeting to consider appeals from decisions rendered by the IRPs and appeals submitted directly to the Appeals Panel without first being submitted to an IRP.~~

(3) ~~A student may appeal directly the loss of a TELS award to TSAC without first appealing to the IRP under the following circumstances:~~

~~(a) Appealing the decision rendered by an IRP. Such appeals shall be properly submitted to the Appeals Panel within forty-five (45) calendar days from the date of the IRP decision letter and shall include the following information:~~

- ~~1. TSAC Appeal Form;~~
- ~~2. Written statement outlining the basis for the appeal;~~
- ~~3. Denial letter from the IRP;~~
- ~~4. Official college transcripts;~~
- ~~5. Proof of current enrollment; and~~
- ~~6. Any other documentation that supports the student's appeal; or~~

~~(b) Appealing directly to the Appeals Panel without first appealing to the IRP. Such appeals shall be properly submitted to the Appeals Panel within forty-five (45) calendar days from the date of notification from TSAC to the student regarding the requirements of the appeal. Appeals directly to TSAC shall include the same documentation outlined in subdivision (3)(a) and may be reviewed by the Appeals Panel under the following circumstances:~~

- ~~(a)1. Where the reason for circumstances leading to the loss of eligibility occurred at a regionally-accredited out-of-state postsecondary institution and the student is now prior to the student being enrolled, or attempting to enroll, in an eligible postsecondary institution;~~
- ~~(a)2. Where the circumstances leading to the loss of eligibility occurs occurred at one eligible postsecondary institution prior to the student transferring to another eligible postsecondary institution;~~
- ~~(c)3. Where a student has delayed postsecondary enrollment first enrolled beyond sixteen (16) months after high school graduation;~~
- ~~(d)4. Where a student withdraws from an eligible postsecondary institution while seeking eligibility as a non-traditional student;~~
- ~~(e)5. Where a student is enrolled part-time and is seeking an extension to the five-year terminating event due to a documented medical disability as certified by a licensed physician; or~~

(Rule 1640-01-19-.28, continued)

- (f) 6. At TSAC's discretion where the loss of eligibility was due to extraordinary circumstances.
- (4) ~~The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or TSAC. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or TSAC by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school or collegiate grade point average. A student who is unable to properly submit an appeal to the Appeals Panel prior to the forty-five (45) day deadline due to circumstances beyond his or her control, may request an extension of the forty-five (45) day deadline. Such a request shall be made in writing to the Appeals Panel prior to the expiration of the forty-five (45) day deadline and shall include an explanation of the circumstances requiring the extension. The appeal of a student who does not meet the forty-five (45) day deadline and does not timely request an extension shall be denied. A denial of an untimely appeal may be set aside by the Executive Director of TSAC only in extraordinary circumstances in the interest of fairness. In such cases, the Appeals Panel will consider the appeal on its merits.~~
- (5) The Appeals Panel shall consider each appeal no later than forty-five (45) calendar days after the appeal is properly submitted, unless an extension to the forty-five (45) day deadline is approved by the Appeals Panel. The Appeals Panel shall notify the appellant in writing of a decision no later than fourteen (14) calendar days after ruling on an appeal. The notification shall include a summary of the pertinent facts and issues leading to the decision and a copy of the notification shall be sent to the appellant's home institution. A decision of the Appeals Panel made on the merits of the appeal is the final administrative remedy available to the student.
- (5)(6) The authority of an IRP shall be strictly limited to consideration of appeals based on determinations of eligibility arising from its respective postsecondary institution. The authority of the Appeals Panel shall be strictly limited to consideration of appeals arising from an IRP or those made directly to TSAC, as authorized by these rules. Neither the IRP nor the Appeals Panel shall have the authority to rule on the validity of, or make exceptions to, high school grade point average, postsecondary grade point average, ACT or SAT scores, or any other academic eligibility requirements.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Original rule filed December 19, 2014; effective March 19, 2015.

* 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)
Governor Bill Lee, by Tony Nicknejad	X				
Dr. Claude Presnell	X				
Comptroller Justin Wilson, by Kristen Podesta	X				
State Treasurer David H. Lillard, Jr.	X				
Commissioner of Finance and Administration Stuart C. McWhorter, by Greg Turner	X				
Penny Schwinn	X				
University of Tennessee President Randy Boyd, by Heidi Leming	X				
Tennessee Board of Regents Chancellor Flora Tydings, by Dr. Linda Martin	X				
Cyrus Vatandoost	X				
John Smarrelli	X				
Tiffany Summer	X				
Tom Hughes	X				
Sharon Hayes	X				
Keri McInnis	X				
Sabrina Washington	X				
Charles Layne	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 01/09/2020 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:

11/18/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 01/08/2020

Date: 13 Jan 2020

Signature: M22

Name of Officer: Mike Krause

Title of Officer: Executive Director

Subscribed and sworn to before me on: 01-13-2020

Notary Public Signature: Corsina Dickson-Wiley

My commission expires on: 08-04-2020



Agency/Board/Commission: Tennessee Student Assistance Corporation

Rule Chapter Number(s): 11640-01-19

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
1/23/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/29/20

Effective on: 4/28/20

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

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

Attached hereto are the responses to public comments.

RECEIVED
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Commission on Fire Fighting Personnel Standards and Education

DIVISION: Commerce and Insurance

SUBJECT: Classifications for Full-Time and Volunteer Fire Fighters, Examinations, Miscellaneous Certification Standards, and Educational Incentive Pay

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-24-101 et seq. and 4-24-201 et seq.

EFFECTIVE DATES: April 21, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: An amendment to rule 0360-03-01-.14 adds the requirement that a candidate for Hazardous Materials Awareness Certification successfully complete a Commission-approved training course compliant with National Fire Protection Association (NFPA) 472 or NFPA 1072, as part of the prerequisites to obtain such certification. Similarly, an amendment to rule 0360-03-01-.15 also provides that a candidate for Hazardous Materials Operations Certification successfully complete a Commission-approved training course compliant with NFPA 472 or NFPA 1072. These Commission-approved training courses are developed to ensure that firefighters receive adequate training prior to taking the written and practical examinations for various levels of certification. Participation in the training courses has significantly increased the success rate in which firefighters have passed the written and practical examinations. These training courses are based upon NFPA recognized performance standards adopted by the Commission in Chapter 0360-06-01 Miscellaneous Certification Standards. Changes to rules 0360-03-01-.52 and 0360-03-01-.53 designate NFPA 1072 as one of the two acceptable performance standards for determining the qualifications and requirements of attaining certification as a Hazardous

Materials Technician or a Hazardous Materials Incident Commander.

An amendment to paragraph (13) of rule 0360-04-01-.06 adds the requirement that an applicant successfully pass a practical examination prior to attaining the Hazardous Materials Awareness Certification level, designates NFPA 472 or NFPA 1072 as the performance standards for this certification level, and allows the written examination for Hazardous Materials Awareness Certification to be administered separately or in conjunction with the written examination for Hazardous Materials Operations Certification. Amendment to paragraph (14) of rule 0360-04-01-.06 designates NFPA 472 or NFPA 1072 as the performance standards for this certification level and allows the written examination for Hazardous Materials Operations Certification to be administered separately or in conjunction with the written examination for Hazardous Materials Awareness Certification. Amendment to rule 0360-04-01.09(3)(c) adds language to the existing rule concerning facial hair to make it coherent.

Amendments for rule 0360-06-01-.01 Adoption by Reference include updating the edition of some of the currently adopted certification performance standards. Some of the performance standards for firefighters currently adopted are out of date since the publication of newer editions. The updated editions to be adopted have been verified with the NFPA and the Commission. The updated standards will ensure that persons participating in approved courses of study and those attending the Tennessee Fire and Codes Academy (TFACA) are better trained to fight fires and protect the public, and themselves, while in emergency situations.

Amendments to rule 0360-07-01-.06 Payment Procedures include formatting and editing changes to eliminate unnecessary repetition and redundancy of a rule. Rule 0360-07-01-.07 Waiver is amended to correct the citations in the rule to other rule sections which are currently cited incorrectly regarding filing deadlines for the Educational Incentive Pay Program. Other changes include clarifying that a waiver for failing to meet the filing deadlines (October 1 and March 1) for the Educational Incentive Pay Program shall not be granted in two (2) consecutive years "unless otherwise authorized by the Commission."

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.

Regulatory Flexibility Analysis:

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

It is anticipated that the rules will not overlap, duplicate or conflict with other federal, state or local governmental rules

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

The rules have been drafted to be clear, concise and unambiguous.

3. The establishment of flexible compliance and reporting requirements for small businesses.

The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.

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

The rules are not anticipated to establish unfriendly schedules or unreasonable deadlines for compliance and reporting requirements for small businesses.

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

The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.

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

The rules do not establish any performance or operational standards for small businesses.

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

These rules are not anticipated to create any unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:

It is anticipated that no small businesses will be affected by the promulgation of these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in the existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

It is anticipated that no small businesses will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

Since the rules will not impact small businesses, a less burdensome, intrusive or costly alternative method has not been identified or recommended for use.

5. Comparison with federal and state counterparts:

There are no federal counterparts to these rules.

6. Effect of possible exemption of small businesses:

There are no exemptions for small businesses to the requirements contained in the rules because the rules are not anticipated to impact 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules will 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;

An amendment to rule 0360-03-01-.14 adds the requirement that a candidate for Hazardous Materials Awareness Certification successfully complete a Commission-approved training course compliant with National Fire Protection Association ("NFPA") 472 or NFPA 1072, as part of the prerequisites to obtain such certification. Similarly, an amendment to rule 0360-03-01-.15 also provides that a candidate for Hazardous Materials Operations Certification successfully complete a Commission-approved training course compliant with NFPA 472 or NFPA 1072. These Commission-approved training courses are developed to ensure that firefighters receive adequate training prior to taking the written and practical examinations for various levels of certification. Participation in the training courses has significantly increased the success rate in which firefighters have passed the written and practical examinations. These training courses are based upon NFPA recognized performance standards adopted by the Commission in Chapter 0360-06-01 Miscellaneous Certification Standards. Changes to rules 0360-03-01-.52 and 0360-03-01-.53 designate NFPA 1072 as one of the two acceptable performance standards for determining the qualifications and requirements of attaining certification as a Hazardous Materials Technician or a Hazardous Materials Incident Commander.

An amendment to paragraph (13) of rule 0360-04-01-.06 adds the requirement that an applicant successfully pass a practical examination prior to attaining the Hazardous Materials Awareness Certification level, designates NFPA 472 or NFPA 1072 as the performance standards for this certification level, and allows the written examination for Hazardous Materials Awareness Certification to be administered separately or in conjunction with the written examination for Hazardous Materials Operations Certification. Amendment to paragraph (14) of rule 0360-04-01-.06 designates NFPA 472 or NFPA 1072 as the performance standards for this certification level and allows the written examination for Hazardous Materials Operations Certification to be administered separately or in conjunction with the written examination for Hazardous Materials Awareness Certification. Amendment to rule 0360-04-01.09(3)(c) adds language to the existing rule concerning facial hair to make it coherent.

Amendments for rule 0360-06-01-.01 Adoption by Reference include updating the edition of some of the currently adopted certification performance standards. Some of the performance standards for firefighters currently adopted are out of date since the publication of newer editions. The updated editions to be adopted have been verified with the NFPA and the Commission. The updated standards will ensure that persons participating in approved courses of study and those attending the Tennessee Fire and Codes Academy ("TFACA") are better trained to fight fires and protect the public, and themselves, while in emergency situations.

Amendments to rule 0360-07-01-.06 Payment Procedures include formatting and editing changes to eliminate unnecessary repetition and redundancy of a rule. Rule 0360-07-01-.07 Waiver is amended to correct the citations in the rule to other rule sections which are currently cited incorrectly regarding filing deadlines for the Educational Incentive Pay Program. Other changes include clarifying that a waiver for failing to meet the filing deadlines (October 1 and March 1) for the Educational Incentive Pay Program shall not be granted in two (2) consecutive years "unless otherwise authorized by the Commission."

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

These rules are promulgated pursuant to T.C.A. §§ 4-24-101 et seq. and 4-24-201 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;

These rules will likely impact those fire departments and the members of those fire departments which participate in the state's educational incentive pay program for fire fighters, and the paid and volunteer fire departments that participate in the commission's certification program.

- (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;

None. The department is unaware of any opinions of the attorney general and reporter or any judicial ruling that directly relates 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;

It is anticipated that these rules will have no impact on state and local government revenues or expenditures.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Anthony Grande, Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Anthony Grande, Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission.

- (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

Joseph Underwood (joseph.underwood@tn.gov), Chief Counsel for Fire Prevention and Law Enforcement, 500 James Robertson Parkway, Nashville, TN 37243, 615-741-3899; Anthony Grande (anthony.grande@tn.gov), Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission, 2161 Unionville/Deason Road, Bell Buckle, TN 37020, 931-294-4140.

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

All relevant and requested information has been included in this filing.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 01-10-20
Rule ID(s): 9294-9297
File Date: 1/22/20
Effective Date: 4/21/20

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 Commission on Fire Fighting Personnel Standards and Education
Division:	Department of Commerce and Insurance
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0360-03-01	Classifications for Full-Time and Volunteer Fire Fighters
Rule Number	Rule Title
0360-03-01-.14	Hazardous Materials Awareness Certification
0360-03-01-.15	Hazardous Materials Operations Certification
0360-03-01-.52	Hazardous Materials Technician
0360-03-01-.53	Hazardous Materials Incident Commander

Chapter Number	Chapter Title
0360-04-01	Examinations
Rule Number	Rule Title
0360-04-01-.06	Examination Form
0360-04-01-.09	Practical Examinations

Chapter Number	Chapter Title
0360-06-01	Miscellaneous Certification Standards
Rule Number	Rule Title
0360-06-01-.01	Adoption by Reference
Chapter Number	Chapter Title
0360-07-01	Educational Incentive Pay
Rule Number	Rule Title
0360-07-01-.06	Payment Procedures
0360-07-01-.07	Waiver

**RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION**

**CHAPTER 0360-03-01
CLASSIFICATIONS FOR FULL-TIME AND VOLUNTEER FIRE FIGHTERS**

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0360-03-01-.14 HAZARDOUS MATERIALS AWARENESS CERTIFICATION.

- (1) A candidate for Hazardous Materials Awareness Certification shall successfully complete all requirements of Hazardous Materials Awareness Certification as prescribed in Commission rules, regulations, and policies.
- (2) A candidate for Hazardous Materials Awareness Certification shall successfully complete a Commission-approved training course compliant with NFPA 472 or NFPA 1072.
- (43) A candidate for Hazardous Materials Awareness eCertification shall successfully pass the examination(s) for Hazardous Materials Awareness Certification as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History:** Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990.

Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments filed July 27, 2018; effective October 25, 2018.

0360-03-01-.15 HAZARDOUS MATERIALS OPERATIONS CERTIFICATION.

- (1) A candidate for Hazardous Materials Operations ~~e~~Certification shall successfully complete all of the requirements of Hazardous Materials Awareness ~~Certification~~ as prescribed in Commission rules, regulations, and policies ~~or complete the hazardous materials portion of a Commission-approved recruit training program in compliance with NFPA 472 and 1072.~~
- (2) A candidate for Hazardous Materials Operations ~~e~~Certification shall successfully pass the examination(s) for Hazardous Materials Operations Certification as promulgated by the Commission.
- (3) A candidate for Hazardous Materials Operations Certification shall successfully complete a Commission-approved training course compliant with NFPA 472 or NFPA 1072.
- (~~3~~4) This level may be taken at the same time as Hazardous Materials Awareness Certification. If the candidate does not successfully pass the examination for Hazardous Materials Awareness Certification, the examination for Hazardous Materials Operations Certification shall not be graded and shall be discarded. Both examinations must be challenged again.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History:** Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments filed July 27, 2018; effective October 25, 2018.

0360-03-01-.52 HAZARDOUS MATERIALS TECHNICIAN.

- (1) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Awareness Certification and Hazardous Materials Operations Certification as prescribed in NFPA 472 or NFPA 1072, and Commission rules, regulations and policies.
- (2) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Technician as prescribed in NFPA 472 or NFPA 1072, and Commission rules, regulations and policies.
- (3) A Hazardous Materials Technician shall successfully complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Technician as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History:** Original rule filed July 27, 2018; effective October 25, 2018.

0360-03-01-.53 HAZARDOUS MATERIALS INCIDENT COMMANDER.

- (1) A Hazardous Materials Incident Commander shall successfully complete all ~~of the~~ requirements for Hazardous Materials Technician as prescribed in NFPA 472 or NFPA 1072, and Commission rules, regulations and policies.
- (2) A Hazardous Materials Incident Commander shall successfully complete all ~~of the~~ requirements for Hazardous Materials Incident Commander as prescribed in NFPA 472 or NFPA 1072, ~~and NFPA 1561~~, and Commission rules, regulations and policies.
- (3) A Hazardous Materials Incident Commander shall complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Incident Commander as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History:** Original rule filed July 27, 2018; effective October 25, 2018.

**RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION**

**CHAPTER 0360-04-01
EXAMINATIONS**

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0360-04-01-.06 EXAMINATION FORM.

- (1) The examination for Fire Fighter I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Fighter I as adopted in standards in Chapter 0360-06-01.
- (a) The practical examination requirements for Fire Fighter I shall consist of all of the following:
1. A practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.
 2. A live fire practical shall be completed. One (1) of the following options shall be completed:
 - (i) Successful completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter I Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination"; or
 - (ii) Successful completion of the live fire objectives in NFPA 1001 for Fire Fighter I during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local department's training program. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination." The department shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission or staff member may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires shall be utilized for this option.
- (b) A live fire practical, as part of the Fire Fighter I performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after June 30, 2016. After June 30, 2016, a live fire practical, as part of the Fire Fighter I performance examination requirements, shall be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.
- (c) An applicant shall obtain a Fire Fighter I certification within thirty six (36) months of completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical shall be required in order to obtain a Fire Fighter I certification.

- (2) The examination for Fire Fighter II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Fighter II as adopted in standards in Chapter 0360-06-01.
- (a) The practical examination requirements for Fire Fighter II shall consist of all the following:
1. A practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.
 2. A live fire practical shall be completed. One (1) of the following options shall be completed:
 - (i) Successful completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination"; or
 - (ii) Successful completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local department's training program. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination." The department shall provide the Commission with a minimum of fourteen (14) working days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission or staff member may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires shall be utilized for this option.
- (b) A live fire practical, as part of the Fire Fighter II performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after June 30, 2016. After June 30, 2016, a live fire practical, as part of the Fire Fighter II performance examination requirements, shall be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.
- (c) An applicant shall obtain a Fire Fighter II certification within thirty six (36) months of successfully completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical shall be required in order to obtain a Fire Fighter II certification.
- (3) The examination for Fire Fighter I/II Combined shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Fighter I/II Combined as adopted in standards in Chapter 0360-06-01.
- (a) The practical examination requirements for Fire Fighter I/II Combined shall consist of all the following:
1. A practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.
 2. A live fire practical shall be completed. One (1) of the following options shall be completed:
 - (i) Completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or

Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination."

- (ii) Completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local department's training program. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination." The department shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires may be utilized for this option.
- (4) The examination for Fire Department Instructor I shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Department Instructor I as set forth in Chapter 0360-06-01.
- (a) Any applicant challenging the Fire Department Instructor I written examination shall complete the Fire Department Instructor I Practical Skills Checklist provided by the Commission. This practical is to be graded by an individual certified by the Tennessee Commission on Fire Fighting as either a Fire Department Instructor I or a Vocational and Higher Education Instructor. A completed copy of the checklist shall be attached to the "Application for Written Examination."
- (5) The examination for Fire Department Instructor II shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Department Instructor II as set forth in Chapter 0360-06-01.
- (a) The practical examination for the Fire Department Instructor II shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.
- (6) The examination for Fire Department Instructor I/II Combined shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Department Instructor I/II Combined as set forth in Chapter 0360-06-01.
- (a) The practical examination for the Fire Department Instructor I/II Combined shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.
- (7) The examination for Fire Department Instructor III shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Department Instructor III as set forth in Chapter 0360-06-01.
- (8) The examination for Fire Officer I shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Officer I as set forth in Chapter 0360-06-01.
- (a) The practical examination for Fire Officer I shall consist of completing projects which shall be administered by the Commission in conjunction with written examinations. The practical requirement shall be completion of two (2) projects assigned to the applicant at random which are derived from NFPA 1021. These projects will be graded by

designated Commission representatives.

- (9) The examination for Fire Officer II shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Officer II as set forth in Chapter 0360-06-01.
- (a) The practical examination for Fire Officer II shall consist of completing a project based on NFPA 1021 for Fire Officer II. The project may be obtained from the Commission. This project will be graded by the Commission.
- (10) The examination for Fire Officer I/II Combined shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Officer I/II Combined as set forth in Chapter 0360-06-01.
- (a) The practical examination for the Fire Officer I/II Combined shall consist of completing a project based on NFPA 1021 for Fire Officer II. The project may be obtained from the Commission. This project will be graded by the Commission.
- (11) The examination for Fire Officer III shall consist of a practical and a written examination. The subjects tested will be substantially derived from the performance standards for Fire Officer III as set forth in Chapter 0360-06-01.
- (a) The practical examination for the Fire Officer III shall consist of completing a project based on NFPA 1021 for Fire Officer III. The project may be obtained from the Commission. This project will be graded by the Commission.
- (12) The examination for Fire Officer IV shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Officer IV as set forth in Chapter 0360-06-01.
- (a) An applicant shall successfully complete the practical examination for Fire Officer IV as promulgated by the Commission utilizing the standards outlined in NFPA 1021, Chapter 7.
- (13) The examination for Hazardous Materials Awareness Certification shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Awareness as set forth in Chapter 0360-06-01.
- (a) The practical examination for Hazardous Materials Awareness Certification may be part of the Fire Fighter I practical or administered separately and shall be based upon NFPA 472 or NFPA 1072 for the appropriate level.
- (b) The written examination for Hazardous Materials Awareness Certification may be administered in conjunction with the Hazardous Materials Operations Certification written examination or may be administered separately.
- (14) The examination for Hazardous Materials Operations Certification shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Operations as set forth in Chapter 0360-06-01.
- (a) The practical examination for Hazardous Materials Operations Level Certification shall may be part of the Fire Fighter I practical or administered individually separately and shall be based upon NFPA 472 or NFPA 1072 for the appropriate level. — A minimum of one (1) evolution shall be selected from NFPA 472 Hazardous Materials Operations level.

- (b) The written examination for Hazardous Materials Operations level ~~will~~ Certification may be administered in conjunction with the Hazardous Materials Awareness written examination or may be administered individually separately.
- (15) The examination for Airport Firefighter shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Airport Firefighter as set forth in Chapter 0360-06-01.
- (a) The practical examination requirements for Airport Firefighter shall consist of all the following:
1. A practical administered on a regional basis. This practical shall be developed by the Commission based on the standards in NFPA 1003.
 2. A live fire practical shall be completed. One (1) of the following options shall be completed:
 - (i) Completion of a Federal Aviation Administration training course where, at minimum, all requirements of the Commission's Airport Live Fire Verification Sheet are accomplished; or
 - (ii) All of the exercises listed on the Airport Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local airport fire department's training program. An Airport Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination". The department shall provide the Commission with a minimum of seventy two (72) hours prior notification of live fire exercises, either by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires may be utilized for this option.
- (16) The examination for Wildland Firefighter I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter I as set forth in Chapter 0360-06-01.
- (a) The practical examination for Wildland Firefighter I shall consist of one (1) of the following:
1. Completion of a practical examination based upon NFPA 1051 which has been submitted to the Commission for approval; or
 2. Completion of the "Task Book for the Position of Firefighter Type 2" offered by the Tennessee Division of Forestry.
- (17) The examination for Wildland Firefighter II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter II as set forth in Chapter 0360-06-01.
- (a) The practical examination for Wildland Firefighter II shall consist of one (1) of the following:
1. Completion of a practical examination based upon NFPA 1051 which has been submitted to the Commission for approval; or
 2. Completion of the "Task Book for the Position of Advanced Firefighter/Squad Boss" offered by the Tennessee Division of Forestry.

- (18) The examination for Fire and Life Educator I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator I as set forth in Chapter 0360-06-01.
- (a) The practical examination for Fire and Life Safety Educator I shall consist of completing a project based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. The project may be obtained from the Commission.
- (19) The examination for Fire and Life Educator II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator II as set forth in Chapter 0360-06-01.
- (a) The practical examination for Fire and Life Safety Educator II shall consist of completing a project based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. The project may be obtained from the Commission.
- (20) The examination for Fire Safety Compliance Officer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer I as set forth in Chapter 0360-06-01.
- (a) The practical examination for personnel assigned to fire suppression shall consist of:
1. The applicant monitoring a minimum of eight (8) fire safety inspections conducted by a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing standards outlined in NFPA 101 and 1031. Two (2) fire safety inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted; or
 2. Becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.
- (21) The examination for Fire Safety Compliance Officer II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer II as set forth in Chapter 0360-06-01.
- (a) The practical examination for personnel assigned to fire suppression shall consist of:
1. The applicant conducting a minimum of eight (8) fire safety inspections under the supervision of a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing standards outlined in NFPA 101 and 1031. Two (2) inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted. The evaluator shall evaluate each inspection on a pass/fail basis determining whether the applicant conducted a thorough and complete inspection ensuring compliance with NFPA Standards and any applicable local ordinances. In order to complete successfully the practical examination, the applicant must ~~shall~~ receive a passing grade for each of the inspections on each of the four (4) occupancies; or
 2. Becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.
- (22) The examination for Fire Apparatus Operator shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Apparatus Operator as set forth in Chapter 0360-06-01.

- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1002, Chapters 4, 5, and 6. In order to challenge this level, the applicant shall perform the evolutions on both pumper and aerial apparatus equipment.
- (23) The examination for Pumper Driver/Operator shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Pumper Driver/Operator as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1002, Chapters 4 and 5.
- (24) The examination for Aerial Apparatus Driver/Operator shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Aerial Apparatus Driver/Operator as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1002, Chapters 4 and 6.
- (25) The examination for Safety Officer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Safety Officer as set forth in Chapter 0360-06-01.
- (a) The practical examination for Safety Officer shall be the completion of a written outline of the Safety Officer's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline shall qualify the applicant to take the written examination for Safety Officer.
- (26) The examination for Incident Safety Officer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Incident Safety Officer I as set forth in Chapter 0360-06-01.
- (a) The practical examination for Incident Safety Officer I shall be the completion of a written project of the Incident Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This project will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this project shall qualify the applicant to take the written examination for Incident Safety Officer I.
- (27) The examination for Health and Safety Officer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Health and Safety Officer I as set forth in Chapter 0360-06-01.
- (a) The practical examination for Health and Safety Officer I shall be the completion of a written outline of the Health and Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline shall qualify the applicant to take the written examination for Health and Safety Officer I.

- (28) The examination for Rope Rescuer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Rope Rescuer I as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 4 and 5.
- (29) The examination for Rope Rescuer II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Rope Rescuer II as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 6.
- (30) The examination for Confined Space Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Confined Space Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 7.
- (31) The examination for Trench Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Trench Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 8.
- (32) The examination for Structural Collapse Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Structural Collapse Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 9.
- (33) The examination for Vehicle Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Vehicle Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 10.
- (34) The examination for Surface Water Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Surface Water Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 11.
- (35) The examination for Swiftwater Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Swiftwater Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 12.

- (36) The examination for Dive Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Dive Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 13.
- (37) The examination for Ice Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Ice Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 14.
- (38) The examination for Surf Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Surf Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 15.
- (39) The examination for Wilderness Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wilderness Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 16.
- (40) The examination for Mine and Tunnel Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Mine and Tunnel Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 17.
- (41) The examination for Cave Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Cave Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 18.
- (42) The examination for Machinery Rescuer shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Machinery Rescuer as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1006, Chapters 5 and 19.
- (43) The examination for Exterior Industrial Fire Brigade Member shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Exterior Industrial Fire Brigade Member as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1081, Chapters 4 and 6.

- (44) The examination for Interior Structural Fire Brigade Member shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Interior Structural Fire Brigade Member as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1081, Chapters 4 and 7.
- (45) The examination for Fire Inspector I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector I as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031, Chapter 4.
- (46) The examination for Fire Investigator I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Investigator I as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1033.
- (47) The examination for Hazardous Materials Technician shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Technician as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 472 or NFPA 1072.
- (48) The examination for Hazardous Materials Incident Commander shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Incident Commander as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 472 or NFPA 1072.
- (49) The examination for Fire Inspector II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector II as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.
- (50) The examination for Fire Inspector III shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector III as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.
- (51) The examination for Plans Reviewer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Plans Reviewer I as set forth in Chapter 0360-06-01.
- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.
- (52) The examination for Plans Reviewer II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Plans Reviewer II as set forth in Chapter 0360-06-01.

- (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.
- (53) The examination for Fire Marshal shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Marshal as set forth in Chapter 0360-06-01.
 - (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1037.
- (54) The examination for Aircraft Rescue Firefighting (ARFF) Driver/Operator shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Aircraft Rescue Firefighting (ARFF) Driver/Operator as set forth in Chapter 0360-06-01.
 - (a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1002, Chapters 4 and 9.

Authority: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110. **Administrative History:** Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed October 5, 2010; effective March 31, 2011. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments filed June 3, 2016; effective September 1, 2016. Amendments filed July 27, 2018; effective October 25, 2018.

0360-04-01-.09 PRACTICAL EXAMINATIONS.

- (1) One department may administer a practical examination to another participating department and/or may enroll students from another department in an approved Recruit Training Program provided the following conditions are met:
 - (a) The administering department's practical examination and/or Recruit Training Program have been approved by the Commission;
 - (b) Both departments have agreed to allow the applicant(s) to utilize the administering department's practical examination; and
 - (c) Proof of successful completion of the practical examination is sent to the applicant's department and placed on file.
- (2) The application for a practical examination shall be submitted by the department of which the applicant is a member and the examination results will be forwarded to that department.
- (3) (a) For practical or live burn practical examinations, compliance with 29 CFR 1910.134, Respiratory Protection Standard, is required. An applicant is required to have been SCBA fit tested for within twelve (12) months of the examination and a SCBA Fit Testing Verification form is to be completed. Appropriate documentation shall include:
 - 1. The signature of the Fire Chief from the applicant's sponsoring department; and
 - 2. Documentation from an authorized fit-testing entity.
- (b) No one shall be allowed to participate in the practical or live burn practical examination in which a SCBA is used unless their fit testing is documented.

- (c) Applicants for Tennessee State Fire Commission Certification in Fire Fighter I or II practical or live burn practicals, who have beards or facial hair in the area of the SCBA face piece seal (examples may include, but not be limited to: full-face beards, muttonchops, goatees, sideburns, mustaches, or even a few days growth of stubble) shall not be allowed to participate in the skillspractical exam; if the facial hair between the wearer's skin and the sealing surfaces of the face piece will prevents a good seal with the respirator. A fire fighter shall not enter an area in which it has been determined that respiratory protection is necessary when conditions prevent a good seal of the respirator face piece to the face. This provision shall be enforced regardless of the live fire skills being tested at any site. No exceptions to this provision shall be granted. This provision is in conjunction with 29 CFR 1910.134 Respiratory Protection Standard.
- (d) Ordinary eyeglasses shall not be used with full face piece respirators. Eye glasses with temple bars or straps that pass between the sealing surface of a full face piece and the fire fighter's face will prevent a good seal. Special spectacle kits can be ordered and mounted inside a full face piece respirator.
- (4) (a) For Regional Practical Examinations, a department shall furnish a minimum of one (1) evaluator for every two (2) applicants that the department submits for examination. If a department submits less than two (<2) applicants, that department will not be required to provide an evaluator but is strongly encouraged to do so.
- (b) Evaluators shall be certified by the Commission at a minimum of Fire Fighter II level (Fire Fighter III for 1987 NFPA Standard or earlier) and are encouraged to be certified at the Fire Department Instructor I level.
- (c) Evaluators shall successfully complete a Commission-approved examination before being allowed to serve as an Evaluator. The Evaluator training and examination may be available online over the Internet.
- (5) Regional Practical Examination Site Requirements. The department hosting a regional practical examination shall meet the following conditions:
 - (a) Have adequate space to conduct the practical examinations;
 - (b) Be able to provide all equipment required for the examination, excluding the equipment each applicant shall provide in accordance with Commission rules;
 - (c) A member of the host department shall have attended a regional practical examination before hosting one within the department;
 - (d) Provide a minimum of three (3) evaluators who are certified by the Commission at a minimum of Fire Fighter II level (Fire Fighter III for 1987 NFPA Standard or earlier) and are encouraged to be certified at the Fire Department Instructor I level;
 - (e) The proposed examination site was inspected by the Commission representative in order to ensure it meets the requirements of the program; and
 - (f) Provide for their fire fighters and for practical examinations equipment which has been inspected and meets all applicable NFPA safety standards.
- (6) A host department for a practical examination shall provide the Commission representative on the day of the practical examination a letter addressed to the Commission and signed by the Fire Chief or Training Chief certifying that all equipment used in the practical examination meets all applicable NFPA, OSHA and other applicable standards for safety and required inspections. Included in the letter shall be a certification statement that all equipment that is

required to be tested according to said standard (e.g., ladders, hose, pumps, SCBA, etc.) has been tested according to the standard. Failure to provide this letter shall result in the cancellation of the practical examination for that day.

- (7) All instructors, evaluators, and approved applicants who participate in a live fire practical shall meet the requirements of Chapter 4, Section 4.3, Student Prerequisites, of the latest adopted edition of NFPA 1403. Written documentation of completion of this training shall be kept on file by the department and shall be subject to audit by the Commission. All requirements listed in the Live Fire Training Requirements Book shall be completed.
- (8) Practical skill sheets shall be available to all applicants through the Commission website.
- (9) Practical examination sites shall have adequate space to safely hold the examination. The site shall have an isolated holding area for the applicants waiting to take the examination and a separate area for applicants who have completed the examination. The Commission representative shall ensure that the site meets these requirements prior to the start of the examination.
- (10) Guidelines for Practical and Live Burn Practical Examinations:
 - (a) No fee shall be charged by the Commission for these examinations.
 - (b) Practical regional examination sites will be established in each Commission representative's territory, on an as needed basis, to meet the needs of the fire departments within their territories.
 - (c) Live Fire Practical examination sites will be established by the Commission representatives in conjunction with a department's ability to host these types of practical examinations which shall be NFPA 1403 compliant.
 - (d) Applicants may travel out of their region to take examinations at other sites.
 - (e) The Commission representative is to conduct a training seminar for evaluators prior to each practical examination to ensure the evaluators understand examination procedures, grading procedures, performance criteria, and instructions on completing required paperwork. The Commission will provide the Commission representative with documents to be utilized during this training. Any evaluator who fails to attend this training will not be allowed to serve as an evaluator.
 - (f) Applications to challenge the practical examination shall be submitted to the Commission a minimum of two (2) weeks prior to the examination date. A minimum of ten (10) applicants shall be scheduled in order to conduct the practical examinations; a maximum of fifty (50) applicants may be tested per day. The Commission or Commission's designee may waive this requirement if justification exists.
 - (g) An applicant who fails any evolution shall be notified immediately of his/her failure and will be allowed to leave the practical immediately.
 - (h) Copies of the entire practical examination will be provided to all departments. A copy may also be requested by individuals from the Commission Office either by e-mail or US mail.
 - (i) Applicants who complete the examination shall remain at the host facility until the end of the day to assist in cleaning and restoring the host facility to original condition prior to receiving test results. Leaving early will result in automatic failure unless the applicant is given permission to leave by the Commission representative.

- (j) Applicants who have completed their practical examination shall remain separate from those waiting to challenge the examination.
- (k) Applicants waiting to challenge the practical examination shall be secluded from the actual practical. Under no circumstances shall an applicant waiting to challenge the practical examination be allowed to see the practicals being administered or be in contact with any individual who has completed the practical.
- (l) The applicant or the applicant's sponsoring department shall provide at least one (1) SCBA and mask; and each applicant shall bring a mask which has been fit tested to them.
- (m) The applicant or the applicant's sponsoring department shall inspect each applicant's equipment to ensure it meets current additions of applicable safety standards. These standards include:
 - 1. NFPA 1981;
 - 2. NFPA 1971;
 - 3. NFPA 1976;
 - 4. NFPA 1977; and
 - 5. NFPA 1982.
- (n) Each applicant shall bring his/her own personal protective equipment (e.g., helmet, turnout gear, gloves, and coat) including SCBA.
- (o) The host department shall provide the equipment to be used for testing (e.g., ladders, hose, etc.).
- (p) The applicant shall assume liability in case of injury. A statement to this effect is included on the application which shall be signed by the applicant.
- (q) The Commission will solicit individuals who are Fire Fighter II or Fire Instructor I certified or individuals deemed by the Commission to be subject matter experts in the area of firefighting and are interested in serving as evaluators. Individuals shall submit their names and qualifications. This list of names will be maintained by the Commission office which will rotate through the names for each examination. Individuals may add their names at any time.
- (r) An applicant shall perform the practical skills examinations as required for each class of certification. An applicant may not refuse to perform a practical skills examination even if his/her department does not have the equipment specified to perform that practical skill.
- (s) The Commission representative shall have the authority to adopt these guidelines to address specific life safety problems as they arise.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History:** Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments filed July 27, 2018; effective October 25, 2018.

**RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION**

**CHAPTER 0360-06-01
MISCELLANEOUS CERTIFICATION STANDARDS**

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0360-06-01-.01 ADOPTION BY REFERENCE.

- (1) The Commission adopts by reference the following National Fire Protection Association (NFPA) Standards in their entirety as performance standards unless otherwise provided herein:
- (a) 472 Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2013 Edition;
 - (b) 1001 Standard for Fire Fighter Professional Qualifications, 2013⁹ Edition;
 - (c) 1002 Standard for Fire Apparatus Driver/Operator Professional Qualifications, 2017 Edition;
 - (d) 1003 Standard for Airport Fire Fighter Professional Qualifications, 2015⁹ Edition;
 - (e) 1005 Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2014⁹ Edition;
 - (f) 1006 Standard for Technical Rescuer Professional Qualifications, 2013 Edition;
 - (g) 1021 Standard for Fire Officer Professional Qualifications, 2014 Edition;
 - (h) 1031 Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2014 Edition;
 - (i) 1033 Standard for Professional Qualifications for Fire Investigator, 2014 Edition;
 - (j) 1035 Standard for Professional Qualifications for Fire and Life Safety Educator, Public Information Officer, and Juvenile Firesetter Intervention, 2015 Edition;
 - (k) 1037 Standard on Fire Marshal Professional Qualifications, 2016 Edition;
 - (l) 1041 Standard for Fire Service Instructor Professional Qualifications, 2012⁹ Edition;
 - (m) 1051 Standard for Wildland Fire Fighter Professional Qualifications, 2016 Edition;
 - (n) 1072 Standard for Hazardous Materials/Weapons of Mass Destruction Emergency Response Personnel Professional Qualifications, 2017 Edition;
 - (o) 1081 Standard for Industrial Fire Brigade Member Professional Qualifications, 2012⁸ Edition;

- (p) 1403 Standard on Live Fire Training Evolutions, 2018 Edition;
- (q) 1500 Standard on Fire Department Occupational Safety and Health Program, 2013 Edition; and,
- (r) 1521 Standard for Fire Department Safety Officer, 2015 Edition.

Authority: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110. **Administrative History:** Original rule filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments and new rules filed June 3, 2016; effective September 1, 2016. Amendments filed July 27, 2018; effective October 25, 2018.

**RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION**

**CHAPTER 0360-07-01
EDUCATIONAL INCENTIVE PAY**

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0360-07-01-.06 PAYMENT PROCEDURES.

- (1) The Commission shall disburse to eligible units of government the Educational Incentive Pay awarded to fire fighters who have established eligibility for such under the provisions of the Commission's rules and regulations. The disbursement of these funds shall be subject to all of the following conditions:
 - (a) The Educational Incentive Pay shall be based on the availability of funds appropriated by the General Assembly.
 - (b) Payment will be made only upon request by the unit of government and upon submission of the necessary documentation by the administrative officer of the eligible department.
 - 1. Proof of the successful completion of a Commission-approved training program, by submission of a copy of the following forms by March 1 of the calendar year:
 - (i) Educational Incentive Pay Request;
 - (ii) In-Service Training Report;
 - (iii) Notarized Statement of Fire Chief attesting to accuracy and completeness of the information; and
 - (iv) Training Substitution Forms for previous year.
 - 2. Payment shall be made in a lump sum directly to the governmental entity handling salary accounts for the eligible departments.
 - (c) No payment shall be made after the end of the fiscal year, June 30, unless such payment is authorized by the departments of commerce and insurance and finance and administration.

- (d) It shall be the responsibility of the unit of government to disburse the funds to the individual fire fighters after the deduction of the applicable taxes.
- (e) The unit of government shall be responsible for any increase in the employer's contribution to social security or like programs necessitated by the increase in the employee's annual base earnings.
- (f) Members of the Fire Service shall not be eligible for supplement pay from more than one (1) agency.
- (g) Effective August 31, 2018, information and training programs required by the Commission shall be received at the Commission office by October 1 of the preceding calendar year in which training is to be taught. Failure to provide all information by the required date may result in a rejection for supplemental pay.
- (h) Departments submitting a certified list of eligible names of fire fighters who have qualified themselves for the forty (40) hour in-service training, Educational Incentive Pay, shall also certify to the Commission that each qualifying individual is a member of the department whose name was on the department payroll as of December 31, of the calendar year in which training was received.

If a qualifying individual is separated from the fire service for any of the following reasons, after becoming qualified, they will be considered as having met the December 31 employment requirements if they:

1. Become eligible and accept a service retirement and begin drawing retirement benefits;
2. Become eligible and accept a disability retirement; or
3. Die while employed.

- (i) All requests for supplemental pay shall be submitted to the Commission office by certified mail and postmarked no later than March 1 of each calendar year.

~~1. The Commission shall not grant a waiver of this date for two (2) consecutive years.~~

21. A department shall have fifteen (15) calendar days from the date it receives notice that a correction is required to their request for Educational Incentive Pay to make the necessary correction and return the request to the Commission.

32. Departments may submit additions to their requests for supplemental pay for up to sixty (60) days from the date Educational Incentive Pay checks were mailed to departments if not later than June 30. Payment of these additions is contingent upon availability of funds.

Authority: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-202. **Administrative History:** Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015. Amendments filed July 27, 2018; effective October 25, 2018.

0360-07-01-.07 WAIVER.

- _____(1) The Commission shall only consider requests to waive the following rules and regulations:
- (a) The waiting periods between certifications in rules 0360-02-02 and 0360-03-01;
 - (b) The deadline for submission of training programs for approval in rule 0360-07-01-.05(4); and
 - (c) The deadline for submitting requests for supplemental pay in rule 0360-07-01-.06(91)(i).
- (2) When considering whether good cause has been shown to grant a waiver pursuant to this rule, the Commission may consider, but is not limited to, the following:
- (a) Hardships on departments through time, staffing, budget or facilities limitations;
 - (b) Unavailability of qualified instructors or test proctors due to financial, staffing or time constraints;
 - (c) Inclement weather, natural disasters, etc.; and
 - (d) Illness, injury or disability of training officer that causes the department to miss the submission deadlines in rule 0360-07-01-.05(4) and ~~(9)~~ or 0360-07-01-.06(1)(i).
- (3) A waiver shall not be granted in two (2) consecutive years unless otherwise authorized by the Commission.
- (4) A request for a waiver shall be submitted in writing to the Commission.

Authority: T.C.A. §§ 4-24-101 and 4-24-107. **Administrative History:** Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Amendment filed October 5, 2010; effective March 31, 2011. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015. Amendments filed July 27, 2018; effective October 25, 2018.

* 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)
Brian Biggs	X				
Tommy Kelly	X				
Richard (Darryl) Kerley	X				
Jay Moore	X				
Stephanie Specht	X				
David Windrow				X	
Toran Hedgepath				X	
Michael Henry	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 08/22/2019 (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: 9/23/2019

Signature: [Signature]

Name of Officer: Joseph Underwood

Title of Officer: Chief Counsel for Fire Prevention and Law Enforcement



Subscribed and sworn to before me on: Sept. 23, 2019

Notary Public Signature: [Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: Firefighting Personnel Standards + Education

Rule Chapter Number(s): 0360-03-01, 0360-04-01, 0360-06-01, 0360-07-01

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

[Signature]
Herbert H. Slattery III

Attorney General and Reporter

11/4/2019
Date

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Filed with the Department of State on: 1/22/20

Effective on: 4/21/20

[Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control Board

SUBJECT: Administrative Fee Schedule

STATUTORY AUTHORITY: Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA"), to administer a Title V major source operating permit program ("Title V program") to collect "an annual fee or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]".

To comply with this requirement, the Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality Act.

EFFECTIVE DATES: April 14, 2020 through June 30, 2021

FISCAL IMPACT: This rulemaking will result in increased revenues of approximately \$1.16 million.

STAFF RULE ABSTRACT: These rulemaking hearing rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish

a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees. For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules.

Public Hearing Comments

Comment: A commenter requested information regarding four specific items pertaining to Visible Emissions Evaluation Course ("Smoke School") Fees.

1. How the proposed increased costs compare to offerings in the private sector.
2. Why the Board has chosen to move away from a dual fee structure (in which out-of-state applicants pay a higher fee than Tennessee applicants) to a uniform fee structure.
3. Why the Division, unlike previous years, has decided not to provide training in East Tennessee in 2020.
4. The number of individuals the Division has trained, certified or recertified in the past years and where the people are from in the state of Tennessee.

Response:

1. The proposed rates for Smoke School will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest provider (Aeromet).
2. Due to the increase of private company offerings of Smoke Schools in surrounding states, the Division does not receive the amount of out-of-state participants that it has in the past. Tennessee is the only state that the Division is aware of that still uses the dual fee structure. Eliminating the dual fee structure will reduce confusion and tracking costs and align Tennessee's structure with other providers in this area.
3. The Division does have schools at Roane State Community College in East Tennessee currently scheduled through the 2021 season and has no plans to discontinue these schools in the future.
4. The Division certifies approximately 150 people, which includes approximately 30 Division staff, every six months at six Smoke Schools per year. Individuals attend from every part of the state at each school.

Comment: A commenter noted that the language of subparagraph 1200-03-26-.02(1)(a), which contains the description of the purpose of 1200-03-26-.02, is changed from "to establish construction fees, annual emission fees, and permit review fees" to simply "to establish fees". The commenter claimed that this change grants the Division the broad authority to create new fees beyond these categories.

Response: The existing minimum and base fees are not technically emission fees, although the minimum fees are related to emissions. This change merely aligns the wording of the rule to the existing contents and streamlines the wording. The Board, not the Division, has the sole authority to promulgate rules, and any changes must always go through public participation procedures before being taken to the Board for approval or denial.

Comment: Throughout the proposal, the term "annual emissions fee" is replaced with the term "annual fee". A commenter asserted that changing this term in a wholesale manner is too broad and that moving away from this terminology will cause confusion. The commenter stated that "until such time that the department proposes a fee collection method that does not rely on the amount of allowable or actual emissions, the term 'annual emissions fee' should be retained."

Response: The existing Title V minimum and base fees are not technically emission fees. This change merely aligns the wording of the rule to agree with the existing structure to increase transparency and cause less confusion.

Comment: A commenter requested an explanation of the variation in the fee payment schedule for Cotton Gin Operations. In particular, the commenter inquired as to why they pay at the end of the year while other entities have a rotating schedule based on county location.

Response: Cotton gins are seasonal operations and many are not staffed year-round. Because of this, the Division found it difficult to ensure delivery of fee invoices, and many companies failed to pay fees in a timely manner, resulting in the assessment of penalties and interest pursuant to 1200-03-26-

.02(8) as provided below. The State of Tennessee's Department of Finance and Administration reports the current rate of interest is 10% annually.

If any part of any fee imposed under this Rule 1200-03-26-.02 not paid within fifteen (15) days of the due date, a late payment penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly.

The change being proposed improves customer service to these facilities that may not be in operation during the month in which their invoice would arrive.

- Comment: A commenter proposed that the Division survey those facilities that pay only the minimum fee to determine if they would qualify as a "small business stationary source" under Section 507(c) of the Clean Air Act (using only subparts (A) and (B) of that definition). The commenter suggested that if there are a meaningful number of facilities that are truly small businesses then it would be reasonable to retain their minimum fee level at \$7,500 for those sources. Another commenter also proposed that a special rate could be established for a small business if small business could be defined.
- Response: The Division currently does not require facilities to identify themselves as small businesses and does not have the means to identify small businesses on its own. Therefore, the Board does not currently have the information necessary to implement the proposals or to investigate any potential revenue impact that would occur from such a provision. This proposal was not brought up or developed during any of the previous Title V fee stakeholder or listening sessions; therefore, the Board will evaluate this proposal in future rulemakings.
- Comment: A commenter supported retaining the current alternative minimum fee of \$5500 for "once in always in sources".
- Response: The Board appreciates the commenter's support for retaining the current alternative minimum fee of \$5500 for "once in always in sources". However, this alternative minimum fee may soon become obsolete as the result of US EPA's January 25, 2018, guidance memorandum withdrawing the "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act and EPA's July 26, 2019, proposed rule "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act".
- Comment: A number of commenters supported increasing the base fee from \$4000 to \$5000. Two of these commenters also supported increasing the minimum fee from the current rate of \$7500 to \$9000.
- Response: The Board appreciates the support of the proposed base fee and minimum fee.
- Comment: A commenter stated that it would be appropriate for the Board to provide a justification for the \$9000 minimum fee.
- Response: During the 2016 stakeholder process, TDEC's Policy Office conducted an analysis of the estimated cost of implementing the Title V program for several facilities of different levels of emissions. The average annual cost of implementing the Title V program for the two lowest emitting sources ranged from \$5,189.37 to \$29,065.87 depending largely on how certain costs (e.g., administrative, Small Business Environmental Assistance Program, regulatory and guidance development, ambient monitoring, and training) were allocated among Title V facilities. The proposed \$9000 minimum fee falls within that range.
- Comment: A commenter objected to the proposed budget for multiple years (2020-2022) without annual evaluation after a fee increase. In addition, a number of commenters requested that the proposed rule should be modified to reflect adjustments to the Title V emission fees for FY2021 only. In support of this request, a commenter stated that annual discussions of the of the Division's

budgetary needs, including production of the annual Title V Workload Analysis, are an effective and appropriate part of the Board's oversight of the Division. This commenter noted that the significant reduction in emissions in recent years has proved challenging to the Title V fee revision process and that the commenter does not foresee this trend of emission reductions reversing course, requiring continued examination of the Division's expenses to keep costs growing beyond reasonable funding levels. This comment was supported by another commenter. A third commenter noted that the Department recently presented a budget request for fiscal year 2020-2021 before Governor Lee and the Title V fee rule, therefore, should only establish a fee for one year. Another commenter asserted that the current board should establish a fee rate for fiscal year 2020-2021 and future boards should set the rates for future years.

Response: Based on these comments, the Board will remove the proposed fee increase for fiscal year 2021-2022 from the rule. The Board agrees that the significant reduction in emissions in recent years and the challenge that this reduction has created regarding Title V fees will require continued examination of the revenue and expenses necessary to maintain a properly funded Title V program. However, the Board understands that the Division has no reason to expect the same level of dramatic reductions that have occurred in the last 5-10 years to continue into the future at comparable levels. The Board expects that the Division will evaluate the need for a fee increase and will present that evaluation to the Board each year, in accordance with provisions of 1200-03-26-.02(9)(d). At a minimum, this evaluation will examine the impact of inflationary costs, such as increased costs of rent, employee benefits, and pay for performance salary increases as required under the TEAM Act. Based on the reduced fiscal year 2020-2021 fees discussed elsewhere in this response to comments document, the analysis for fiscal year 2021-2022 will also need to include an evaluation of any fee increase necessary to ensure that the Title V program is fully funded and maintains an adequate Title V fee reserve.

Comment: A commenter encouraged TDEC to reconsider its proposal and see if a more reasonable increase could sustain the Title V program in Tennessee. Several commenters asserted that an increase in fees exceeding 20% (or 20.6%) annually could not be supported. One commenter provided the following table comparing the proposed fee increase for fiscal year 2020-2021 and a 20% (20.6%) increase.

Fee Rates	Status quo	Proposed in Rule		Chamber's upper limit	
	2019 current	FY2021 proposal	% increase	if 20% increase	% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$40.20	20%
NEGU Actual	\$53.50	\$69.50	29.9%	\$64.20	20%
EGU Allowable	\$47.00	\$61.00	29.8%	\$57.00	20%
EGU Actual	\$75.00	\$97.50	30.0%	\$90.00	20%
with current base & min fee	\$5,656,986	\$7,050,443	24.6%	\$6,590,389	16.5%
& adjust Base & Min. Fee	n/a	\$7,278,333	28.7%	\$6,819,868	20.6%
new funds collected		\$1,621,347		\$1,162,882	

Response: Based on comments received, the Division recommended two separate proposals for the Board to consider, both of which were lower than the noticed proposal. One proposal was the 20.6% fee increase recommended by the commenters. The second proposal was an approximate 25% increase illustrated in the table below that was recommended by the department. However, it is important to note that both proposals would result in Title V fee revenue below the estimates of the Title V fee program expenses and would result in a significant reduction or complete depletion of the Title V fee reserve. The Board adopted the 20.6% proposal. As a result, the Board expects that the Division will evaluate the need for a fee increase each year in the future and the analysis for fiscal year 2021-2022 will also include an evaluation of any fee increase necessary to fully fund the Title V program and rebuild a reserve.

The commenters' proposal results in estimated Title V fee collections of \$6,819,868. This is \$990,971 less than the projected Title V expenses for fiscal year 2020-2021 and would likely deplete the Title V reserve (estimated to be \$1,000,000 at the beginning of fiscal year 2020-2021). While not significant, the commenters' proposal also deviates from the Division's historical practice that dollar per ton rates are rounded to the nearest 50 cents and deviates slightly from the actual-to-allowable ratio of 1.6 to 1 and EGU to non-EGU ratio of 1.4 to 1, which has consistently received approval from both stakeholders and the Board.

The department recommended option is an approximate 25% increase as indicated below.

	Status quo	Proposed in Rule		Division's Recommended Option	
Fee Rates	2019 current	FY2021 proposal	% increase		% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$42.00	25.4%
NEGU Actual	\$53.50	\$69.50	29.9%	\$67.00	25.2%
EGU Allowable	\$47.00	\$61.00	29.8%	\$59.00	25.5%
EGU Actual	\$75.00	\$97.50	30.0%	\$94.00	25.3%
with adjust Base & Min.	n/a	\$7,278,333	28.7%	\$7,066,366	24.9%
new funds collected		\$1,621,347		\$1,409,398	

Comment: Several commenters noted that the staffing size of the Division could be reduced in order to reduce the amount of revenue needed to administer the Title V program. One commenter pointed to the significant reduction in emissions since enactment of the Clean Air Act amendments of 1990 resulting from substantial capital improvements and cleaner fuel sources. The commenter predicted continued improvements will occur in industry's efforts to reduce emissions, placing additional downward pressures on revenue in the years ahead and, quoting Commissioner Salyers regarding the air quality in Tennessee, suggested that the Division be redesigned to focus on maintenance of standards rather than a regulatory regime.

Another commenter suggested that that the level of effort required by TDEC to provide governance and oversight to the Title V program, while not directly proportional, should at least mirror the direction of the state emissions profile.

Response: The Board agrees that air quality in Tennessee has significantly improved since 1990, as evidenced in the Commissioner's statement. However, an equally important aspect of the Clean Air Act is that the positive improvements in air quality must be maintained through a responsible regulatory program. The status of attainment under the Clean Air Act, in and of itself, does not provide opportunity for the Board or the Division to relax implementation of regulatory requirements. Nor does the status of attainment, in and of itself, remove critical regulatory program elements such as the issuance of permits, performing full compliance evaluations, conducting ambient air quality monitoring and responding to citizen complaints. In fact, it is because of the Board's and the Division's efforts to ensure compliance with applicable regulatory requirements, with the support of our Title V industry partners, that the state of Tennessee is able to enjoy the cleanest air since the dawn of the industrial era today and hopefully well into the future.

The regulatory requirements that make up the Title V program are mandated by federal regulation and statute. The requirements for facilities to obtain Title V permits, what those permits must contain, and the process for issuing and amending those permits are all specified in federal Part 70 regulations. Even though there have been significant emission reductions from Title V facilities (billable tons have dropped from 287,382 in 2004 to 113,135 tons in 2019), the number of Title V facilities is basically the same as it was ten years ago (221 in fiscal year 2009-2010 and 220 in the current fiscal year 2019-2020). Many Title V facilities are subject to federal NESHAP, NSPS, section 111(d), and section 129 standards and federal regulations require the Division to incorporate these standards and appropriate compliance methods into Title V permits. The

Division is also required to enforce provisions of its federally approved State Implementation Plan and incorporate those requirements into Title V permits. Major new source review requirements, which require both permitting and modeling staff, are required by federal PSD and Nonattainment NSR regulations. The requirements for enforcing Title V permits, including inspections, report reviews, source testing, enforcement actions, and reporting when violations are discovered, are all established by federal regulations or guidelines. Engaging the public through public process requirements and responding to complaints is also a critical aspect of Title V program requirements. Emission inventory and Title V regulatory and SIP development are all required by or driven by federal regulations. The requirement to operate and maintain an ambient monitoring program is done in accordance with Part 58 regulations and a large compendium of federal guidance documents. Part 70 regulations require the Department's Small Business Environmental Assistance Program to be funded by Title V fees. Federal Part 70 regulations require that these costs, as well as the general administrative costs of running the Title V permit program, be funded using Title V fees. Many of these activities can easily be attributed to individual Title V facilities and must be charged to Title V funds. A few of these activities, such as ambient monitoring, may or may not be specifically linked to specific Title V sources, but are collectively measuring the level of air pollution in the ambient air from all sources of air pollution within specific distances from the monitors, including air emission from Title V sources. The Division has begun the process of evaluating various approaches for determining what portion of the ambient monitoring should be funded by Title V fees. The Division has also begun an evaluation of the Title V inspection frequency to see if changes can be made while still ensuring that the current compliance rate for Title V facilities is not eroded. In summary, each of the activities that comprise Tennessee's Title V program today are required by federal regulations and cannot be simply eliminated or diminished in a way that would impact the adequacy of Tennessee's operation of the Title V program.

While some Title V facilities have not had to deal with changing air quality requirements for a significant amount of time and may be able to move towards a "maintenance of standards" mindset, that is not the case with all Title V facilities in the state and is not the case for the Board or the Division. Recent work in transition from a geographic-based permitting organization to a sector-based organization identified 73 separate industry categories (sectors) in Tennessee subject to 109 different federal regulations. The Division's staff is responsible for having a working knowledge of and staying up to date with the state and federal regulations that apply to each sector. Based on information contained on EPA's Residual Risk/Technology Rules website, EPA has promulgated 40 new or revised standards in the past 10 years, 20 more have been signed but not yet published in the Federal Register, and 35 more are scheduled to be reviewed and potentially revised within the next two years. This trend is expected to continue as EPA proposes and promulgates residual risk standards as required under the federal Clean Air Act. In addition, the Board and Division are tasked by federal regulation to develop several new air quality plans and revisions over the next few years including Regional Haze (due June 2021), the Affordable Clean Energy rule (due July 2022), and a 111(d) plan for existing Municipal Waste Landfills that was due in August 2019. Additionally, the Division is responsible for addressing the one remaining nonattainment area in Kingsport, Tennessee.

In addition to these specific regulatory changes, the Clean Air Act requires U.S. EPA to review federal ambient air quality standards every five years and revise them if necessary. Revision of federal air quality standards often leads to additional regulatory and permitting burdens for Title V facilities and additional responsibilities for the Division. Changes to federal air quality standards may also change or increase ambient air monitoring requirements for the Division. In September 2019, EPA issued a Policy Assessment for review of the PM standard and in October 2019, EPA issued a similar document for the ozone standard. Either or both of these could lead to tighter standards in the near future that may impact the workload of the Division. The Division and the Department have also spent a considerable amount of time addressing ozone transport challenges from other states by responding to EPA petitions or participating in matters as they proceed through the court system. Much of this work is specific to Title V facilities in the state and, while not mandated by federal law, is beneficial to Tennessee and the facilities at issue.

While the Board and the Division cannot change the requirements of the Title V program, they can and have undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work

product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. It is the intention of the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. However, providing staff the tools to do the best job they can does come at a cost.

Some examples are:

- Development of an on-line system (known as SLEIS) for facilities to submit emissions inventory reports, permit fee AEAR reports, and compliance reports;
- Recent changes to air quality rules that will allow sources that are subject to federal standards to be considered insignificant activities for Title V purposes once those federal rules have been adopted into Tennessee's rules;
- Changes to Tennessee's construction permitting process (which were identified and developed through a LEAN process that included industry stakeholders) that should benefit Title V as well as non-Title V facilities;
- Reorganization to sector-based permitting that will provide for consistency and improve efficiency across industry sectors;
- Automation of non-Title V and semi-automation of Title V invoicing; and
- Modernization of the ambient monitoring network to reduce required staff travel time and make critical ambient data available anywhere in the state.

Many of these changes have already or will soon be implemented, while others will take longer to come to fruition.

The Division's Field Services Program has recently implemented and will continue to develop changes to improve the efficiency of its operations. Each Field Office has its own region with its own assigned counties. In the past, each Field Office was responsible only for its region. The Division has shifted workload between the Field Offices in order to use its resources more efficiently and effectively. This has allowed the Division to shift work, such as Title V inspections and report reviews, from one Field Office to another when needed, thereby spreading the workload more evenly and maximizing use of our resources. Previously, the program combined periodic Field Services meetings with the Smoke School training. The Division has reevaluated how it accomplished this training to ensure that we are using its resources effectively. The Division added an East Tennessee VEE school, which required only day travel for staff. All Field Services meetings and ambient monitor training are now conducted by WebEx, and the Division is currently developing self-instructional training courses. As a result of these adjustments, the program has eliminated almost all overnight travel, resulting in substantial savings of both time and money.

The department is currently reviewing the Alternate Workplace Solutions (AWS), a program which allows staff members to work from home in lieu of traditional offices. Programs within the Division have participated in AWS since 2017 and more will implement AWS in 2020. When fully implemented, AWS will allow the Division to substantially reduce office space needs, while increasing efficiency and maintaining workload productivity. The Division will continue to work with the department on the implementation of AWS.

As expectations for ready access to information and transparency have increased with the advent of mobile technology, the Division has met those expectations through its publicly available dataviewer and by maintaining its website pages. The Division has also improved response times for requests for information by digitizing all paper files across the state. The database (known as Smog Log) that maintains that information is now the backbone for the Division and is used daily in our permitting, inspection, and administrative work, and also for federally mandated reporting, invoicing, reports to the Board and the Tennessee General Assembly. The support and maintenance of this system is critical to the daily functionality of the Division.

In order to meet the requirements of a 100 percent digital work space, the Division had to transition from a historical clerical based administration group to a professional administrative services group. Becoming more sophisticated has required reclassification of clerical positions to

professional administrative services positions. A large portion of this group operate as data entry and administration specialists by receiving and entering applications, reports, and modifications; updating official information; and reviewing and uploading other documents to the database. Others continue to provide a face and voice to the citizens and regulated community by staffing a front desk and providing phone coverage for the Division, but now also spend considerable time using its website and the Internet to provide information to the public. In this regard, they work to ensure the Division's website and the Board's website are updated and include accurate information. Finally, they continue to manage Division personnel activities, time and activity, training, assistance with travel and expense reimbursements, required public participation processes for the Division, facilities and supplies support, procurement support, and Board administrative support. EPA requires Title V reporting semiannually that is conducted by the administrative staff by running queries of the database. In modernizing and moving to a digital work environment, the Division has eliminated seven administrative positions since 1993. As a whole, the Division has less staff than it has had since the very early days of the Title V program. The Board understands that the Division is committed to operating a program that is right sized for the needs of Tennessee and will continue to evaluate and implement opportunities for further efficiency gains in 2020.

Comment: Two commenters provided two specific suggestions of efficiencies that should be utilized by the Division. An additional commenter supported these suggestions generally but for future budgets. Another commenter mentioned the first suggestion in its comments.

1. One commenter noted that the Title V Workload Analysis is based on annual Title V inspection frequencies when EPA guidance allows for bi-annual inspections. The commenter asserted that Title V is a self-reporting and compliance certification based program and that sources should not be paying for inspections beyond the EPA recommendation. Another commenter requested the Division examine whether annual inspections are necessary or whether a less frequent and more focused approach would be more effective. One commenter estimated that cutting the number of inspections in half would move 3.19 FTEs from Title V to non-Title V. This commenter estimated that this change would also move 1.49 FTEs related to the Field Services program's program management and meetings to non-Title V, resulting in a total of 4.7 FTEs being moved from Title V to non-Title V activities. Another commenter also suggested shifting certain positions. Two of these commenters also asserted that it appears that the Title V program has been charged for Conditional Major source inspections.
2. Commenters questioned ambient monitoring expenditures. One commenter questioned the assumption in the Workload Analysis that 42% of the ambient air program should be borne by Title V and 38% by non-Title V (the remainder is funded by an EPA grant). This commenter pointed out that TDEC's ambient air monitoring network plan shows only four source oriented monitors versus about 20 population-oriented monitors. Another commenter proposed that the five source-oriented monitors be assigned to Title V and the remaining 19 be assigned to non-Title V. This commenter estimated that this would shift 3.4 FTEs from Title V to non-Title V funding. Another commenter requested the Division determine more accurately the relative burden of ambient monitoring expenditures that should be borne by Title V Sources.

Response:

1. The Division follows the Federal Fiscal year (October 1st to September 30th) for its inspection cycle. The Division's current inspection frequency began on October 1, 2019, and each Field Office manager developed his or her annual Field Office workload plan. The Division has operated the Title V program in Tennessee for over twenty years and has had a fairly consistent approach to conducting inspections during that operation. The suggestion for a change to the Title V inspection frequency was made during the second listening session held with stakeholders, but had not been previously discussed or suggested by stakeholders in the previous three years of stakeholder engagement regarding Title V fees. Following the September listening session, the Division began evaluating data related to compliance for Title V facilities in Tennessee and what impact a revision of the inspection frequency for Title V facilities may have on compliance. The Board understands that the Division is committed to conducting a full evaluation that assesses whether and how a program change involving a less frequent on-site facility inspection could be designed and implemented to accomplish

some level of Title V workload relief, but would also ensure compliance levels within the Title V program are not unnecessarily diminished. Once completed, this evaluation and any associated recommendations will be presented to the Board for feedback and direction before any changes to inspection frequency are implemented. Based on the data and information assessed to date, the Board understands that the Division anticipates that there may be an increase in High Priority Violations (HPVs) should inspection frequencies be reduced. (HPVs are a subset of violations that receive additional scrutiny by U.S. EPA to ensure that enforcement agencies respond to them in a timely and appropriate manner.) Reduced inspection frequencies may also result in a longer duration of non-compliance at a facility. The Board understands that the Division does agree that Title V regulations and permits do require self-reporting (generally semi-annually) and annual compliance certifications. However, the Division states that these requirements have not necessarily resulted in lower compliance rates when compared to facilities that are not subject to Title V requirements. The Division has compiled data regarding Title V, conditional major (CM), and true minor (TM) source inspections from 2008 through 2019. This data shows that Title V sources have a higher rate of non-compliance than non-Title V sources.

Inspection Period*	Title V	Title V Non-Compliance Rate	CM	CM Non-Compliance Rate	TM	TM Non-Compliance Rate
2008-2009	258	9%	385	10%	209	8%
2009-2010	247	9%	373	9%	234	14%
2010-2011	245	18%	370	11%	308	17%
2011-2012	230	20%	369	12%	254	15%
2012-2013	209	15%	358	12%	325	18%
2013-2014	206	24%	349	18%	501	19%
2014-2015	213	17%	339	15%	324	23%
2015-2016	237	17%	324	12%	226	25%
2016-2017	234	19%	329	10%	216	18%
2017-2018	231	26%	327	12%	438	6%
2018-2019	227	13%	343	8%	321	3%
Total	2537	427- 17%	3866	410 - 11%	3356	497 - 15%

*Inspection period is October 1 through September 30.

The Board also understands that the Division anticipates that an adjustment to the Title V facility's inspection frequency would not result in a 50% decrease in workload hours worked to determine compliance associated with Title V sources as the commenter suggests. According to the EPA's October 4, 2016 memo, a Full Compliance Evaluation (FCE) should be conducted at a minimum of once every two Federal fiscal years at all Title V major sources, except those classified as mega-sites. An on-site inspection is only one part of a FCE; it also includes the review of all required reports¹, visible emission observation (as needed), a review of facility records and operating logs, an assessment of process parameters, an assessment of control equipment performance parameters, and (if applicable or deemed appropriate) a stack test. The Division currently has eight facilities that are classified as mega-sites. Seven of these facilities are inspected on a three year cycle, and one is currently inspected on a two year cycle. A three year cycle is one in which the inspectors will inspect one-third of the emission sources at these facilities each year until a FCE is completed within the three year cycle.

Each Title V facility is required to submit semi-annual reports and annual compliance certifications to the Division. The Division is required to review these reports in a timely manner and to enter the data into EPA's database (ICIS-Air) within sixty days of receipt. Inspectors must review the reports and enter the data in a timely manner in order to meet

¹ Reports include- continuous emission monitoring, continuous parameter monitoring, malfunction, excess emission, semi-annual, annual compliance certification, periodic monitoring reports, and any other reports required by the permit.

federal requirements; therefore, workload associated with a facility's full compliance evaluation will occur on an annual basis regardless of the frequency of the facility inspection.

The Division receives complaints regarding Title V facilities. When the Division receives a complaint about a permitted facility, the inspectors conduct an on-site inspection to ensure that the facility is complying with its permit conditions. If a complaint is received regarding a Title V facility, the Division will complete an on-site inspection in order to verify compliance with the permit conditions and be responsive to the complainant regardless of the frequency of the facility inspections.

Inspection Period	Title V complaints
2008-2009	47
2009-2010	75
2010-2011	34
2011-2012	13
2012-2013	13
2013-2014	18
2014-2015	18
2015-2016	24
2016-2017	27
2017-2018	26
2018-2019	32

Since the Field Services Program's program management and meetings workload is due to a variety of activities, the Board understands that the Division cannot at this time determine how many, if any FTEs associated with these tasks would be moved from Title V to non-Title V, but the Division will include this in its assessment.

The Board understands that the Division has confirmed that all time associated with conditional major facilities is charged as non-Title V time. A facility may initially be classified as a Title V source until it is issued a permit that includes conditions that limit its emissions to below major source thresholds (i.e., a conditional major permit). While the facility is still classified as a Title V source, activities related to that facility will be charged to Title V. There are currently three facilities in Tennessee that fit into this category. Once a conditional major permit is issued, the facility will be reclassified as a conditional major source and activity will be charged to non-Title V.

2. The Division currently operates 28 ambient air quality monitors within the state located at 24 different monitoring sites. The various monitoring sites are classified as maximum concentration, background, population weighted emission index (PWEI), transport, population oriented, and source oriented in accordance with federal regulations. The cost of operating and maintaining an ambient monitoring network is an eligible Title V cost under both state (1200-03-06-.02(1)(c)5) and federal regulations (40 CFR 70.9(b)(iv)(v)). Five of Tennessee's sites are classified as source oriented or maximum concentration. The cost of operating these source oriented and maximum concentration monitors are charged to Title V or non-Title V, based on the type of source they are located near (four are near a single Title V source and the fifth near a now-closed non-Title V facility).

The monitors that are not source oriented or maximum concentration measure air pollution emitted from or formed from emissions from a wide variety of sources, including Title V facilities. Since it is impossible to determine where the air pollution measured at the non-source oriented monitors originated, permitting authorities have the discretion to determine what portion of ambient monitoring costs should be charged to Title V fees.

The Board does not agree with the comments suggesting the costs associated with all non-source oriented monitors should be charged to non-Title V. The commenters provide no basis for this suggestion, but the suggestion assumes that emissions from Title V facilities

have nothing to do with the requirements or necessity for those monitors. The population associated monitors that measure ozone and particulate matter are sited following federal requirements and guidance. The monitor siting objective is to place the monitor where there is likely to be the most amount of people exposed to air pollution coming from any source, including Title V facilities. For ozone, EPA regulations and guidance advise to locate monitors within about 30 miles from where the ozone precursor emissions of NOx and VOCs may originate, although it is readily acknowledged that the area of influence for ozone is likely much larger. Within Tennessee, there are about 99 Title V facilities located within a 30 miles radius of the ozone monitors. Additionally, mechanisms under the Clean Air Act like the Good Neighbor Provision and EPA's historic NOx SIP call rule that was aimed at reducing impacts to ozone levels in neighboring states provide ready evidence that large Title V facilities can have an impact on air quality a large distance from the actual facility. The reach of particulate matter pollution is longer and can occur within up to 400 miles from the source; therefore, Tennessee's Title V sources with particulate matter and particulate matter precursor emissions may impact many of Tennessee's particulate monitors as may sources from other states. Finally, the calculations made by the commenter suggesting shifting cost from Title V to non-Title V included some incorrect assumptions regarding the monitoring program. First, one of the five source-oriented monitors is a lead monitor in Bristol which is near a now-closed non-Title V site and is therefore charged to non-Title V not Title V. Second, the commenter included a vacant position in the calculations that the Division has no current plans to fill.

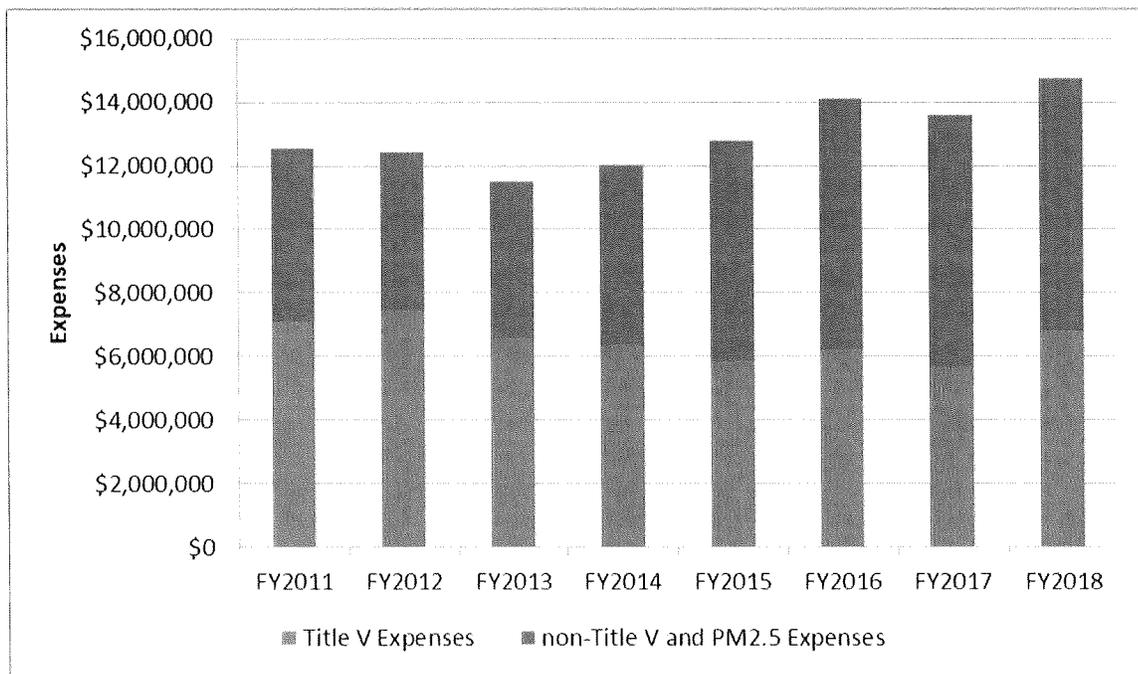
Since fiscal year 2017-2018, the Division has charged the costs of operating and maintaining its ambient monitoring network (excluding source oriented and maximum concentration monitors) using a "default ratio" of 52% Title V/48% non-Title V. The Division also receives approximately \$210,000 per year from an EPA section 103 PM_{2.5} grant that is used to fund a portion of the fine particulate monitoring network. When considering the amounts charged to Title V and non-Title V for source-oriented monitors, the amount charged to the PM_{2.5} grant, and the amount charged to the default ratio, the portion of the total ambient monitoring cost covered by Title V fees is approximately 42%. Since initiating this approach in 2017, the approach has been discussed and has received general support during stakeholder meetings and from the Board. The Division agrees that there are likely other evidence based approaches for charging ambient monitoring costs, but until such alternatives have been fully developed and vetted with stakeholders and the Board, the Board believes it is appropriate to retain the current approach. The Board understands that the Division is committed to conducting an analysis and providing the Board a proposed allocation between Title V and non-Title V for the costs of the monitoring program that has some connection to the state's relative emissions profile or other factors that influence the need for the monitors.

Comment: A commenter encouraged department leadership to examine expenses currently assigned as Title V activities that may not serve the purpose of the Title V program. The commenter presented data indicating that the average Title V expenses from fiscal year 2009-2010 through fiscal year 2017-2018 averaged \$6.7 million dollars per year compared to the projected fiscal year 2020-2021 Title V expenses of \$7,810,839. The commenter also referred to the Division's September 11, 2019, presentation to the Board that projects Title V expenses reaching \$9,784,927 in fiscal year 2025-2026.

Response: The Board understands that the Division reviews expenses charged to all funding sources, including Title V, on at least a monthly basis. Those reviews are conducted on a routine basis by the Division's Business Administrator and the managers of each program within the Division to ensure that they are legitimate Division expenses and have been charged to the proper funding source. When an incorrect charge is found, the Business Administrator corrects the error and, when necessary, initiates process changes to prevent similar errors in the future. This process allows the department and the Division to ensure that activities charged to Title V are eligible costs for the program under federal and state law.

As indicated in the draft fiscal year 2020-2021 Title V Workload Analysis, previous workload analyses, and during numerous stakeholder and Board meetings, the Division made changes to how employee time and other expenses are entered into the Department's time and expense management system to ensure that expenses are charged to the proper funding sources.

Therefore, the levels of Title V expenses prior to fiscal year 2017-2018 are not representative of the actual cost of running Tennessee's Title V program. As can be seen from the following graph, the Division's total expenses have increased steadily since fiscal year 2012-2013 (FY2013). (Expenses in FY2016 were somewhat elevated due to increased equipment purchases that were funded by a significantly higher EPA grant that year and expenses in FY2017 were slightly reduced due to a large number of positions held vacant pending a reorganization of the Division and the completion of fee rules that would adequately fund both the non-Title V and Title V programs. There was also a significant reduction between FY2012 and FY2013 due to a reduction in the amount of indirect expenses for the Department and the Bureau of Environment that were charged to the Division.) However, even though total Division expenses increased from FY2013 through FY2017, Title V expenses dropped. This is due to the fact that expenses were intentionally shifted from Title V to non-Title V because of 1) an anticipated decline in Title V fees due to reduced emissions, and 2) a misperception that the Division had surplus funds available in its non-Title V fee reserve. (It was later discovered that a significant amount of non-Title V expenses were being charged to Title V. This was corrected and the expenses were reallocated in 2016. These expenses are properly allocated in the figure below as well as in Table 15 of the Title V Workload Analysis.) Projected FY2021 expenses were developed using best available information as explained in the draft FY2021 Title V workload analysis. If the actual FY2021 Title V expenses were to be estimated by simply increasing FY2018 Title V expenses by the actual rate of increase for the past several years of 4.6%, one would arrive at an estimate very close to projected FY2021 Title V expense amount specified in the draft FY2021 Title V Workload Analysis of \$7,810,839



Comment: General and Administrative Expenses

One commenter described its comments as being with respect to a portion of the Title V expenses labeled "TDEC General & Administrative Expenses" in the Workload Analysis prepared by the Division of Air Pollution Control (the "Division"), which the commenter described as the basis for the proposed increase in Title V fees in these proposed rules. The commenter stated that the workload analysis lists a series of expenses, without amounts, and then states that "G&A (General & Administrative) expenses are charged to the Division according to formulae based on the percentage of the Division's budget in proportion to that of other BOE division budgets and special reserve funds and the Division's headcount. The Division's G&A expenses are charged to Title V funds, non-Title V funds, and federal grant revenue."

The commenter had concerns that the amount of G&A charged to the Title V program may be greater than is reasonable. The commenter stated that it has repeatedly in this budgeting process, and in prior years, asked for the specific formulae used to allocate G&A expenses among the various divisions in the Department, and further allocate the Division's allocated portions to the Title V and non-Title V programs. The commenter further stated that while the commenter had been advised as described in this quoted language that it is based on the percentages of budgets, reserve funds and headcount, the Chamber has not been provided any specifics on this. The commenter requested that it be provided with these formulae, and also requested that the specifics of how these formulae are applied in the allocations among the divisions and within the Division between Title V and non-Title V programs, including the dollar amounts of these allocations.

A commenter noted that in the department's comments during its budget hearing with the Governor's office the week of November 4, the Commissioner stated that approximately \$24 million, or about 6% of the Department's budget, was for department-wide support services. The G&A expenses allocated to the Title V program have consistently been over twice this percentage of the Title V program budget, other than the two years when the G&A expense was not allocated to the Title V program. The commenter stated that it presumed that there are some expenses included in this Title V G&A expense number that were not included in the 6% figure for department-wide support services, but the commenter did not know what those are. The commenter requested that the department provide a description of the department-wide support services that are included in the G&A expenses in the Title V workload analysis and the total costs thereof to provide an apples-to-apples comparison with the 6% department budget figure, or otherwise provide information that would explain the difference in the percentage of the G&A expenses in the Title V workload analysis and the 6% department-wide support services.

A commenter made an oral comment during the hearing that the Chamber had not been informed of what constitutes "special reserve funds" that are referred to in the general verbiage included in the Title V workload analysis. This commenter stated that he had not seen the formulae and the numbers of how they are allocated: the number of people in each division, the dollars in each division, and how decisions are made with respect to how allocations are made from reserve funds. He stated that it is difficult for the Chamber and its members to determine whether these allocations are fair are appropriate and comment accordingly. He commented that the Chamber believes this is a flaw in this process and that excess amounts may be allocated to Title V. He stated that the Chamber has had specific discussions regarding costs that they believe should be allocated to non-Title V, and the Chamber has been rebuffed on every suggestion so far to move those costs. His concern is that this is driven more by the inability to fund them with non-Title V than the fairness or accuracy of those suggestions. He stated that these are his assumptions and that the Chamber hasn't seen these numbers yet. He stated that his personal concern is further magnified by the fact that when the Chamber pressed on this approximately 10 years ago and had a sit down with the head economic person at the Department, there were changes in allocations that were made and there were things that they agreed were not fair. He stated that the Chamber is concerned that we may be there again. He said that this is a statement of ignorance because the Chamber has not seen the numbers and not because he knows that this is the case.

Response: Each Division that collects Environmental Protection Fund (EPF) fees and or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701, which is characterized as department wide administrative support services, and 32730, which is characterized as environmental administrative support (collectively TDEC General and Administrative Expenses or TDEC G&A).

The methodology for funding department administrative support services is based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services (32701). For example, if Division A's budget is 25% of the total eligible divisions' budgets, then Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative Services (32701).

The methodology for funding 32730, Environmental Administration, would be prorated based on the full time position count at the environmental field offices (EFOs). All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions. For example, if Division A had 25% of the positions in the EFOs, then Division A would be responsible for 25% of the Environmental Divisions' funding required for Environmental Administration, 32730.

As the TDEC budget changes each year, this calculation is performed at the beginning of each fiscal year using the new budget numbers for both administrative support service divisions and eligible Bureau of Environment divisions. A new memo is sent to the Department of Finance and Administration (F&A) each year which approves it. Attached is a copy of the May 2, 2019, memo from the department to F&A.

TDEC G&A is shared among two Air Pollution Control programs, Title V and non-Title V. A portion of non-Title V TDEC G&A is covered by federal grants. The TDEC G&A expenses are calculated based on the percentage of the Division's total employees to perform the respective services. The Division's Title V workload analysis is prepared annually which outlines the number of employees necessary to perform the services for the Title V program.

The Department's proposed FY2021 budget includes funding for both the Bureau of Environment (BOE) and Parks and Conservation. While the \$24,000,000 referenced in the Governor's hearing is 6% of the overall Department budget of \$416,000,000, this amount is inclusive of only department-wide administrative services, of which \$11.3 million is supported by various divisions of the BOE based on the funding formulae described herein. These administrative support services are provided by the Office of General Counsel, Commissioner's Office, Internal Audit, Procurement, Communications, Human Resources, Talent Management, shared services for technology and accounting, and other administrative functions. It is important to note that this figure does not include support services from the eight Environmental Field Offices (EFOs). These services are inclusive of EFO facility rent, utilities, maintenance, BOE leadership, and administrative staff.

The legislature can designate any fund a special reserve fund when it is created. Special reserve funds are statutory reserves that are held for a specific, "special" purpose. There are a variety of special reserve funds throughout the BOE. For example, the UST fund is a special reserve fund, specifically for UST fees. The funds in the UST account are used for the operation of the division, including personnel, and their related work such as cleanups. Another example is the Hazardous Waste Remedial Action Fund, which is also used for their operations and related cleanup or other work.

Comment: A commenter stated that it was the commenter's understanding that that the budget request is two million dollars more than the loss that will occur with the loss of revenue from elimination of the vehicle emissions inspection program and that all of these funds are going to the non-Title V program. The commenter's position is that if additional monies granted by the legislature go to the Air Pollution Control Division that some of these should go to the help with Title V fees either directly to fund some of the costs that the commenter has suggested are currently charged to Title V but should be funded with non-Title V fees.

Response: The Department of Environment and Conservation has submitted a request to the Governor's office for 3.6 million dollars in additional recurring funds for the Division of Air Pollution Control. As shown in the table titled "SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule" and the end of this response to comments document, the Division has projected a 3.4 million dollar shortfall in non-Title V revenue following elimination of the vehicle emissions testing program. A portion of this shortfall is due to the loss of the inspection and maintenance program, but roughly 1.6 million dollars of the shortfall is due to the revenue in the non-Title v program not being adequate to cover the costs of the program. Therefore, should the Governor choose to include the Department's request in his budget and should the legislature adopt the budget as requested, there will be few if any funds available to

cover shifted Title V costs.² Furthermore, the Clean Air Act and federal Title V regulations require that Title V programs be funded entirely with Title V fees. The Board understands that the Division has determined that all of the projected Title V expenses indicated in the FY2021 Title V Workload Analysis are legitimate Title V expenses and have been legitimately allocated to Title V. As indicated elsewhere in this response to comments document, the Division has begun the process of evaluating the inspection frequency of Title V sources, with the goal of ensuring that any changes would not reduce the compliance rate of these facilities, and evaluating alternative methodologies for determining the percentage of ambient monitoring costs that should be charged to Title V. It would be imprudent for the Board and Division to implement either of these changes until these analyses have been completed.

Comment: One commenter asserted that the Board has proposed to add five new positions and has proposed a very significant increase in fees.

Response: The Board understands that the Division is not proposing to add any new positions. During the September 11, 2019, Board meeting the Division provided a table showing the number of filled positions (as of January of each year) going back to fiscal year 2010-2011. This information shows that between fiscal year 2010-2011 and fiscal year 2015-2016, the Division averaged between 110 and 114 positions. Starting in calendar year 2016, many positions that became vacant due to retirement or other reasons were not filled while the Division was undergoing reorganization and working to develop and implement fee rules that would adequately fund both the non-title V and Title V programs. That reorganization was completed in 2019 with several staff moving to positions with new responsibilities. During this period, workload was prioritized and staff worked excessive hours in order to meet regulatory deadlines and meet the needs of the businesses of Tennessee. A number of efficiency projects have been put on hold and permit backlogs are starting to build. Operation at the current level of staffing is not sustainable. This rule will simply allow the Division to restore its previous staffing levels. If all positions that the Division intends to staff are filled, the Division would have 114 filled positions.

The Board acknowledges that the proposed fee increase is significant compared to the current fee rule. However, the amount that would be collected as a result of the department's recommended fee rule (which is estimated to be approximately a 25% increase from the current rule) is roughly equivalent to the Title V collections that occurred prior to the significant reduction in emissions that has been seen in the past few years. The Division has been forthcoming and transparent with the Title V regulatory community and the Board about the significant impact reduced emissions would have on the financial adequacy of the Title V program since at least 2016. Additionally, this circumstance is not unique to Tennessee and various states throughout the region have needed to raise Title V fees to address the dramatic decline in emissions that has occurred. In February of 2016, the Division held a stakeholder meeting and presented a graph showing Title V Revenue and Expenses. That graph projected that Tennessee's Title V program would have about a 2.8 million dollar deficit in 2018. In May of 2016, the Division presented to the Board and showed the same graph, but with updated projections indicating that the 2018 deficit may be closer to three million dollars. The Division conducted significant stakeholder outreach in 2016 and again in 2017 to discuss rule changes that would address the deficit and the overwhelming recommendation from the regulatory community was to keep the structure of the program funding as it is and increase the dollar per ton rates. A rulemaking proceeded and was adopted by the Board in December 2017, became effective July 1, 2018 and actually applied to Title V fees that were due in 2019. These changes added an additional \$980,000 to Title V fee revenue, but did not address the full program deficit nor did they address inflationary costs like pay for performance, rent, or IT cost increases. Neither proposal presented to the Board would result in emission fees that are the highest in the region. For non-EGU sources, there are currently three other states with higher emission fees and some of those states have various other fees associated with work activities within their Title V programs that Tennessee does not have. Additionally, other states within the region are currently working to address the financial adequacy of their Title V programs. The proposed fee increase is necessary in order to ensure proper funding of Tennessee's Title V program as required by state and federal law.

² A similar version of this document was provided to Mr. Drew Goddard by Director Michelle Owenby on 8/8/2019 and was included in the September 11, 2019, Board package. That version still shows expenses and revenue of vehicle testing program. Removal of those revenues and expenses will show a \$3.4 million deficit.

As can be seen from the table of historical Title V collections and expenses below, the proposed fee for fiscal year 2020-2021 is lower than the Title V fee program collected a decade ago (fiscal years 2007-2008 through 2009-2010) and the Division's recommended fee schedule is about the same as it was in 2015. However, because of the large reduction in emissions that have occurred over this period (see table), it is necessary to significantly increase the dollar per ton rates in order to achieve a similar level of funding. Hence, the proposed increase in fee rates is necessary due to decreased emissions and not as the result of increased personnel.

Projected expenses for fiscal year 2020-2021 are consistent with the level of expenses that occurred in fiscal years 2010-2011 and 2011-2012, prior to the Division's shifting of expenses from Title V to non-Title V (see earlier response to comment), particularly when considering inflationary costs since that time period. Title V expenses have decreased almost every year since 2012, and the Division has undertaken significant efforts to ensure that Title V activities are properly charged to Title V funds and to develop streamlining and efficiency measures where possible. However, federal law requires that eligible Title V program costs be paid at least in part through fees. It is not reasonable to assume that expenses would continue to decrease but instead it is logical to conclude that expense increases are necessary to cover the cost of inflation, including salary increases, rent increases, and the state's share of the increased costs of health insurance, among other things. Since Tennessee's Title V fee rules do not include a provision to account for inflationary costs, such increases must be accomplished through rulemaking. If rulemakings are not undertaken or accomplished on an annual basis, as has been the case in Tennessee, annual inflationary costs build up and the resulting necessary increases are larger when done.

Fiscal Year	Fees	Billable Tons	Expenses
FY2004	\$5,780,573.30	287,382	\$5,299,426.96
FY2005	\$5,773,095.32	290,031	\$6,289,281.06
FY2006	\$6,806,903.33	259,420	\$6,604,384.65
FY2007	\$6,170,217.54	236,937	\$6,993,064.19
FY2008	\$7,116,004.10	234,615	\$7,254,796.79
FY2009	\$7,939,773.17	232,996	\$6,613,669.61
FY2010	\$7,587,853.93	211,345	\$6,415,182.16
FY2011	\$5,800,630.50	204,961	\$7,075,587.11
FY2012	\$6,336,163.20	190,232	\$7,442,955.03
FY2013	\$6,891,980.16	186,001	\$6,539,361.37
FY2014	\$6,844,856.89	170,198	\$6,355,428.77
FY2015	\$7,040,610.80	164,758	\$5,818,609.26
FY2016	\$5,321,521.83	141,624	\$6,094,831.92
FY2017	\$4,617,895.15	136,292	\$5,687,186.70
FY2018	\$6,294,657.17	113,364	\$6,818,383.34
FY2019	\$6,355,230.48	113,135	\$5,703,359.09

Collection and expense data are taken from Table 15 of the Title V workload analysis. Expenses have been revised to account for a transfer of non-Title V funds to the Title V EPF that occurred in FY2016 to correct previous misallocations of expenses.

Comment: A commenter asked to know why the Title V fee rule needs to be adopted in December 2019, although the increased fees will not be due until April 1, 2021. The commenter noted the budget request of 3.6 million dollars in funding for the Division discussed in the budget hearings and asserted that if the funding is enacted, it will significantly affect what money is necessary for the Division to run its programs. The commenter wanted to know if there was any way to defer the December board adoption until there is a better understanding of what becomes of the budget request.

Response: Effective July 1, 2013, Tennessee Code Annotated section 4-5-229 provides that any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following expiration of the ninety (90) days as provided in T.C.A. § 4-5-207. The majority of Title V fees are due April 1 of the state fiscal year for which the fees are being collected. This means that the fees for a specific fiscal year must be effective the first day of that fiscal year. (The state fiscal year is July 1 to June 30.) As an example, the currently effective fee rules were adopted by the Board in

December 2017. Although the portions of the rule that did not increase the fee or create the base fee were effective April 11, 2018, the actual fee rates did not change until July 1, 2018, the first day of state fiscal year 2018-2019. If the current rulemaking is approved by the Board December 11, the fee rate changes will be effective July 1, 2020, the first day of fiscal year 2021, and will be due between April 1, 2021 and September 28, 2021, depending on the permittee's choice of fee bases. Other changes in the current rulemaking will be effective prior to July 1, 2020. In addition, state rulemaking timelines and review by the Office of the Attorney General and Reporter are established in state statutes. Adoption in December is necessary in order to comply with state law, account for delays, and ensure that the effective date of the fee increases in this rulemaking is no later than June 30, 2020 (for an effective date pursuant to the statute cited above of July 1, 2020). Specifically waiting until the General Assembly passes and the Governor signs the budget for adoption of the rules (estimated to be April or May) would mean that the deadline would be missed.

The Department has requested 3.6 million dollars in recurring funding to support the non-Title V program. These funds cannot be applied to the Title V program due to federal law and are needed to administer the non-Title V program as described in an earlier response.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

DAVID W. SALYERS, P.E.
COMMISSIONER

BILL LEE
GOVERNOR

DATE: May 2, 2013
TO: Benny Romero, Controller for TDEC, Department of Finance and Administration
From: David W. Salyers, P.E., Commissioner
Subject: Administrative Services (32701) and Environmental Administration (32730) Funding Methodology

Each Environmental Division currently contributes funding to support the Administrative Services Division and Environmental Administration. The funding for 32701 and 32730 from the Environmental Divisions comes from three primary sources:

1. State Appropriations - Both Administrative Divisions receive general fund appropriations.
2. Federal Grants - Each Division contributes a portion of its federal grant funds to support the Administrative Groups based on TDEC's EPA approved federal indirect cost rate.
 - a. The Department negotiates an indirect cost rate each year with the federal government (the U.S. Environmental Protection Agency). Regardless of the Division that receives the grant, the same percentage of that grant's personnel and benefits expenditures is used to fund 32701.
3. Environmental Protection and Other Special Revenue Funds - Each Division that collects Environmental Protection Fund (EPF) fees and/or Other Special Revenue Fund (OSRF) fees contributes a portion of those annual fees to 32701 and 32730.
 - a. The Methodology for funding 32701 will be based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services 32701. For example, Division A's budget is 25% of the total eligible divisions budgets, therefore Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative services 32701.
 - b. The methodology for funding 32730 Environmental Administration would be prorated based on the full time position count at the environmental field offices. All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions.

Journals will be requested to be processed monthly to effectuate this funding methodology from the EPF and SRF divisions. This method will be in effect until further modification is made.

DWS/sq

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ³	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁴	\$7,278,833	-	\$7,278,833
Visible Emissions Control Fee	-	\$15,903	\$15,903
Construction Permit Fee	-	\$54,543	\$54,543
Annual Non-Title V Emission Fee	-	\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁵	-	-	-
EPA Air Quality Grant	-	\$1,191,101	\$1,191,101
EPA PM2.5 Grant	-	\$257,681	\$257,681
State Funds	-	\$1,200,000	\$1,200,000
TOTAL	\$7,278,833	\$4,433,389	\$11,712,222
SHORTFALL⁶	\$532,006	\$3,408,991	\$3,940,997

³ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁴ Revised based on data received August-September, 2019

⁵ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

⁶ Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TCCI Proposal

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-		
TDEC G&A Expenses	\$1,120,604	\$894,452 ⁷	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁸	\$6,819,868		\$6,819,868
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁹			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$6,819,868	\$4,433,389	\$11,253,257
SHORTFALL¹⁰	\$990,971	\$3,408,991	\$4,399,962

⁷ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁸ Revised based on data received August-September, 2019

⁹ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁰ Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TDEC Recommendation

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ¹¹	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ¹²	\$7,066,366	-	\$7,066,366
Visible Emissions Control Fee	-	\$15,903	\$15,903
Construction Permit Fee	-	\$54,543	\$54,543
Annual Non-Title V Emission Fee	-	\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ¹³	-	-	-
EPA Air Quality Grant	-	\$1,191,101	\$1,191,101
EPA PM2.5 Grant	-	\$257,681	\$257,681
State Funds	-	\$1,200,000	\$1,200,000
TOTAL	\$7,066,366	\$4,433,389	\$11,499,755
SHORTFALL¹⁴	\$744,473	\$3,408,991	\$4,153,464

¹¹ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

¹² Revised based on data received August-September, 2019

¹³ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁴ Shortfall is expensed minus income and does not take into account available reserve funds.

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 rule amendment to paragraph (2) of Rule 1200-03-26-.01 Construction and Annual Emission Fees relative to Visible Emission Evaluation Course ("Smoke School") fees may minimally impact small businesses. The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of Title V source annual fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tennessee Code Annotated section 4-5-404. Due to increased program expenses and diminishing revenues, the rule amendment proposes to increase Title V fee rates in order to generate sufficient revenue to administer the major source "Title V" permitting program as mandated by federal law. Small businesses that are Title V sources will experience increased fees. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected. If the Department fails to collect adequate revenue to fund this permitting program EPA may revoke its approval of the program and regulate Tennessee businesses directly. Other changes in this rulemaking improve clarity of the rule and will not have an impact on small businesses.

The review below addresses the following proposed rule amendments:

- (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.

Any small business with a Title V air pollution permit or that is required to conduct visible emission evaluations may be affected by these rule amendments. Very few small businesses are required to regularly conduct visible emission evaluations and thus would not be directly impacted by the proposed changes to the visible emission evaluation course fees because they hire consultants to conduct the evaluations instead of using their own employees. The changes to Title V fee rates ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not 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.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

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

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (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.

Based on a comment received during the public comment period, the Department will conduct a review of the impact on revenues if affected sources that are small businesses are allowed to request an alternative minimum fee. If the impact is determined to be acceptable an alternative will be considered during the next Title V fee rulemaking. The Department does not have this data currently.

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

Each state's fee system is unique, so direct comparisons cannot be made. The federal presumptive fee rate (\$/ton) is the rate states must charge unless they provide proof to EPA that their program meets federal requirements with an alternative fee rate or structure. The federal presumptive fee rate effective for the 12-month period of September 1, 2019 through August 31, 2020 is \$52.03 per ton of actual emissions. Tennessee's current fees are more complex than the federal fees, with different fee rates for actual emissions and allowable emissions as well as different rates for electric utility generating units and non-electric utility generating units. Tennessee also has an existing minimum fee and an existing base

fee in these amendments. For these reasons, and because the Title V fee rates actually assessed by EPA for sources they permit are more complex than a single rate, a direct comparison to the federal fees cannot be made. The fee rates in this proposed rule for FY21 are: a base fee of \$5,000 and minimum fee of \$9,000; for fees based on actual emissions, \$64.20 per ton for non-EGU sources and \$90.00 per ton for EGU sources; and, for fees based on allowable emissions, \$40.20 per ton for non-EGU sources and \$57.00 per ton for EGU sources.

- (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.

Exemption of small businesses could result in the collection of insufficient fees to operate the Title V operating permit program as required by federal law or, alternatively, increase the fees paid by businesses that do not meet the definition of a small 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that these amended rules will have a financial impact on local governments with a Title V permit.

Additional Information Required by Joint Government Operations Committee

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

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

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules.

- (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;

Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V program"), to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]" To comply with this requirement, the Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality 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;

Owners and operators of sources in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. These persons recognize the necessity of fee collections and of increases to the currently effective fees; comments received from representatives of some of these sources included alternative fee increases to those originally proposed. This rule, as approved by the Board, contains lower fee increases than originally proposed by the Department in response to comments received during the public comment period. It also only establishes fee increases for state fiscal year 2021 and beyond rather than the proposed increases over fiscal years 2021 and 2022.

- (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;

The Board is not aware of any opinions that directly relate to the rulemaking.

- (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 result in increased revenues of approximately \$1.16 million.

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

James Johnston and Lacey Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
James.Johnston@tn.gov
Lacey.Hardin@tn.gov

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

Emily Urban
Deputy General Counsel
Office of General Counsel

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

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

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

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

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees for the various services and functions the Department performs. Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V program"), to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]" To comply with this requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board is proposing the Title V annual fee structure that it has determined to be adequate for funding needs and the most responsive to comments received from stakeholders during the development process. The proposal increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to

\$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules

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

Smoke School fee revisions: Tennessee is one of only a few states that offer this certification. The proposed rates will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest competitor (Aeromet). Because the Division's air inspectors are required to be certified every six months, it is significantly more cost effective for the Department to provide the school than to pay for the inspectors to be certified by a private entity. Allowing non-State employees to attend the training is a customer-friendly way to subsidize the cost of certifying Department staff.

T5 fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

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

For Smoke School, not revising the fees as proposed will result in the Division paying more of the cost to train its inspectors. Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. EPA.

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

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources. For Smoke School, offering the class to non-State employees provides a way to offset some of the costs to certify Department employees while offering an alternative for training to private sector participants.

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

No impact on competition is expected.

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

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

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

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.

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

Existing revenues will be used to implement these revisions.

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

persons will benefit directly and indirectly from the action.

Changes to the Smoke School rates will have a minimal impact on attendees. For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. Citizens of the state of Tennessee will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Department.

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Sequence Number: 01-07-20
 Rule ID(s): 9292
 File Date: 1/15/20
 Effective Date: 4/14/20

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 Air Pollution Control Board
Division: Air Pollution Control
Contact Person: Lacey J. Hardin
Address: William R. Snodgrass Tennessee Tower
 312 Rosa L. Parks Avenue, 15th Floor
 Nashville, Tennessee
Zip: 37243
Phone: (615) 532-0545
Email: Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-03-26	Administrative Fee Schedule
Rule Number	Rule Title
1200-03-26-.01	Tennessee Visible Emission Evaluation Course Fees
1200-03-26-.02	Construction and Annual Emission Fees

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

Chapter 1200-03-26
Administrative Fee Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) The effective date of this the fee schedule in subparagraph (2)(b) of this rule shall be July 16, 1990 July 1, 2020. The fee schedule in subparagraph (2)(a) of this rule continues to apply until June 30, 2020.

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

Paragraph (2) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Fee Schedule schedules.

- (a) Until June 30, 2020, the following course fees apply:

- Initial Certification Tennessee Applicant \$125.00
 - Recertification Tennessee Applicant \$95.00
 - Initial Certification Out-of-State Applicant \$175.00
 - Recertification Out-of-State Applicant \$125.00

- (b) Beginning July 1, 2020, the following course fees apply:

- Initial Certification \$180.00
 - Recertification \$150.00

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

Subparagraph (a) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) ~~It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees for sources subject to permitting pursuant to Division 1200-03 sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.~~

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

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the language "subjected" and substituting instead the language "subject" so that as amended the subpart shall read:

- (iii) Any pollutant that is ~~subjected~~ subject to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

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

Part 12 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a source subject to paragraph (11) of Rule 1200-03-09-.02.

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans

96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	<u>Ethyl</u> acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine

74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachoroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)

95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds ¹
0	Glycol ethers ^{2 6}
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

¹ X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

² Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n- OR'.

Where:

n = 1, 2, or 3:

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than or equal to 100°C one benzene ring, and which have a boiling point greater than or equal to 100°C

⁵ A type of atom which spontaneously undergoes radioactive decay.

⁶ The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).

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

Subparagraph (b) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) ~~On or after December 1, 1994, all All annual emission fees must be paid in full by the due date dates specified in paragraph subparagraph (6)(c) and paragraph (9) of this rule. Major sources subject to the provisions of paragraph 1200-03-26-.02(9) shall continue to pay annual emission fees under the provisions of paragraph 1200-03-26-.02(6) until July 1, 1994. In the year of their transition from the provisions of the aforementioned paragraph to the provisions of paragraph 1200-03-26-.02(9), the major source must pay the fractional balance of their schedule I fee calculation period (number of months from the due date to July 1, 1994 divided by 12, that quotient being multiplied against the appropriate annual emission fee from Schedule III). Thereafter, the provisions of paragraph 1200-03-26-.02(9) shall apply.~~

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

Subparagraph (i) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (i) Where more than one ~~(4)~~ allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.
1. Major sources subject to the provisions of paragraph ~~1200-03-26-.02(9)~~ of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.
 - (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 1200-03-11, or Chapter 1200-03-31, or Chapter 0400-30-38 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.
 - (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part ~~1200-03-26-.02(2)(i)12~~ of this rule that do not have an allowable emission standard under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
 - (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02(2)(i)~~ of this rule.
 - (iv) Major sources that wish to pay annual emission fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual emission fees on an actual ~~PM 10~~ PM10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02(2)(i)~~ of this rule shall also apply to PM10 emissions.

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

Subparagraph (c) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) The Division shall denote the date that all applications for construction permits are received in its Nashville Central office. Applications received after 4:30 p.m. local time will be stamped considered as being received the next working day.

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

Subparagraph (d) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (d) Upon receipt of a construction permit application, the Division must examine it to ~~insure~~ ensure that it is complete and within 30 days. ~~If the application is found to be incomplete, advise the applicant in writing of its findings via certified mail parts 1 through 4 of this subparagraph apply. Thirty (30) days will be allowed for the review. The thirty (30) days completeness evaluation time period is extended to ninety (90) days for minor and conditional major sources of the nonattainment pollutant or its precursor pollutants as identified in part (4)(b)47 of Rule 1200-03-09-.01 located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency. [Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]~~

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.
2. After receiving notice from the Division that the application was incomplete, the applicant shall have ~~one hundred eighty (180)~~ calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with ~~Division Rules~~ this chapter and Chapter 1200-03-09. If the deficiencies are not corrected within the ~~one hundred eighty (180)~~ 180-day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.
3. It is the express intent of the Board that the ~~one hundred eighty (180)~~ 180-day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by ~~Division Rules~~ Chapter 1200-03-09.
4. Upon receipt of a corrected application revised pursuant to part ~~1, 2, or 3~~ 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the ~~source applicant~~ applicant has the remainder of the initial ~~one hundred eighty (180)~~ 180-day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within ~~thirty (30)~~ days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

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

Subparagraph (a) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in ~~subparagraph rule 1200-03-26-.02(2)(j) of this rule~~] required by ~~rule Rule 1200-03-09-.01~~ must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A, of this rule unless ~~they are~~ exempted from construction permit fees pursuant to subparagraph ~~1200-03-26-.02(9)(a) of this rule~~. The fee determined from ~~subparagraph (5)(g), Schedule A of this rule~~ shall be calculated based on increases in emissions of regulated pollutants.

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

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) ~~On and after October 24, 1991, a~~ A responsible official applying to make a change to a source ~~or permit~~ such that a new construction permit is required, must pay a permit ~~filing/processing~~ fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

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

Subparagraph (f) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (f) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within ~~thirty (30)~~ days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to permit allow review and approval of the refund by the ~~Tennessee Attorney General's Office~~ Office of the Attorney General shall be allowed.

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

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (6) ~~ANNUAL EMISSION FEES FOR MINOR AND CONDITIONAL MAJOR SOURCES AND PERMIT REVIEW FEES FOR CONDITIONAL MAJOR SOURCES~~ Annual Fees for Minor and Conditional Major Sources.

- (a) A responsible official of a minor source and/or a conditional major source must pay an annual emission fee to the ~~Division~~ State of Tennessee. The annual emission fee shall be based on the source's allowable emissions as defined in subparagraph ~~4200-03-26-.02(2)(d)~~ of this rule.
- (b)
 - 1. The minor source and conditional major source annual emission fee must be calculated as using the sum of ~~the~~ allowable emissions of all regulated pollutants at a source. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive requirement must be specified ~~on~~ in the permit, and must include the method(s) used to determine compliance with the limitation(s). The documentation procedure to be followed by the source owner or operator must also be included to ~~insure~~ ensure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.
 - 2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least ~~ninety (90)~~ days prior to the applicable due date of the annual emission fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced.
- (c) ~~Beginning December 1, 1991 all~~ All minor and conditional major source annual emission fees are due and payable to the ~~Division~~ State of Tennessee in full according to Schedule I of this subparagraph. The county that in which a source is located ~~in~~ determines when the ~~minor source source's~~ annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the ~~Division~~ State of Tennessee in full by the first ~~(1st)~~ day of the month that the fee is due. The Technical Secretary may extend this due date an additional ~~ninety (90)~~ days where ~~he finds~~ that the ~~minor source owner or operator's~~ fee notice was mailed by the ~~Division~~ Department to an incorrect mailing address.

SCHEDULE I

Month the Annual Emissions Fee is Due (Accounting Period)

Counties in the Monthly Grouping

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor ~~and~~ or conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual ~~emission~~ fee for the remainder of the annual accounting period. A minor or conditional major source ~~company~~ ceasing operations during the annual accounting period will not receive a refund for annual ~~emission~~ fees paid.
- (e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 ~~(ten)~~ tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.
- (f) Deleted.
- (g) Deleted.
- (h) Deleted.
- (i) ~~The responsible official must pay an annual emission fee as per subparagraph (e) of this paragraph.~~ The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (j) Deleted.
- (k) ~~Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k),~~ conditional Conditional major sources must pay a an annual permit review fee

in accordance with the table below in addition to the ~~minor source~~ annual emission fees specified in subparagraph (6)(e) of this rule ~~paragraph~~. This fee is due and payable to the Division State of Tennessee according to Schedule 4 I found in subparagraph (6)(c) of this rule ~~paragraph~~. When determining the permit review fee, the allowable tons per year shall be calculated in accordance with subparagraph (b) of this paragraph except that ~~When determining the allowable tons per year,~~ carbon monoxide emissions shall be included.

Allowable Tons Per Year	Review Fee
0-50	\$250
50.1-100 TPY	\$500
100.1-250 TPY	\$1,000
250.1 and up	\$2,000

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

Paragraph (7) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(7) ~~PAYMENT OF FEES.~~ Payment of Fees.

- (a) All fees regulated by this chapter shall be payable to the ~~Division of Air Pollution Control~~ State of Tennessee.
- (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph ~~1200-03-26-.02(8)~~ of this rule.
- (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc.) are considered failure to pay until such time collected funds are forwarded to the Division State of Tennessee. Returned checks are subjected to an additional \$20.00 handling charges.
- (d) Annual emission fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" or "Facility ID" specified in the source's permit(s) and the invoice number, if available, or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.
- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within ~~One~~ one year from the date on which the ~~Division of Air Pollution Control~~ State of Tennessee received payment of the fee.
- (f) Online payment can be made to the State of Tennessee for annual fees by following the established State of Tennessee online payment process. Online payments require the inclusion of the customer identification number and the invoice number, if available, to ensure proper crediting of payment.

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

The title for paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it and replacing with a title that reads as follows:

(8) ~~LATE FEES – FAILURE TO PAY~~ Late Fees – Failure to Pay

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

Subparagraph (b) of paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) If any part of any fee imposed under this ~~Rule 1200-03-26-.02 rule~~ is not paid within ~~fifteen (15)~~ days of the due date, a late payment penalty of ~~five percent (5%)~~ of the amount due shall at once

accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ~~five percent (5%)~~ of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within ~~fifteen (15)~~ days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.

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

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (9) ~~ANNUAL EMISSION FEES FOR MAJOR SOURCES AND SOURCES SUBJECT TO PARAGRAPH 11 OF RULE~~ Annual Fees for Major Sources and Sources Subject to Paragraph (11) of Rule 1200-03-09-.02.
- (a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual ~~emission~~ fee to the ~~Division~~ State of Tennessee. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual ~~emission~~ fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual ~~emission~~ fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source as long as the source remains a major source or Paragraph 11 source.
2. Effective January 1, 2018, the following shall apply:
- (i) Sources choosing to pay annual ~~emission~~ fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay ~~one hundred percent (100%)~~ of the fee due pursuant to subparagraph (d) of this paragraph:
- (I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or
- (II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.
- (ii) Sources choosing to pay annual ~~emission~~ fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay ~~one hundred percent (100%)~~ of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part ~~(g)3-~~ (g)3 of this paragraph.
- (iii) Sources choosing to pay annual ~~emission~~ fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated ~~sixty-five percent (65%)~~ of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual ~~emission~~ fee is due July 1 of each year, except as allowed by part ~~(g)3-~~ (g)3 of this paragraph.
- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual ~~emission~~ fee based on:
- (i) Either a calendar year or state fiscal year; and

- (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
2. If the responsible official does not declare a fee payment choice as provided in subparts ~~4.(i)~~ 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.
 3. If the responsible official wishes to restructure allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the annual emission fee, then an application must be filed at least ~~ninety~~ (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.
 4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual emission fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.
 5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.
- (c) Reserved.
- (d) 1. Notwithstanding the emission fee rates established by part 2 of this subparagraph, a responsible official of any source subject to this paragraph (9) shall pay an annual base emission fee of ~~\$4,000~~ \$5,000 for fees due on and after January 1, 2021. This base emission fee shall be paid in addition to the annual emission fee established by ~~part 2~~ subpart 2(iii) of this subparagraph, but shall be counted toward the applicable minimum fee set forth in ~~subpart 2.(ii)~~ 2(ii) of this subparagraph.
2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.
 - (ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual emission fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:
 - (l) \$5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in ~~part 14 of subparagraph (b) of paragraph (11)~~ (b)14 of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31

of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and

- (II) ~~\$7,500~~ \$9,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2021.
- (iii) The emission fee rates applied to calculate the annual emission fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
 - (I) Fee based on actual emissions: ~~\$53.50~~ \$64.20 per ton for non-EGU sources and ~~\$75.00~~ \$90.00 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: ~~\$33.50~~ \$40.20 per ton for non-EGU sources and ~~\$47.00~~ \$57.00 per ton for EGU sources.
- (iv) The emission fees and fee rates enumerated in ~~subpart (iii) of this part~~ this subparagraph (d) must be supported by the Division's annual workload analysis that is approved by the Board.
- 3. The emission fees and fee rates specified in this subparagraph (d) shall remain in effect until the effective date of an amendment to ~~part 2 of this subparagraph (d)~~. Any revision to the emission fees and fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e)
 - 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
 - 2. No annual emission fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shut down, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. However, in no case shall the annual fee be less than the minimum annual fee established in subpart (d)2(ii) of this paragraph. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
- (g) Responsible officials required to pay the major source or Paragraph 11 source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
 - 1. (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure the allowable emissions of a major source subject to ~~paragraph (11) of Rule 1200-03-09-02 or Paragraph 11 source~~ for the purpose of lowering the annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation

procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.

- (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ~~ninety~~ (90) days prior to December 31 of the annual accounting period.
- 2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the date the fee is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.
 - (i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission-based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.
 - (ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the source's emissions to the satisfaction of the Technical Secretary.
- 3.
 - (i) Responsible officials choosing to pay the annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ~~ninety~~ (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1~~7~~, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than ~~sixty-five percent~~ (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.
 - (ii) A responsible official choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.
- (h) Reserved.
- (i) Reserved.

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

The title of Rule 1200-03-26-.02 is amended by changing the title from "Construction and Annual Emission Fees" to "Construction and Annual Fees."

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

The table of contents to Chapter 1200-03-26 Administrative Fee Schedule is amended by changing the title of Rule 1200-03-26-.02 from "Construction and Annual Emission Fees" to "Construction and Annual Fees," so that as amended the table of contents shall read:

1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees
1200-03-26-.02 Construction and Annual Emission Fees
1200-03-26-.03 Repealed

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 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				
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				
Ken Moore Working in Municipal Government	X				
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer	X				
Greer Tidwell, Jr. Conservation Interests	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by Air Pollution Control Board on 12/11/2019, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (10/04/19)

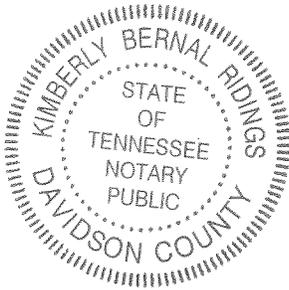
Rulemaking Hearing(s) Conducted on: (add more dates). (11/25/19)

Date: December 12, 2019

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 12/12/19

Notary Public Signature: Kimberly Bernal Ridings

My commission expires on: 9-6-22

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

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

1/14/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/16/20

Effective on: 4/14/20

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health, Health Services Administration

DIVISION: Family Health and Wellness

SUBJECT: Family Planning

STATUTORY AUTHORITY: No federal or state law or rule mandates the promulgation of this rule.

EFFECTIVE DATES: April 20, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule Chapter 1200-16-1-.01, et. seq. is amended in this rulemaking hearing rule by removing practice guidelines and updating the rules to include federal trends.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There was one written comment received before the hearing regarding a typographical error located in 1200-16-01-.01(4), where the term "physician's assistant" was used instead of "physician assistant." This typographical error was corrected and the commenter was notified.

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.

The proposed rules do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

The proposed rules are clear, concise and free of ambiguity.

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

The proposed rule amendments do not impose any compliance and/or reporting requirements.

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

The proposed rule amendments do not impose any schedules or deadlines for compliance and/or reporting requirements.

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

The proposed rule amendments do not consolidate or simplify 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.

The proposed rule amendments do not establish performance standards for small business as opposed to design or operation standards required for the proposed rules.

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

The proposed rule amendments do not create entry barriers or other impacts which may stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Health Services Administration, Family Health and Wellness

Rulemaking hearing date: 09/04/2019

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:**

None.

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:**

None.

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

None.

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:**

None.

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

Federal: No comparable rule identified.

State: No comparable rule identified.

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.**

Not applicable.

Impact on Local Governments

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

The 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;

Rule Chapter 1200-16-1-.01, et. seq. is being amended by removing practice guidelines and updating the rules to include federal trends.

- (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 amendments generally affect anyone who receives family planning services in Tennessee.

- (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;

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 impact revenues or expenditures.

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

Rachel Appelt, Sr. Associate 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;

Rachel Appelt, Sr. Associate 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, 710 James Robertson Parkway, 5th Floor, Nashville, TN 37243, (615) 532-7924, Rachel.Appelt@tn.gov.

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

None.

**Department of State
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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-09-20
Rule ID(s): 9293
File Date: 1/21/20
Effective Date: 4/20/20

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 Department of Health, Health Services Administration
Division: Family Health and Wellness
Contact Person: Rachel Appelt, Sr. Associate General Counsel
Address: 710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip: 37243
Phone: (615) 532-7924
Email: Rachel.Appelt@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-16-01	Family Planning
Rule Number	Rule Title
1200-16-01-.01	Definition of Terms
1200-16-01-.02	Policy
1200-16-01-.03	Eligibility for Contraceptive Services
1200-16-01-.04	Frequency of Availability of Contraceptive Services Required of Local Health Departments
1200-16-01-.05	Notice
1200-16-01-.06	Administrative and Medical Procedures
1200-16-01-.07	Procedures to be Followed in Providing Contraceptive Supplies Requiring a Prescription
1200-16-01-.08	Contraceptive Supplies Not Requiring a Prescription
1200-16-01-.09	Procedure for Providing Intrauterine Devices
1200-16-01-.10	Cooperation of Local Health Departments

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF PERSONAL HEALTH SERVICES-DIVISION OF FAMILY HEALTH
SERVICES
DIVISION OF FAMILY HEALTH AND WELLNESS – REPRODUCTIVE AND WOMEN'S HEALTH
SECTION**

**CHAPTER 1200-16-01
FAMILY PLANNING**

TABLE OF CONTENTS

1200-16-01-.01	Definition of Terms	1200-16-01-.05-.07	Procedures To Be Followed in
1200-16-01-.02	Policy		Providing Contraceptive
1200-16-01-.03	Eligibility for Contraceptive Services		Supplies Requiring a Prescription
1200-16-01-.04	Frequency of Availability of Contraceptive Services Required of Local Health Departments	1200-16-01-.08	Contraceptive Supplies Not Requiring a Prescription
1200-16-01-.04.05	Notice	1200-16-01-.09	Procedure for Providing Intrauterine Devices
1200-16-01-.06	Administrative and Medical Procedures	1200-16-01-.10	Cooperation of Local Health Departments

1200-16-01-.01 DEFINITION OF TERMS. For the purposes of these rules and regulations and as used herein:

- (1) ~~“Department” means the Tennessee Department of Health.~~
 - (2) ~~“Commissioner” means the Commissioner of the Tennessee Department of Health.~~
 - (3) ~~“Physician” means any doctor of medicine or doctor of osteopathy dully licensed to practice his profession in Tennessee or the state in which he resides and lawfully practices his profession.~~
 - (4) ~~“Contraceptive Procedures” means any medically accepted procedure designed to prevent conception.~~
 - (5) ~~“Contraceptive Supplies” means those medically approved items designed to prevent conception through chemical, mechanical or other means.~~
 - (6) ~~“Contraceptive Services” means all medically approved contraceptive procedures and supplies designed to prevent conception.~~
 - (7) ~~“Local Health Department” means any local governmental health agency functioning pursuant to T.C.A. Section 53-308 and providing contraceptive services.~~
- (1) “Advanced Practice Registered Nurse” means a licensed registered nurse with a master's degree or higher in a nursing specialty who has national specialty certification under T.C.A. § 63-7-126.
 - (2) “Department” means the Tennessee Department of Health.
 - (3) “Commissioner” means the Commissioner of the Tennessee Department of Health.
 - (4) “Family Planning Provider” means a physician or physician assistant, an advanced practice registered nurse, a registered nurse, a pharmacist, or a clinic that is approved to provide family planning services to eligible clients according to the most recent clinical guidelines

(Rule 1200-16-01-.07, continued)

from the Office of Population Affairs (OPA) and Centers for Disease Control and Prevention (CDC).

- (5) "Physician" means any doctor of medicine or doctor of osteopathy duly licensed to practice the profession in Tennessee or the state in which s/he resides and lawfully practices such physician's profession.
- (6) "Centers for Disease Control and Prevention (CDC)" is a federal agency under the Department of Health and Human Services.
- (7) "Contraceptive Procedures" means any medically approved procedure designed to prevent conception.
- (8) "Contraceptive Supplies" means those FDA approved or exempted items designed to prevent conception through chemical, mechanical or other means.
- (9) "Contraceptive Services" means all medically approved contraceptive procedures, supplies, and information designed to prevent conception.
- (10) "County Health Department" means any county health agency functioning pursuant to T.C.A. § 68-2-603 and providing family planning services.
- (11) "Registered Nurse" means a licensed registered nurse under T.C.A. § 63-7-105.
- (12) "Office of Population Affairs (OPA)" is a part of the United States Department of Health and Human Services, which oversees the Title X program.

Authority: T.C.A. §§ 63-7-126 and 68-34-102, 63-7-105, 63-7-126, 68-34-102, and 68-34-10653-4606.

Administrative History: Original rule filed January 27, 1975, effective February 26, 1975.

1200-16-01-.02 POLICY. It shall be the policy of the Department in implementing The Family Planning Act of 1971 T.C.A. § 53-4601 et seq., that:

It shall be the policy of the Department in implementing The Family Planning Act of 1971 T.C.A. § 68-34-101 et seq., that:

- ~~(1) All contraceptive services and information thereof, shall be provided by local health department to any eligible patient under the supervision of the Department.~~
- (1) All contraceptive services and information thereof, shall be provided by county health department to any eligible patient under the supervision of the Department.
- ~~(2) Physicians and family planning nurse practitioners employed by the Department or by a local health department, shall, except as hereinafter such services are requested and voluntarily consented to by the patient.~~
- (2) Family planning providers employed by the Department acting pursuant to the Department's authority, shall from now on provide such services as requested and voluntarily consented to by the patient.
- ~~(3) Any physician employed by the Department or any local health department shall not be prohibited from performing on any patient a surgical interruption of the vas deferens or fallopian tubes; provided such procedure is requested and voluntarily consented to by the patient.~~

(Rule 1200-16-01-.02, continued)

- (3) The Department or any agency acting pursuant to the Department's authority may, subject to the availability of funds, arrange for a patient to undergo a permanent sterilization procedure at a licensed healthcare facility provided such procedure is requested and voluntarily consented to by the patient.
- (4) ~~In accord with the provisions of T.C.A. Section 53-4604(c) nothing herein shall prohibit a physician or family planning nurse practitioner from refusing to furnish any contraceptive procedures, supplies or information where such refusal is for medical reasons.~~
- (4) In accord with the provisions of T.C.A. § 68-34-104(3), nothing shall prohibit a family planning provider from refusing to furnish any contraceptive procedures or supplies where such refusal is for medical reasons.

Authority: ~~T.C.A. § 68-34-104 and 68-34-106.53-4606.~~ **Administrative History:** ~~Original rule filed January 27, 1975, effective February 26, 1975.~~

1200-16-01-.03 ELIGIBILITY FOR CONTRACEPTIVE SERVICES. ~~All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each and every person desirous of the same regardless of sex, race, age, income, number of children, marital status, citizenship or motive in accordance with fee schedules, rules and regulations promulgated by the Commissioner.~~

All medically approved contraceptive procedures, supplies and information shall be readily and practicably available to each and every person desirous of the same regardless of religion, race, color, national origin, citizenship, disability, income, age, sex, number of pregnancies, or marital status in accordance with fee schedules which shall be available at each family planning site.

Authority: ~~T.C.A. §§ 68-34-102, 68-34-103 68-34-104, and 68-34-106.53-4606.~~ **Administrative History:** ~~Original rule filed January 27, 1975, effective February 26, 1975.~~

1200-16-01-.04 FREQUENCY OF AVAILABILITY OF CONTRACEPTIVE SERVICES REQUIRED OF LOCAL HEALTH DEPARTMENTS. ~~Each local health department shall make contraceptive supplies available at least one half day per week during each week of the calendar year, in at least one location in the area serviced by such local health department in a regular and scheduled manner. Nothing under these rules and regulations shall prohibit a local health department from providing family planning services simultaneously with any other services offered by such local health departments.~~

Authority: ~~T.C.A. § 53-4606.~~ **Administrative History:** ~~Original rule filed January 27, 1975, effective February 26, 1975.~~

1200-16-01-.045 NOTICE. The general public served by each local health department shall be reasonably notified of the date, time and place contraceptive services will be made available.

Authority: ~~T.C.A. § 68-34-106.53-4606.~~ **Administrative History:** ~~Original rule filed January 27, 1975, effective February 26, 1975.~~

1200-16-01-.06 ADMINISTRATIVE AND MEDICAL PROCESURES. ~~Each local health department in providing contraceptive services shall comply with the Department's administrative and record keeping procedures, and medical standards.~~

Authority: ~~T.C.A. § 53-4606.~~ **Administrative History:** ~~Original rule filed January 27, 1975, effective February 26, 1975.~~

(Rule 1200-16-01-.02, continued)

~~1200-16-01-.05.07 PROCEDURES TO BE FOLLOWED IN PROVIDING CONTRACEPTIVE SUPPLIES REQUIRING A PRESCRIPTION. Procedures To Be Followed in Providing Contraceptive Supplies.~~

Any eligible patient requesting contraceptive supplies shall be provided such services according to guidance from Title X and OPA.

- (1) ~~Any eligible patient requesting contraceptive supplies requiring a prescription shall be provided such services only after the following tests and procedures are performed and annually thereafter:~~
- (a) ~~A physical examination and history~~
 - (b) ~~A pap smear and breast examination~~
 - (c) ~~A G.C. culture~~
 - (d) ~~A blood pressure~~
 - (e) ~~A hematocrit~~
- (2) ~~The exception to this is the patient who has had performed one or all of these tests within three months of the initial visit at another clinic or private physician's office and the results are available. The test or tests need not be repeated unless clinical evidence indicates need. Any patient desiring not to have these procedures performed shall be ineligible for contraceptive supplies requiring prescription.~~

Authority: ~~T.C.A. §§ 68-34-105 and 68-34-1060.53-4606. Administrative History: Original rule filed January 27, 1975, effective February 26, 1975. Amendment filed January 14, 1976, effective February 13, 1976. Amendment filed June 14, 1976, effective July 14, 1976.~~

~~1200-16-01-.08 CONTRACEPTIVE SUPPLIES NOT REQUIRING A PRESCRIPTION.~~ All contraceptive supplies not requiring a prescription shall be made available to all eligible patients upon demand in reasonable quantities. A nonprofessional department or local health department employee shall not be prohibited by these rules and regulations from dispensing nonprescription contraceptive supplies. In all such cases the patient shall be given instructions on the use of such supplies and advised as to the advisability of receiving a physical examination and laboratory tests but such examination and tests shall not be required.

Authority: ~~T.C.A. § 53-4606. Administrative History: Original rule filed January 27, 1975, effective February 26, 1975.~~

~~1200-16-01-.09 PROCEDURE FOR PROVIDING INTRAUTERINE DEVICES.~~ Any eligible patient shall be provided an intrauterine device unless medically contraindicated, provided the requirements for physical examination and testing under Rule 1200-16-01-.07 of these rules and regulations are fully complied with. Local health departments not having a physician or family planning nurse practitioner willing and competent to provide such service shall so indicate, and the director of family planning of the department is authorized to arrange an alternative means to secure the service.

Authority: ~~T.C.A. § 53-4606. Administrative History: Original rule filed January 27, 1975, effective February 26, 1975.~~

~~1200-16-01-.10 COOPERATION OF LOCAL HEALTH DEPARTMENTS.~~ Local health departments shall cooperate with the state departments of public health and public welfare in giving timely appointments to all referrals from said departments and advising same on the disposition of such referrals. Use of official departments forms is encouraged.

(Rule 1200-16-01-.07, continued)

~~**Authority:** T.C.A. § 53-4606. **Administrative History:** Original rule filed January 27, 1975, effective February 26, 1975.~~

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

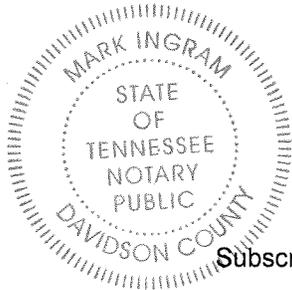
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health, Health Services Administration, Family Health and Wellness (board/commission/ other authority) on 09/04/2019 (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: 07/09/19 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 09/04/19 (mm/dd/yy)



Date: 01/02/20

Signature: [Handwritten Signature]
Name of Officer: Rachel Appelt

Title of Officer: Sr. Associate General Counsel
Department of Health

Subscribed and sworn to before me on: Jan. 2, 2020

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3/7/23

Agency/Board/Commission: Tennessee Department of Health, Health Services Administration, Family Health and Wellness

Rule Chapter Number(s): 1200-16-01

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

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[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter
1/10/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/21/20

Effective on: 4/20/20

[Handwritten Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board for Licensing Health Care Facilities

SUBJECT: Review of Health Care Facility Construction – Plans and Specifications; Fees

STATUTORY AUTHORITY: No federal or state law or rule mandates the promulgation of this rule.

EFFECTIVE DATES: April 13, 2020 through June 30, 2021

FISCAL IMPACT: These rules should not affect state or local government revenues or expenditures

STAFF RULE ABSTRACT: Rule 1200-24-05-.01 is amended in this rulemaking hearing rule by adding a new definition of "health care facility" and of "occupancy type."

Rule 1200-24-05-.03 is amended by adding a fifteen dollar (\$15.00) fee for any plans submitted electronically. For those facilities making this payment by credit card, an internet payment processing fee shall not exceed two and one half percent (2.5%) of the total fee for submission of electronic plans. For those facilities submitting payment via electronic check, an (e-check) payment shall not exceed a one dollar (\$1.00) fee.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No public hearing comments were received. A sign-in sheet was available at the rulemaking hearing. No members of the public signed up to make a comment. After collecting the blank sign-in sheet, Senior Associate Counsel, Caroline Tippens, called multiple times for public comment. No public comment was received.

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 rule amendments do 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.

These rules amendments establish clarity, conciseness, and lack of ambiguity.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do 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.

These rule amendments do 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 for Licensing Health Care Facilities

Rulemaking hearing date: October 2, 2019

- 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 impacts all health care facilities currently under construction or that will undergo construction in the future. The rule clarifies which types of facilities are subject to rules related to plans review. Further, the rule is necessary to provide an additional option to engineers, architects, and contractors to submit plans and specifications via an electronic portal. This rule change will also allow providers to pay for submission of their plans via credit or debit card and electronic check and will be a cost saving measure, given the costs of printing and shipping paper copies of plans. This will also be a time-saving measure, as well.

- 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 changes to the rules would align the Department of Health with other agencies across the state. Stakeholders who chose to use the electronic portal will pay a fee of fifteen (\$15.00) dollars, a 2.5% financial transaction fee for payments made via credit or debit card, and a one dollar (\$1.00) fee for transactions made via check. The electronic portal is a choice for stakeholders to use; it is not mandatory. The fees charged are reasonable.

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

The effect on small businesses and consumers is minimal. All facility types already submit plans to the plans review division whenever there is construction. The rule also offers a more cost-effective and streamlined approach for plans submission, thereby reducing the overall cost and burden to those stakeholders who wish to use the electronic portal.

- 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 is no less burdensome, less intrusive, or less costly alternative method.

- 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.**

Small business will not be exempt from the implementation of the proposed rule. This electronic portal is optional; it is not mandatory.

Impact on Local Governments

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

(Insert statement here)

There is no impact to local government.

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;

Rule 1200-24-05-.01 is amended by adding a new definition of "health care facility" and of "occupancy type."
Rule 1200-24-05-.03 is amended by adding a fifteen dollar (\$15.00) fee for any plans submitted electronically. For those facilities making this payment by credit card, an internet payment processing fee shall not exceed two and one half percent (2.5%) of the total fee for submission of electronic plans. For those facilities submitting payment via electronic check, an (e-check) payment shall not exceed a one dollar (\$1.00) fee.

- (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;

This rule impacts all health care facilities currently under construction or that will undergo construction in the future.

- (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;

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 affect state or local government revenues or expenditures.

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

Caroline R. Tippens, Senior Associate General Counsel, Tennessee Department of Health.

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

Caroline R. Tippens, Senior Associate General Counsel, Tennessee 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, TN 37243, (615) 741-1611, caroline.tippens@tn.gov

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

None.

Department of State**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: 01-06-20
 Rule ID(s): 9291
 File Date: 1/14/20
 Effective Date: 4/13/20

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 for Licensing Health Care Facilities
Division:	
Contact Person:	Caroline R. Tippens, Senior Associate General Counsel
Address:	665 Mainstream Drive, Nashville, TN
Zip:	37243
Phone:	(616) 741-1611
Email:	Caroline.Tippens@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-24-05	Plans and Specifications
Rule Number	Rule Title
1200-24-05-.01	Definitions
1200-24-05-.03	Fees

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FACILITIES**

**CHAPTER 1200-24-05
REVIEW OF HEALTH CARE FACILITY CONSTRUCTION
PLANS AND SPECIFICATIONS**

TABLE OF CONTENTS

1200-24-05-.01	Definitions	1200-24-05-.04	Approval of Plans
1200-24-05-.02	Submission of Plans	1200-24-05-.05	Inspection of Construction
1200-24-05-.03	Fees		

1200-24-05-.01 DEFINITIONS.

- (1) Board. The Board for Licensing Health Care Facilities.
- (2) Construction. The erection of a new building, an addition to an existing building, a change of occupancy, an alteration that reconfigures the exit arrangement, fire-resistive assemblies, or type of construction, or involves the installation of fire suppression or detection systems or fuel fired equipment. The term construction shall not be construed to include excavation or site preparation.
- (3) Department. The Department of Health.
- (4) Division. The Division of Health Care Facilities.
- (5) Health care facility. Includes any hospital, ~~recuperation center~~, nursing home, home for the aged, ~~alcohol and drug prevention and/or treatment facility~~, birthing center, ambulatory surgical treatment center, ~~or~~ residential HIV supportive living facility, adult care home level 2, assisted care living facility, outpatient diagnostic center, prescribed child care center, end stage renal dialysis clinic, residential hospice, or traumatic brain injury residential home required to be licensed in accordance with Tennessee Code Annotated § 68-11-201.
- (6) N.F.P.A. The National Fire Protection Association.
- (7) Occupancy type. Business occupancy, residential occupancy, or health care ~~institution~~ occupancy as defined by the current approved edition of the Life Safety Code (NFPA 101) by the Board for Licensing Health Care Facilities. ~~in the 2000 edition of the Life Safety Code (NFPA 101-2000).~~

Authority: T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.
Administrative History: Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed February 18, 2003; effective May 4, 2003.

1200-24-05-.02 SUBMISSION OF PLANS.

- (1) No person, partnership, association, corporation, or any state, county or local government unit, or any division, department, board or agency thereof shall commence construction of any health care facility until plans and specification have been submitted to and approved in writing by the Department.
- (2) Any construction may be undertaken prior to approval of final plans and specification if:

(Rule 1200-24-05-.02, continued)

- (a) The phased plans adequately describing the nature and scope of the project have been submitted to the Department; and
 - (b) Complete plans and specification for that phase of construction to be undertaken have been submitted to the Department, and such plans and specifications have been approved in writing.
- (3) The Department has failed to transmit a written evaluation of such plans and specifications within thirty (30) working days after receipt thereof.
- (4) In the event that submitted materials do not appear to satisfactorily comply with the existing codes, the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (5) Resubmission of the complete plans and specifications for any proposed project which is identical in structure and interior arrangement to one already reviewed and approved in accordance with this chapter is required, however, the Department may reduce the review fee for resubmission.

Authority: T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Administrative History: Original rule filed April 10, 2000; effective June 24, 2000.

1200-24-05-.03 FEES.

- (1) The fee schedule for review of plans and specifications for construction shall be specified in the following table:

Total Project Construction Cost	Fee
\$0.00 to \$1,000,000.00	\$2.50 per thousand or fraction thereof (\$250.00 minimum)
\$1,000,000.01 or more	\$2,500.00 for the first \$1,000,000.00 plus \$2.00 for each additional thousand or fraction thereof.

- (2) The fee shall be payable and due at the time of initial submission of plans and specifications.
- (a) The fee for obtaining a letter stating that plans are not required to be reviewed (a "no review letter") shall be one hundred dollars (\$100.00).
 - (b) The fee shall be applied to the fee for review of plans and specifications for construction if it is determined that plans are required to be reviewed.
- (3) The fee for review of plans and specifications for minor renovations, locking hardware, hood and duct suppression shall be three hundred dollars (\$300.00).
- (4) The fee for review of plans and specifications for Homes for the Aged (RHAs) licensed for six (6) beds or fewer shall be three hundred dollars (\$300.00).
- (5) An additional fee of fifteen dollars (\$15.00) per building project for receiving plans or specifications electronically shall be applied.
- (6) For those making payment by card, an internet payment processing fee, not to exceed two and one half percent (2.5%) of the total fee, to be used solely to defray the costs of any payments processed electronically, shall be applied.

(Rule 1200-24-05-.03, continued)

- (7) For those making electronic check (e-check) payments, an internet payment processing fee, not to exceed one dollar (\$1.00), to be used solely to defray the costs of any payments processed electronically, shall be applied.
- (68) Filing fees are non-refundable and must be received by the Department prior to beginning the required thirty-day review cycle.
- (69) If plans and specifications must be resubmitted due to the expiration of the twelve (12) month approval period as specified under Rule 1200-24-05-.04, a new fee established under these rules shall be imposed. Extensions to the approval period may be granted upon submission of written request to the Department.
- (710) The Department may require appropriate documentation of cost, such as, contractors' bids or invoices if:
 - (a) In its opinion, the construction cost of a project has been underestimated in the certification submitted pursuant to these rules; or
 - (b) The scope of a project is substantially revised after initial plans submission.

Authority: T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-804.

Administrative History: Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed February 28, 2002; effective May 14, 2002. Amendments filed January 3, 2012; effective April 2, 2012.

1200-24-05-.04 APPROVAL OF PLANS.

- (1) Plans and specifications submitted pursuant to these rules shall be approved only if the proposed construction would be in compliance with the minimum standards of fire prevention, fire protection, and building construction safety in effect at the time of initial submission.
- (2) No final approval of plans and specifications shall be valid unless the construction represented by such plans and specifications has substantially progressed within twelve (12) months after the effective date of any adopted revisions of the building or codes standards in effect at the time of initial submission.
- (3) A copy of the approved plans and specifications shall be retained on the job site through completion of the project and final inspection.
- (4) Construction shall proceed in accordance with the plans and specifications as approved hereunder. If construction is completed in accordance with the approved plans and specifications, the building represented by such plans and specifications shall be exempt from subsequently adopted standards of fire prevention, fire protection, and building construction safety, unless the non-conformity of the building to such standards poses a serious life safety hazard.
- (5) No approval of, or failure to review, plans and specifications by the Department shall relieve the owner, developer, designing architect or engineer of their respective responsibilities for compliance with applicable laws, rules or codes respecting fire prevention, fire protection, and building construction safety.

Authority: T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Administrative History: Original rule filed April 10, 2000; effective June 24, 2000.

1200-24-05-.05 INSPECTION OF CONSTRUCTION.

(Rule 1200-24-05-.03, continued)

- (1) When the Department inspects any construction pursuant to these rules, the inspector shall determine only whether the construction conforms to the approved plans and specification; except, however, that if such plans and specifications are not specific with respect to any applicable standard, the inspection shall be made to that standard.
- (2) If upon final inspection or re-inspection of the completed project, the Department's inspector finds that only minor items remain to be completed or corrected which do not significantly affect the health or safety of the occupants, the inspector shall recommend to the Department permission to occupy, pending completion or correction of such items.

Authority: T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Administrative History: Original rule filed April 10, 2000; effective June 24, 2000.

* 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)
Mr. Paul Boyd	X				
Mr. Robert Breeden	X				
Dr. Evelyn Brock	X				
Dr. Patsy Crihfield	X				
Mr. Joshua Crisp				X	
Dr. Jennifer Gordon-Maloney				X	
Mr. Chuck Griffin				X	
Dr. Julie Jeter	X				
Dr. Patricia Ketterman	X				
Ms. Carissa Lynch	X				
Mr. Roger Mynatt	X				
Ms. Susan Peach				X	
Dr. Sherry Robbins	X				
Dr. Rene Saunders			X		
Mr. Jim Shulman	X				
Ms. Gina Throneberry	X				
Ms. Janet Williford	X				
Mr. Bobby Wood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 10/02/2019 (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: 07/18/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 10/02/2019

Date: December 17, 2019

Signature: Caroline R. Tippens

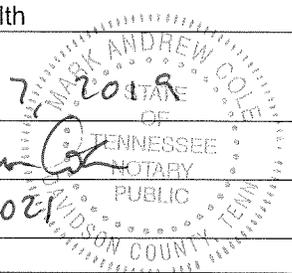
Name of Officer: Caroline R. Tippens
Senior Associate General Counsel

Title of Officer: Tennessee Department of Health

Subscribed and sworn to before me on: December 17, 2019

Notary Public Signature: Mark Andrew Cole

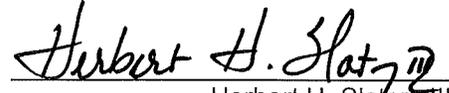
My commission expires on: March 9, 2021



Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-24-05

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

1/7/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/14/20

Effective on: 4/13/20


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Education

SUBJECT: Charter Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-13-110(b), 4-5-208, and 4-5-102

EFFECTIVE DATES: April 30, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule establishes the timelines and appeal process for charter schools to submit an amendment petition to the charter school's authorizer and for a charter school to appeal a decision by the charter school authorizer to deny an amendment petition to the State Board of Education.

NOTE: Rule not submitted in redline form.

Public Hearing Comments

The State Board of Education held a rulemaking hearing at 1:00 pm CST on July 29, 2019. No public comments were submitted as part of the rulemaking hearing.

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 has no impact on 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule has 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 establishes the timelines and appeal process for charter schools to submit an amendment petition to the charter school’s authorizer and for a charter school to appeal a decision by the charter school authorizer to deny an amendment petition to the State Board of Education.

- (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. § 49-13-110(b), as amended by Public Chapter 219, 111th General Assembly requires the State Board of Education to establish the “[t]imelines for approval and the appeal process” for a charter school governing body who wishes to appeal the denial of a petition to amend the charter agreement. This language contained in Public Chapter 219 went into effect on April 26, 2019.

T.C.A. § 4-5-208 authorizes state agencies to promulgate an emergency rule if the agency finds that it is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of normal rulemaking procedures for the promulgation of permanent rules.

T.C.A. § 4-5-102, as amended by Public Chapter 929 of the 110th General Assembly requires that any government agency “regulation, standard, statement, or document of general applicability” that “affect private rights, privileges, or procedures available to the public” must be contained in a rule and not a policy.

- (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;

Existing charter school operators and charter school authorizers in the state of Tennessee are directly affected by this rule. The State Board of Education urges adoption of this rule, along with other authorizers of charter schools.

- (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;

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;

N/A

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Tess Stovall
Tess.Stovall@tn.gov

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Tess Stovall
Tess.Stovall@tn.gov

- (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

Angie Sanders
Angela.C.Sanders@tn.gov
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243
(615) 253-5707

Nathan James
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Nashville, TN 37243
(615) 532-3528

Tess Stovall
Tess.Stovall@tn.gov
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243
(615) 770-1190

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

N/A

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Sequence Number: 01-13-20
Rule ID(s): 9900
File Date: 1/31/20
Effective Date: 4/30/20

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: State Board of Education
Division:
Contact Person: Angie Sanders
Address: 5th Floor, Davy Crocket Tower
500 James Robertson Parkway Nashville, TN
Zip: 37243
Phone: 615-253-5707
Email: Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.06	Amendments to the Charter Agreement

Chapter 0520-14-01 Charter Schools is adding Rule 0520-14-01-.06 Amendments to the Charter Agreement and Appeals Process to the Table of Contents and to the Chapter so that as added is shall read as follows:

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-14-01
CHARTER SCHOOLS**

TABLE OF CONTENTS

0520-14-01-.01	Approval of a Charter School	0520-14-01-.04	Enrollment
0520-14-01-.02	New Start, Renewal, Revocation Appeals	0520-14-01-.05	Annual Authorizer Fee
0520-14-01-.03	Allocation of State and Local Funds	0520-14-01-.06	Amendments to the Charter Agreement and Appeals Process

0520-14-01-.06 AMENDMENTS TO THE CHARTER AGREEMENT AND APPEALS PROCESS.

- (1) Charter Amendments.
- (a) An authorizer's approval of a public charter school ("charter school") application shall be in the form of a written charter agreement, signed by the sponsor and the authorizer which shall be binding upon the governing body of the charter school. The charter agreement for a charter school shall be in writing and contain all material components of the approved application. The governing body of the charter school may petition the authorizer to amend the original charter agreement.
- (b) An amendment to the original charter agreement shall be required for any material modification to the provisions of a charter school's charter agreement.
- (c) A material modification to a charter agreement is defined as a substantive change to the terms of the charter agreement regarding a charter school's governance, financial, operational, or academic structure. Material modifications include, but are not limited to:
1. Change in governance structure (including, but not limited to, a change in the non-profit entity governing the school), or addition of or changes to the charter management organization;
 2. The addition or removal of a grade level or levels;
 3. Changes in student enrollment which fall outside of the minimum or maximum enrollment thresholds set forth in the charter school's charter agreement;
 4. The addition or removal of a plan to provide transportation to students attending the charter school;
 5. Changes to the charter school's location, if outside the geographic area set forth in the charter agreement;
 6. Changes to the charter school's academic focus set forth in the charter agreement; and
 7. Changes identified in the charter agreement as material modifications or amendments.
- (d) The governing body of the charter school applying for a material modification to the charter agreement shall complete and submit to its authorizer the amendment petition application (the

“amendment application”) created and published by the Department of Education and approved by the State Board.

- (e) The governing body of a charter school seeking to apply for a material modification to the charter agreement shall file an amendment petition letter of intent with the authorizer by one of two deadlines stated below:
 - 1. Fall Deadline. The governing body of the charter school may file an amendment petition letter of intent with the authorizer by September 1 of the school year preceding the school year in which the proposed amendment will take effect for any material modification outlined in paragraph (c). If the due date falls on a Saturday, Sunday or state-observed holiday, the letter of intent shall be due on the next business day.
 - 2. Spring Deadline. The governing body of the charter school may file an amendment petition letter of intent with the authorizer by January 15 of the year in which the proposed amendment will take effect for any material modification outlined in paragraph (c) except items contained in paragraphs (c)(2) or (c)(3). If the due date falls on a Saturday, Sunday or state-observed holiday, the letter of intent shall be due on the next business day.
- (f) The governing body of a charter school shall file an amendment application with the authorizer thirty (30) calendar days after submitting a letter of intent.
 - 1. Fall Deadline. The governing body of a charter school that submits its letter of intent in accordance with in paragraph (e)(1) shall file an amendment application with the authorizer by October 1. If the due date falls on a Saturday, Sunday or state-observed holiday, the amendment application shall be due on the next business day.
 - 2. Spring Deadline. The governing body of a charter school that submits its letter of intent in accordance with paragraph (e)(2) shall file an amendment application with the authorizer by February 14. If the due date falls on a Saturday, Sunday or state-observed holiday, the amendment application shall be due on the next business day.
- (g) The authorizer shall review and score all complete and timely amendment applications using a scoring rubric created and published by the Department of Education and approved by the State Board.
- (h) The authorizer shall rule by resolution, at a regular or special called meeting, on the approval or denial of an amendment application within sixty (60) calendar days of the application due date. Amendment applications may be submitted prior to the due date; however, all complete and timely amendment applications shall be reviewed and acted upon within sixty (60) calendar days following the due date.
- (i) Should the authorizer fail to either approve or deny a complete and timely amendment application within the sixty (60) calendar day time limit, the amendment application shall be deemed approved.
- (j) If an amendment application is deemed approved, such amendment shall not alter the original term of the charter agreement. The charter school shall still be required to submit a renewal application pursuant to T.C.A. § 49-13-121 to continue to operate beyond the current charter term.
- (k) If an amendment application is denied, the grounds upon which the authorizer based the decision to deny must be stated in writing, specifying the reasons for the denial.
- (l) An emergency amendment petition application (“emergency amendment application”) and rubric shall be created and published by the Department of Education and approved by the State Board.
- (m) If the governing body of a charter school determines that, due to unanticipated extraordinary circumstances, good cause exists for the emergency amendment application to be submitted, it

shall make a finding by resolution at a regular or special called meeting of the governing body. An emergency amendment application may be submitted to the authorizer at any time.

1. In order for an emergency amendment application to be complete, the governing body of the charter school shall include with the emergency amendment application detailed written findings explaining the unanticipated extraordinary circumstances giving rise to the emergency amendment application. An emergency amendment application shall not be used to add a grade level or levels or to increase student enrollment outside of the maximum enrollment thresholds set forth in the charter agreement.
2. The authorizer shall rule by resolution, at a regular or special-called meeting, on the approval or denial of an emergency amendment application within sixty (60) calendar days of the date the emergency amendment application was submitted to the authorizer.
3. Should the authorizer fail to either approve or deny a complete emergency amendment application within the sixty (60) calendar day time limit, the emergency amendment application shall be deemed approved.
4. If an emergency amendment application is denied, the grounds upon which the authorizer based the decision to deny must be stated in writing, specifying the reasons for the denial.

(2) Appealing an Amendment Decision.

- (a) The governing body of a charter school may appeal a decision by an authorizer other than the State Board to deny an amendment to the charter agreement to the State Board within ten (10) calendar days of an authorizer's vote to deny the amendment application, consistent with T.C.A. § 49-13-110(d). The governing body of a charter school shall submit a notice of appeal by email to the State Board. The notice of appeal must be received by the State Board no later than 4:30 p.m. Central Time on the tenth (10th) calendar day after an authorizer's vote to deny the amendment application or emergency amendment petition. In order to be considered a complete appeal, the notice of appeal shall contain the following information:
 1. A copy of the original charter agreement that contains all material components of the approved application;
 2. A copy of the amendment application or emergency amendment application submitted to the authorizer;
 3. A summary of the amendment application or emergency amendment application timeline including the date the amendment application or emergency amendment application was originally submitted to the authorizer and the date the amendment application or emergency amendment application was denied by the authorizer;
 4. A copy of the letter informing the governing body of the authorizer's reasons for denying the amendment application or emergency amendment application; and
 5. A brief statement, no longer than three (3) pages, including but not limited to, an explanation of why the authorizer's denial of the charter school amendment application or emergency amendment application was contrary to the best interests of the students, LEA, or community.
- (b) State Board staff shall not accept an incomplete appeal or any additional documentation from the governing body of the charter school beyond the contents of the notice of appeal, unless requested by the State Board staff.
- (c) State Board staff may request additional documentation from the governing body, the authorizer, and the Tennessee Department of Education.

- (d) Within sixty (60) calendar days after receipt of the notice of appeal and after reasonable public notice, the State Board shall hold a public hearing. The public hearing shall be attended by the State Board or its designated representative and shall occur in the school district in which the charter school is operating.
- (e) Following the public hearing, the review of the amendment application or emergency amendment application and any additional information collected by the State Board, the Executive Director of the State Board shall provide written findings and recommendations to the State Board. The State Board shall consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the State Board is not bound by the recommendation.
- (f) Subsequently, but within the sixty (60) calendar days after receipt of the notice of appeal, the State Board shall meet to render a decision. If the State Board finds that the denial of the amendment application or emergency amendment application is contrary to the best interests of the students, LEA, or community, the State Board shall remand the decision to the authorizer with written instructions for approval of the amendment application or emergency amendment application. The State Board shall not become the authorizer, and the charter school shall remain under the supervision of the authorizer to whom the amendment application or emergency amendment application was submitted. The decision of the State Board is final and no other appeals shall be made.

Authority: T.C.A. § 49-13-110(b) and Acts 2019, ch. 219. **Administrative History:** Emergency rule filed June 27, 2019; effective through December 24, 2019.

* 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)
Darrell Cobbins	X				
Bob Eby	X				
Mike Edwards	X				
Gordon Ferguson	X				
Elissa Kim	X				
Wendy Tucker	X				
Lillian Hartgrove	X				
Nicholas Darnell				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education (board/commission/ other authority) on 09/18/2019 (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: 06/05/2019 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 07/29/2019 (mm/dd/yy)



Date: 1/17/20

Signature: Angie Sanders

Name of Officer: Angie Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: 1/17/2020

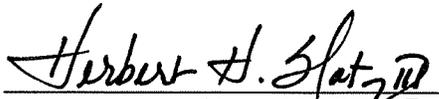
Notary Public Signature: [Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-14-01-.06

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
1/23/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/31/20

Effective on: 4/30/20


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Education

SUBJECT: Individualized Education Accounts

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-10-140 et seq.

EFFECTIVE DATES: April 21, 2020 through June 30, 2021

FISCAL IMPACT: No financial impact outside of the fiscal note in the original legislation.

STAFF RULE ABSTRACT: Revisions to this rule include clean-up edits to make the rules consistent with state law in regards to the definition of physician, criminal background checks, student eligibility, and uses of funds.

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.

These rule revisions do not affect small 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule does not have any financial impact on local governments outside of the fiscal note on the original legislation.

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;

Revisions to this rule include clean-up edits to make the rules consistent with state law in regards to the definition of physician, criminal background checks, student eligibility, and uses of funds.

- (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. §§ 49-10-140 et seq. establish the IEA program and mandates the promulgation of rules for the program.

- (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 Board of Education and the Tennessee Department of Education urge adoption of this rule. Parents of students with disabilities, local school districts, and providers are most directly affected by this rule, neither have contacted the state board urging adoption or rejection of this rule.

- (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;

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;

This rule has no financial impact outside of the fiscal note in the original legislation.

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James

Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

- (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

Angie Sanders
500 James Robertson Parkway, 5th Floor
Nashville, TN 27243
(615) 253-5707
Angela.C.Sanders@tn.gov

Nathan James
500 James Robertson Parkway, 5th Floor
Nashville, TN 27243
(615) 532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
710 James Robertson Parkway, 9th Floor
Nashville, TN 27243
(615) 253-1960
Elizabeth.Fiveash@tn.gov

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

N/A

**Department of State
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: 01-11-20
Rule ID(s): 9298
File Date: 1/22/20
Effective Date: 4/21/20

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: State Board of Education
Division:
Contact Person: Angie Sanders
Address: 5th Floor, Davy Crockett Tower, 500 James Robertson Parkway,
Nashville, TN
Zip: 37243
Phone: 615-253-5707
Email: Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.06	Use of Funds

0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest
0520-01-11-.12	Reserved

**RULES
 OF
 STATE BOARD OF EDUCATION
 CHAPTER 0520-01-11
 INDIVIDUALIZED EDUCATION ACCOUNTS**

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0520-01-11-.05	Agreement and Funds Transfer	0520-01-11-.11	Conflict of Interest
0520-01-11-.06	Use of Funds	0520-01-11-.12	Reserved

0520-01-11-.01 PURPOSE.

The purpose of these rules is to effectuate the Individualized Education Act as required by T.C.A. § 49-10-1401, *et seq.*

Authority: T.C.A. §§ 49-1-302, 49-10-1401, *et seq.*, **Administrative History:** *Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018.*

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0520-01-11-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (4) "Standard Application Form" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) "Computer hardware or other technological devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices must/shall meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.

- (6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers ~~must~~shall maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation (FBI) for processing pursuant to the National Child Protection Act. All participating schools ~~must~~shall maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint-based criminal history records check conducted by the FBI.
- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means tuition, fees, and/or required textbooks at a participating school. Fees do not include: room and board ~~or meals, meal plans, food, or consumable materials.~~
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists ~~that~~who meet the requirements set by the Department and the State Board of Education.
- (10) "Eligible postsecondary institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible student" means:
- (a) A resident of this state with an active Individualized Education Program (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the following disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program:
1. Autism;
 2. Deaf-blindness;
 3. Developmental delay;
 4. Hearing impairments;

5. Intellectual disability;
6. Multiple disabilities;
7. Orthopedic impairments;
8. Traumatic brain injury; or
9. Visual impairments; and

(b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to enroll in the program prior to August 1 of the year in which they are enrolled in the IEA program;
3. Has not previously attended a school in Tennessee during the one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
4. Received an IEA in the previous school year.

- (12) "Fee-for-service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee ~~individualized education account~~ Individualized Education Account.
- (15) "IEP" means an ~~individualized education program~~ Individualized Education Program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (16) "Local Education Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

- (17) "Nonpublic online learning program or course" means online programs or courses that meet the requirements set by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- (19) "Participating school" means a nonpublic school that meets the requirements established in T.C.A. § 49-10-1401, et seq. and seeks to enroll eligible students.
- (20) "Participating student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.
- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 3, Chapter 4, Chapter 5, Chapter 6 or T.C.A. § Title 63, Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 11, Chapter 14, Chapter 16, Chapter 17, Chapter 19, Chapter 22, Chapter 23, Chapter 24, or Chapter 25.
- (22) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. § 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (24) "Tutoring services" means services provided by a tutor ~~that~~who meets the requirements set by the Department.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq., **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

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0520-01-11-.03 APPLICATION

- (1) To apply to receive an IEA the parent of an eligible student, or an eligible student who has attained the age of majority, must fully complete the Standard Application Form available through the Department's website or through the Department's office by the deadline set by the Department.
 - (a) ~~A school district, a nonpublic school, or the~~The Department may assist a parent of an eligible student or an eligible student who has attained the age of majority in filing the Standard Application Form.
 - (b) The Standard Application Form must include all information requested by the Department and must be approved by the Department.
- (2) The Department shall make a determination of eligibility to participate in the Program and notify the parent of an eligible student or an eligible student who has reached the age of majority.
- (3) Once a completed Standard Application Form has been approved, the parent of an eligible student or an eligible student who has attained the age of majority shall complete the enrollment procedures

set by the Department to become enrolled in the Program, including execution of an Agreement to participate in the Program.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

0520-01-11-.04 TERM OF THE IEA.

- (1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the participating student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school;
 - (b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The Account Holder may remove the participating student from the nonpublic school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.
- (3) The Account Holder may move the student from one (1) nonpublic school to another nonpublic school in accordance with procedures set by the Department.
- (4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has ~~aged out of~~ exited the Program, provided the student attends or takes courses from an eligible postsecondary institution and the expenditures are determined to be qualifying expenses.
- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA Program and overall spending must equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.
 - (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department ~~will~~ shall

subtract the difference from the payments in the next contract year. If a student withdraws from the IEA Program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.

Authority: T.C.A. §§ 49-1-302 and ~~49-10-1401 et seq.~~ **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER

- (1) Upon notification by the Department that an IEA may be established, a parent of an eligible student or an eligible student who has attained the age of majority shall sign an agreement to:
 - (a) Provide an education for the participating student in at least the subjects of English language arts, mathematics, social studies, and science;
 - (b) Not enroll the participating student in a public school during the time the student is enrolled in the IEA Program; and
 - (c) Release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program.
- (2) The Department shall provide the Agreement template to parents of an eligible student or eligible students who have attained the age of majority. Parents of an eligible student or eligible students who have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective. The Agreement shall specify the acceptable uses of IEA funds and the responsibilities of the parent of an eligible student or eligible student who has attained the age of majority.
- (5) After receipt of the completely signed agreement, the Department shall remit the first payment to the IEA ~~via electronic funds transfer.~~ IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

- (7) After the initial payment to the IEA, the Account Holder shall submit expense reports and receipts for all IEA funds expended in accordance with the procedures set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may immediately and permanently remove any Account Holder participating student from eligibility for an IEA if the Account Holder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (9) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

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0520-01-11-.06 USE OF FUNDS.

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
 - (a) Tuition or fees at a participating school;
 - (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by an individual tutor that/who meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
 - (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic course of study for a particular content area ~~or grade level~~, including any supplemental materials required by the curriculum;

- (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to schools and educational providers (including tutors and therapists);
- (f) Tuition or fees for a nonpublic online learning program or course that meets the requirements set by the Department;
- (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
- (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;
- (i) Educational therapies or services for participating students provided by a therapist who meets the qualifications set by the Department and the State Board of Education;
- (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
- (k) Tuition or fees at an eligible postsecondary institution.
- (l) Textbooks required for courses at an eligible postsecondary institution;
- (m) Fees for the management of the IEA by private financial management firms;
- (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Before purchasing computer hardware or technological devices using IEA funds, Account Holders must receive notification of pre-approval from the Department. An Account Holder may request pre-approval for computer hardware and technological devices by:
 1. Completing and submitting the Department's pre-approval form; or
 2. Submitting the Physician's pre-approval form completed by a licensed treating physician.
- (o) Contributions to an Achieving a Better Life Experience (ABLE) account in accordance with the ABLE Act, compiled in T.C.A. Title 71, Chapter 4, Part 8, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States ~~department~~Department of treasuryTreasury, including the ~~internal-revenue-service~~Internal Revenue Service (IRS).

- (2) Account Holders shall obtain pre-approval for educational therapies, tutoring services, and any other expenses identified by the Department. If pre-approval is not obtained, the expense ~~will~~shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form.

Authority: T.C.A. §§§ 49-1-302 and 49-10-1401 et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. ~~Amendments filed October 25, 2018; effective January 23, 2019.~~

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0520-01-11-.07 MONITORING AND COMPLIANCE.

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose.
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an Account Holder, ~~nonpublic school, school-district,~~ or participating school(s) of state laws, rules, or procedures relating to the Program. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.

Authority: T.C.A. §§§ 49-1-302 and 49-10-1401 et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. ~~Amendments filed October 25, 2018; effective January 23, 2019.~~

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0520-01-11-.08 PARTICIPATING SCHOOLS.

- (1) For the purposes of the IEA Program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:
 - (a) Students with disabilities are educated with non-disabled children; and
 - (b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.
- (2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.
 - (a) The Department shall determine the application process for nonpublic schools to participate in the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.

- (b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.
 - (c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.
- (3) Participating schools shall include in their application to participate in the IEA Program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.
- (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department with the application financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.
 - (b) Participating schools shall provide to the Department all required documentation, including the school calendar and the nonpublic school's student fee schedules.
- (4) Participating schools shall:
- (a) Be academically accountable to the Account Holder for meeting the educational needs of the student by:
 - 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 - 2. Cooperating with the parent of a student enrolled in the IEA Program, or a student enrolled in the IEA Program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.
 - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the provider;
 - (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
 - (d) Conduct criminal background checks on employees;
 - (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a provider; and
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and providers that enroll participating students shall provide Account Holders with a receipt for all qualifying expenses.

- (6) Participating schools shall annually submit to the Department the graduation and completion information of participating students in accordance with procedures set by the Department.
- (7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the Program by following the procedures developed by the Department.
- (8) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (9) The Department may suspend or terminate a participating school from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
 - (a) If the Department suspends or terminates a school's participation, the Department shall notify the Account Holder and participating school of the decision. If a participating school is suspended or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.
 - (b) A participating school may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10) If a student withdraws from a participating school and transfers to another nonpublic school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (11) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

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0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student may return to the LEA upon termination of the student's participation in the Program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA, the parent of a participating student or the participating student who has attained the age of majority shall notify the Department

and the LEA in which the student resides, by following the procedures and timeline set by the Department.

- (3) Upon termination of a student's participation in the Program, the Department shall close the participating student's IEA.
- (3)(4) Upon a student's withdrawal from the nonpublic school, participating schools shall send all educational records of the participating student to the LEA or other nonpublic school identified by the parent.
- (4)(5) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5)(6) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-10-1403. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019.

0520-01-11-.10 APPEAL PROCEDURES.

- (1) Participating schools may appeal the denial, suspension, or termination of the entity's participation in the IEA Program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, a denial of an expense paid for using IEA funds, or removal of the student from the IEA Program pursuant to the following two (2) step appeal process:
 - (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the commissioner of education within ten (10) business days of receipt of the notice of application denial, suspension, termination, and/or removal. Notice of application denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, and a decision shall be issued within forty-five (45) calendar days.
 - (b) Step two (2): The applicant, Account Holder, or participating school shall be notified of the commissioner's decision in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the applicant, Account Holder, or participating school within thirty calendar (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed

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September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018.

0520-01-11-11 CONFLICT OF INTEREST.

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
 - (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA Program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA Program.
 - (b) It is also a conflict of interest and against IEA Program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018.

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* 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)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove				X	
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 07/26/2019 (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: 12/17/19

Signature: [Handwritten Signature]

Name of Officer: Angie Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: 12-17-19

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: TN State Board of Education

Rule Chapter Number(s): 0520-01-11

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.

[Handwritten Signature]
Herbert H. Slattery III
Attorney General and Reporter

1/10/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/22/20

Effective on: 4/21/20

Tre Hargett

Tre Hargett
Secretary of State

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