

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Tennessee Wildlife Resources Agency

DIVISION: Wildlife

SUBJECT: Permit Applications and Draws Governing Hunts

STATUTORY AUTHORITY: Executive Order No. 38, subparagraph 2.b. prohibits gatherings of fifty (50) or more people for the purposes of social or recreational activities. Duck blind permit drawings routinely attract hundreds, sometimes thousands, of people to one location. The emergency rule is needed to comply with Governor Lee's executive order.

EFFECTIVE DATES: July 1, 2020 through December 28, 2020

FISCAL IMPACT: Moving to a computer drawing could increase the number of participants as a person does not have to travel to a hand-held drawing, but any increase in participation, which requires a hunting license, is estimated to be not significant.

STAFF RULE ABSTRACT: This emergency rule allows the Tennessee Wildlife Resources Agency to conduct a computer drawing for permanent duck blind site permits to comply with Executive Order No. 38, which prohibits gatherings of more than fifty (50) individuals.

### **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.)

There is no impact to 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;

Allows the Tennessee Wildlife Resources Agency to conduct a computer drawing for permanent duck blind site permits to comply with Executive Order No. 38, which prohibits gatherings of more than fifty (50) individuals.

- (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;

Executive Order No. 38, subparagraph 2.b. prohibits gatherings of fifty (50) or more people for the purposes of social or recreational activities. Duck blind permit drawings routinely attract hundreds, sometimes thousands, or people to one location. The emergency rule is needed to comply with Governor Lee's executive order.

- (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;

Duck hunters who historically attend hand-held drawings will be impacted by this rule change.

- (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;

No known rulings or opinions.

- (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;

Moving to a computer drawing could increase the number of participants as a person does not have to travel to a hand-held drawing, but any increase in participation, which requires a hunting license, is estimated to be not significant.

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

Chris Richardson, TWRA, 5107 Edmondson Pike, Nashville, TN 37211; 615-308-0477; chris.richardson@tn.gov

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

Chris Richardson, TWRA, 5107 Edmondson Pike, Nashville, TN 37211; 615-308-0477; chris.richardson@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

Chris Richardson, TWRA, 5107 Edmondson Pike, Nashville, TN 37211; 615-308-0477; chris.richardson@tn.gov

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

**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;

Allows the Tennessee Wildlife Resources Agency to conduct a computer drawing for permanent duck blind site permits to comply with Executive Order No. 38, which prohibits gatherings of more than fifty (50) individuals.

- (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;

Executive Order No. 38, subparagraph 2.b. prohibits gatherings of fifty (50) or more people for the purposes of social or recreational activities. Duck blind permit drawings routinely attract hundreds, sometimes thousands, or people to one location. The emergency rule is needed to comply with Governor Lee's executive order.

- (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;

Duck hunters who historically attend hand-held drawings will be impacted by this rule change.

- (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;

No known rulings or opinions.

- (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;

Moving to a computer drawing could increase the number of participants as a person does not have to travel to a hand-held drawing, but any increase in participation, which requires a hunting license, is estimated to be not significant.

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

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Chris Richardson, TWRA, 5107 Edmondson Pike, Nashville, TN 37211; 615-308-0477; chris.richardson@tn.gov

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

**Department of State**  
**Division of Publications**  
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**For Department of State Use Only**

Sequence Number: 07-01-20  
Rule ID(s): 9368  
File Date: 7/1/2020  
Last Effective Day: 12/28/2020

## Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Tennessee Wildlife Resources Agency  
**Division:** Wildlife Division  
**Contact Person:** Chris Richardson  
**Address:** 5107 Edmondson Pike  
**Zip:** 32711  
**Phone:** 615-308-0477  
**Email:** [chris.richardson@tn.gov](mailto:chris.richardson@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Due to the outbreak of COVID-19 and Governor Lee's Executive Order No. 38, the Tennessee Wildlife Resources Agency (TWRA) must change its historic procedure of conducting an in-person drawing for permanent duck blind permits. These drawings bring large crowds of duck hunters, often over 1,000 individuals. To prevent a potential risk to public health and safety, the TWRA needs to change the procedure for drawing permanent duck blind permits.

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

Chapter Number	Chapter Title
1660-01-08	Rules and Regulations Governing Hunts
Rule Number	Rule Title
1660-01-08-.05	Permit Applications and Drawings

Rule 1660-01-08-.05(2) is amended by deleting that paragraph in its entirety and replacing with the following:

- (2) Waterfowl blind drawing and allocation procedure on wildlife management areas.
- (a) Permanent blind sites will be allocated by a hand-held drawings, a computer drawing, or any other drawing method deemed appropriate by the TWRA for the wildlife management areas: Barkley-Unit I, Big Sandy (including Gin Creek Unit), Camden- Units I and II, Cheatham Lake, Gooch-Unit A, Harmon's Creek, Haynes Bottom, Old Hickory-Units I and II, Reelfoot (except as provided in Rule 1660-01-02-.02), Tigrett, West Sandy, and Woods Reservoir of A.E.D.C.
  - (b) Each individual or group desiring to participate in the waterfowl blind drawing must complete an application supplied by the Tennessee Wildlife Resources Agency. Each individual wishing to compete in the drawing must appear in person at the designated location. Applications must be submitted between the hours of 7 a.m. and 10 a.m. (local time) on the first Saturday in August.
  - (c) ~~No individual may apply for more than one area. One application is permitted per person.~~ A hunter may only apply once per year as an individual or in a group. If a hunter applies as an individual, then any subsequent group application including that hunter will have the hunter removed from such application. If a hunter applies in a group, then any subsequent individual application including the hunter will be rejected and any group application including that hunter will have the hunter removed from such application. Each applicant must be at least sixteen (16) years of age to compete in the drawing or sign-on.
  - (d) ~~Individuals must produce~~ The following licenses and permits are required in order to compete in the drawing:
    - 1. All areas (except Reelfoot) - Annual Hunting and Fishing License and an Annual Small Game and Waterfowl Permit, or Sportsman License, or any Lifetime Sportsman License
    - 2. Reelfoot - Annual Reelfoot Preservation Permit, or Sportsman License, or any Lifetime Sportsman License.
  - (e) ~~Applications will be drawn in order to establish priorities for blind sites. All participants wishing to sign-on with a successful applicant must do so when he makes his/her choice of blind sites. An individual's application for blind selection is immediately voided when he/she signs-on with another applicant. All individuals wishing to sign-on must possess the necessary licenses and permits indicated in subparagraph (d). Individuals desiring to sign-on must be present.~~
  - (fe) Permits for blinds will be issued at the time of after the drawing. ~~Cancelled or unbuilt blinds~~ If a permit holder does not comply with the waterfowl blind requirements of Rule 1660-01-02-.02(1)(c), then the permit holder's waterfowl blind site permit will be cancelled and the blind site will be designated as a temporary blind sites, and available on a first-come,- first-served basis. All decoy and other hunt associated items must be removed at the end of each day.
  - (gf) No person shall buy, sell, barter, loan or transfer under any theory of law, or offer to buy, sell, barter, loan or transfer under any theory of law, a waterfowl draw blind site permit or the privilege of signing on a waterfowl draw blind site permit issued pursuant to this rule. Any person violating this rule and regulation is subject to have his/her permit and/or hunting privileges revoked in addition to other penalties as prescribed by law.

**Authority:** T.C.A. §§ 70-1-206, 70-2-219, 70-4-107, and 70-5-101.

Rule 1660-01-08-.05(3)(g) is amended by deleting that subparagraph in its entirety and replacing with the following:

- (g) Successful applicants that fail to return the notice of intention to TWRA two weeks prior to the TWRA established deadline will forfeit their reservation. Any vacant hunt units will be filled by a hand-held drawing, a computer drawing, or any other drawing method deemed appropriate by the TWRA at a time and location specified and as per instructions supplied by the Tennessee Wildlife Resources Agency.

**Authority:** T.C.A. §§ 70-1-206, 70-2-219, 70-4-107, and 70-5-101.

\* 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)
Angie Box	✓				
Dennis Gardner	✓				
Jimmy Granbery	✓				
Kurt Holbert	✓				
Steve Jones	✓				
Connie King	✓				
Brian McLerran	✓				
Jim Ripley	✓				
Tony Sanders	✓				
James Stroud					
Kent Woods	✓			X	
Tommy Woods	✓				
Hank Wright	✓				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 6-26-2020

Signature: Bobby Wilson

Name of Officer: Bobby Wilson

Title of Officer: Executive Director

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-01-08

All emergency 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. Slattery III  
 Herbert H. Slattery III  
 Attorney General and Reporter  
6/30/2020  
 Date

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SECRETARY OF STATE  
 PUBLICATIONS

Filed with the Department of State on: 7/1/2020

Effective for: 180 \*days

Effective through: 12/28/2020

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION: N/A

SUBJECT: Minimum Requirements for the Approval of Public Schools/Continuous Learning Plans/Educator Preparation

STATUTORY AUTHORITY: Public Chapter 652 of 2020 gave the State Board of Education authority to promulgate emergency rules addressing issues as a result of COVID-19.

EFFECTIVE DATES: July 2, 2020 through December 29, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These emergency rules are authorized by Public Chapter 652 of 2020 to address issues arising from the state-wide closure of public schools in the Spring of 2019-20 due to the COVID-19 public health emergency. These rules require school districts and public charter schools to develop continuous learning plans to outline how the district or public charter school plans to respond to COVID-19 related disruptions to school operations in the 2020-21 school year. Additionally, these rules contain technical edits to address school district eligibility to become an Educator Preparation Provider as a result of the elimination of district accountability designations in the 2019-20 school year due to COVID-19, and clarify that waiver requests related to COVID-19 may be submitted to the Commissioner of Education beyond the June 30, 2020 deadline if they are for the 2020-21 school year.

### **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.insosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

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No impact.

**Additional Information Required by Joint Government Operations Committee**

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

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

These emergency rules are authorized by Public Chapter 652 of 2020 to address issues arising from the state-wide closure of public schools in the Spring of 2019-20 due to the COVID-19 public health emergency. These rules require school districts and public charter schools to develop continuous learning plans to outline how the district or public charter school plans to respond to COVID-19 related disruptions to school operations in the 2020-21 school year. Additionally, these rules contain technical edits to address school district eligibility to become an Educator Preparation Provider as a result of the elimination of district accountability designations in the 2019-20 school year due to COVID-19, and clarify that waiver requests related to COVID-19 may be submitted to the Commissioner of Education beyond the June 30, 2020 deadline if they are for the 2020-21 school year.

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

Public Chapter 652 of 2020 gave the State Board of Education authority to promulgate emergency rules addressing issues as a result of COVID-19.

- (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 impact all local education agencies and charter schools in the state, as well as the Department of Education and State Board of Education. These rules were developed in consultation with the Department of Education office of policy and legislative affairs, office of general counsel, office of educator licensure and preparation, directors of schools, district and charter school leaders, the school boards association, and others. State Board staff solicited and incorporated feedback from directors of schools, school and district leaders, the school boards association and others on a number of areas prior to final approval by the Board. The State Board and Department of Education urge adoption.

- (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;

None.

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

Angie Sanders  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jay Klein  
[Jay.Klein@tn.gov](mailto:Jay.Klein@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](mailto:Angela.C.Sanders@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jay Klein  
[Jay.Klein@tn.gov](mailto:Jay.Klein@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

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

N/A

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For Department of State Use Only

Sequence Number: 07-02-20  
 Rule ID(s): 9369-9371  
 File Date: 7/2/2020  
 Last Effective Day: 12/29/2020

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

Agency/Board/Commission: State Board of Education  
 Division: N/A  
 Contact Person: Angie Sanders  
 Address: 500 James Robertson Parkway, 5<sup>th</sup> Floor  
 Zip: 37243  
 Phone: 615 253-5707  
 Email: [Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Statement of Necessity:**

The following emergency rules are authorized by Public Chapter 652 of 2020 to address issues arising from the state-wide closure of public and private schools and post-secondary institutions in the Spring of 2019-20 due to the COVID-19 public health emergency. These rules require districts and public charter schools to develop continuous learning plans to respond to COVID-19 related disruptions to school operations in the 2020-21 school year. Additionally, these rules address school district eligibility to become an Educator Preparation Provider as a result of the elimination of district accountability designations in the 2019-20 school year due to COVID-19, and these rules clarify that waiver requests related to COVID-19 may be submitted to the Commissioner of Education beyond the June 30, 2020 deadline if they are for the 2020-21 school year.

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please 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
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.11	Requirements for the 2019-20 School Year as a Result of the COVID-19 Public Health Emergency

Chapter Number	Chapter Title
0520-01-17	Continuous Learning Plans
Rule Number	Rule Title
0520-01-17-.01	Continuous Learning Plans for the 2020-21 School Year

Chapter Number	Chapter Title
0520-02-04	Educator Preparation
Rule Number	Rule Title
0520-02-04-.03	Eligible Educator Preparation Providers

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03  
MINIMUM REQUIREMENTS FOR THE APPROVAL  
OF PUBLIC SCHOOLS**

AMEND Emergency Rule 0520-01-03-.11, Requirements for 2019-20 School Year as a Result of the COVID-19 Public Health Emergency, by adding a new paragraph (1)(a) so that, as amended the revised paragraph (1) shall read:

**0520-01-03-.11 REQUIREMENTS FOR 2019-20 SCHOOL YEAR AS A RESULT OF THE COVID-19 PUBLIC HEALTH EMERGENCY**

- (1) A Local Education Agency ("LEA") may request that the Commissioner waive a State Board rule or state statute for one (1) or more of the LEA's schools that inhibits or hinders the LEA's ability to meet the LEA's goals or comply with the LEA's mission due solely to the outbreak of COVID-19 during the spring semester of the 2019-2020 school year. No waiver shall be effective until approved by the State Board. Waiver requests shall be submitted to the Commissioner by June 30, 2020.
  - (a) The Commissioner may accept waiver requests submitted by an LEA after June 30, 2020 if the waiver request applies to the 2020-21 school year.

**Authority:** T.C.A. §§ 49-1-103 and 49-1-302, Executive Order No. 14 of 2020 (and applicable, subsequent Executive Orders addressing COVID-19 relief), U.S. Department of Education 2020 Waiver of Tennessee Assessment Requirements, and Public Chapter 652 of 2020. **Administrative History:** (For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992. Emergency rules filed April 16, 2020; effective through October 13, 2020.

**RULES**  
**OF**  
**THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-17**  
**CONTINUOUS LEARNING PLANS**

**TABLE OF CONTENTS**

0520-01-17-.01    Continuous Learning Plans for  
the 2020-21 School Year.

**0520-01-17-.01 CONTINUOUS LEARNING PLANS FOR THE 2020-21 SCHOOL YEAR**

- (1)    As used in this chapter:
- (a)    "Authorizer" has the same meaning given in T.C.A. § 49-13-104.
  - (b)    "Charter Management Organization" or "CMO" means a non-profit entity that manages or operates two (2) or more public charter schools.
  - (c)    "The Department" means the Tennessee Department of Education.
  - (d)    "Instructional Time" means the amount of instruction provided through synchronous or asynchronous instruction, or a combination of the two (2), as defined in this rule. To the extent practicable, instruction delivered remotely must be as commensurate in quality, rigor, and effectiveness as in-person instructional time.
  - (e)    "LEA" means local education agency and has the same meaning given in T.C.A. § 49-1-103 (2).
  - (f)    "Remote Instruction" means instruction that takes place when teachers are not providing in-person instruction to students within the traditional school setting. Remote instruction does not include operation of a virtual school pursuant to T.C.A. Title 49, Chapter 16 and State Board rules.
  - (g)    "CLP" means continuous learning plan.
  - (h)    "State Board" means the Tennessee State Board of Education.
  - (i)    "Synchronous Instruction" means instruction provided by a Tennessee educator to a student or students at the same time but not necessarily in the same place who engage in instruction while it occurs. This may include but not be limited to in-person instruction or telephonic, Internet-based, or other appropriate methods of communication as determined by the Department and may include full-class or small-group instruction or one-on-one instruction between student and teacher.
  - (j)    "Asynchronous Instruction" means instruction provided by a Tennessee educator to students who participate in instruction at a separate time from when the teacher delivered the instruction. This may include but not be limited to methods

such as printed work materials, teacher-assigned individual or group projects, audio- or video-recorded lessons, or online course modules, or other appropriate methods as determined by the Department.

- (k) "Public Charter School" means a Tennessee public charter school authorized to operate under T.C.A. Title 49, Chapter 13.
- (2) Each LEA and Public Charter School shall develop a CLP for the 2020-21 school year that shall be submitted to the Department of Education for approval. A CMO may develop and submit one (1) CLP for all of the schools operated by the CMO in Tennessee. All Public Charter Schools shall provide their Authorizer a copy of the CLP submitted to the Department by the Public Charter School or the Public Charter School's CMO. Public Charter Schools are encouraged to share their CLP with the Authorizer prior to submission of the CLP to the Department.
- (3) The Department shall develop and provide LEAs and Public Charter Schools with a template for CLPs. The CLP template and any rubric utilized by the Department for evaluation of CLPs shall be posted on the Department's website.
- (4) LEAs and Public Charter Schools shall submit their CLP to the Department utilizing the CLP template no later than July 24, 2020. The Department shall be responsible for evaluation and approval of all submitted plans in accordance with the evaluation and approval process developed by the Department. The evaluation and approval process shall ensure CLPs adhere to the requirements of this rule, State Board COVID-19 Continuous Learning Plan Policy 3.210, and all applicable federal and state laws and rules, unless waived. The Department shall post information regarding the evaluation and approval process on the Department's website. The Department shall report the outcomes of the approval process and common strategies and challenges identified in the CLPs to the State Board. An interim report shall be submitted no later than February 28, 2021, and a final report shall be submitted no later than July 31, 2021.
- (5) The CLP shall address how the LEA or Public Charter School will continue to deliver quality instruction during the 2020-21 school year in the event of future COVID-19 related disruptions to one or more students, schools, or district-wide school operations. The CLP shall address, at minimum, the following components as defined in State Board COVID-19 Continuous Learning Plan Policy 3.210:
  - (a) Communications;
  - (b) Monitoring implementation;
  - (c) Access to instructional materials and technology;
  - (d) Attendance procedures;
  - (e) Educator and staff training;
  - (f) Standards-based instruction;
  - (g) Support for all students, including special populations and at-risk students; and

(h) How the LEA or Public Charter School will meet the requirements of T.C.A. § 49-6-3004 and T.C.A. § 49-6-201(b)(2) during a COVID-19 related disruption to school operations, including:

1. If one (1) or more school buildings are closed and all instruction is being provided via Remote Instruction. The CLP shall include how the LEA or Public Charter School will provide students in grades one (1) through twelve (12) access to six and one half (6 ½) hours of Instructional Time each school day and students in Kindergarten with access to four (4) hours of Instructional Time each school day;
2. If one (1) or more school buildings are open but on a modified schedule or operating with a reduced capacity. The CLP shall include how the LEA or Public Charter School will provide students in grades one (1) through twelve (12) access to six and one half (6 ½) hours of Instructional Time each school day and students in Kindergarten with access to four (4) hours of Instructional Time each school day.
3. If one (1) or more school buildings are open but the LEA or Public Charter School permits certain students to participate in Remote Instruction due to COVID-19 related reasons. The CLP shall include how the LEA or Public Charter School will provide students participating in Remote Instruction in grades one (1) through twelve (12) access to six and one half (6 ½) hours of Instructional Time each school day and students in Kindergarten with access to four (4) hours of Instructional Time each school day.

(6) The Instructional Time requirements set forth in paragraph (5)(h)(1)-(3) do not apply to students being served under the homebound program, incarcerated students, and students in a residential mental health facility or court-ordered day-treatment program. Instructional Time requirements for students being served under the homebound program, incarcerated students, and students in a residential mental health facility or court-ordered day-treatment program shall comply with state law and state board rules governing these students.

(6)(7) CLPs may address the following additional components as defined in State Board COVID-19 Continuous Learning Plan Policy 3.210:

- (a) Stakeholder engagement; and
- (b) Evaluating the effectiveness of the CLP.

(7)(8) CLPs shall also:

- (a) Provide students with disabilities access to instruction in a manner consistent with each student's individualized education program (IEP) or 504 plan. Remote Instruction supports shall be considered and included, as appropriate for the student, when an IEP or 504 plan is initially developed or at any subsequent review or revision of an IEP or 504 plan;

- (b) Provide students who are English Learners access to instruction in a manner consistent with each student's individualized learning plan and with State Board English as a Second Language Program Policy 3.207;
  - (c) Address the needs of other at-risk student populations as defined in State Board High School Policy 2.103;
  - (d) Align student grading expectations to the State Board's Uniform Grading Policy 3.301 for students in grades 9-12 and to the LEA's or public charter school's locally adopted grading policies for students in grades K-8, and, if applicable, for students in grades 9-12; and
  - (e) Include a policy and/or procedure establishing standards governing daily student attendance when students are participating in Remote Instruction, including, but not limited to, procedures for determining when a student is present, determining an excused versus unexcused absence, the internal attendance tracking system to be used, and how the LEA or Public Charter School will communicate attendance policies and/or procedures to parents and/or legal guardians. LEAs and Public Charter Schools shall address in their attendance policy and/or procedure potential interventions for addressing student absences during Remote Instruction. The reporting of attendance to the Department must be via the LEA or Public Charter School's student information system utilizing the attendance code set by the Department;
  - (f) Include a process for monitoring the implementation of the CLP during the 2020-21 school year to ensure all components of the plan are implemented with fidelity; and
  - (g) Comply with class size averages and maximums pursuant to T.C.A. § 49-1-104. If the LEA or Public Charter School needs a waiver of class size averages in order to implement its CLP, a waiver request shall be submitted to the Commissioner of Education.
- (8) Each LEA and Public Charter School shall post its approved CLP on its website and make a copy available to parents/legal guardians and students upon request. All approved CLPs shall also be posted on the Department's website.
- (9) After an LEA's or Public Charter School's CLP receives final approval, the LEA, an individual school within the LEA, or Public Charter School shall be credited with an instructional day during the 2020-21 school year for all days in which the Public Charter School, LEA, or individual schools within the LEA, operated under the approved CLP. This includes days during which the LEA or Public Charter School implemented the CLP prior to final approval.
- (10) An LEA or Public Charter School that continues instruction during a COVID-19 related disruption to school operations in compliance with the LEA's or Public Charter School's approved CLP shall continue to receive Basic Education Program (BEP) funding as outlined in T.C.A. §§ 49-3-301, et. seq.

**Authority: Public Chapter 652 of 2020; T.C.A. §§ 49-6-3004, 49-1-302. Administrative History:**

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-04  
EDUCATOR PREPARATION**

AMEND Rule 0520-02-04-.03 Eligible Educator Preparation Providers by deleting the language in paragraph (2)(c) and replacing it with the following:)

(2)(c) A Tennessee LEA or consortium of Tennessee LEAs that have not received the lowest performance determination on the state's accountability model pursuant to T.C.A. § 49-1-602 in either of the two (2) most recent school years where performance determinations on the state's accountability model were available; or

**Authority:** T.C.A. §§ 49-1-302, 49-5-101, and 49-5-108, Executive Order No. 14 of 2020 (and applicable, subsequent Executive Orders addressing COVID-19 relief), Public Chapter 652 of 2020. **Administrative History:** Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. Repeal filed May 29, 2015; effective August 27, 2015. Emergency rules filed January 28, 2019; effective through July 27, 2019. Amendments filed January 28, 2019; effective April 28, 2019.

\* 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)
Lillian Hartgrove	X				
Bob Eby	X				
Darrell Cobbins	X				
Larry Jensen	X				
Gordon Ferguson				X	
Elissa Kim	X				
Mike Edwards	X				
Nick Darnell	X				
Nate Morrow				X	

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 7/1/20

Signature: \_\_\_\_\_

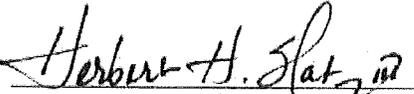
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-03-.11; 0520-01-17; 0520-02-04-.03

All emergency 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  
7/1/2020  
 Date

Department of State Use Only

RECEIVED

2020 JUL 02 AM 11:58

SECRETARY OF STATE  
 PUBLICATIONS

Filed with the Department of State on: 7/2/2020

Effective for: 180 \*days

Effective through: 12/29/2020

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Department of State

DIVISION: Publications

SUBJECT: Notice of Rulemaking/Filing of Rules/Withdrawal and Stay of Rules

STATUTORY AUTHORITY: There is no federal or state law or regulation mandating promulgation of this rule.

EFFECTIVE DATES: October 22, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule governs the filing of rules as well as rulemaking notices, withdrawals and stays of rules with the Secretary of State pursuant to the Uniform Administrative Procedures Act. They remove the requirement that paper files must be filed in triplicate, allow for digital filing with an electronic signature, and remove the requirement that the signature of the filer must be notarized. Implementation of these rules will allow for online transmission of rule filings and related documents.

**Public Hearing Comments**

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

No public comments were received prior to or at the hearing on these rules.

**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 rules do not affect 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.)

These rules will not have any impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules govern the filing of rules as well as rulemaking notices, withdrawals and stays of rules with the Secretary of State pursuant to the Uniform Administrative Procedures Act. They remove the requirement that paper files must be filed in triplicate, allow for digital filing with an electronic signature, and remove the requirement that the signature of the filer must be notarized. Implementation of these rules will allow for online transmission of rule filings and related documents.

- (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;

State agencies will now be able to file rules online, resulting in greater convenience and speed throughout the process.

- (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;

None.

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

Mary Beth Thomas  
General Counsel  
Secretary of State's Office  
State Capitol, 1<sup>st</sup> Floor  
Nashville, Tennessee 37243

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

Mary Beth Thomas  
General Counsel  
Secretary of State's Office  
State Capitol, 1<sup>st</sup> Floor  
Nashville, Tennessee 37243

- (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

Mary Beth Thomas

General Counsel  
Secretary of State's Office  
State Capitol, 1<sup>st</sup> Floor  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@tn.gov

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

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

**For Department of State Use Only**

Sequence Number: 07-29-20  
 Rule ID(s): 9374-9376  
 File Date: 7/24/2020  
 Effective Date: 10/22/2020

## 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:** Department of State  
**Division:** Division of Publications  
**Contact Person:** Mary Beth Thomas  
**Address:** State Capitol, 1<sup>st</sup> Floor, Nashville, Tennessee  
**Zip:** 37242  
**Phone:** (615) 741-2819  
**Email:** [Mary.Beth.Thomas@tn.gov](mailto:Mary.Beth.Thomas@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
1360-01-01	Notice of Rulemaking
Rule Number	Rule Title
1360-01-01-.02	Paper Size and Margins
1360-01-01-.03	Forms and Completion of Forms

Chapter Number	Chapter Title
1360-01-02	Filing of Rules
Rule Number	Rule Title
1360-01-02-.01	Purpose
1360-01-02-.03	Paper Size, Margins and Numbering of Rules
1360-01-02-.04	Forms and the Completion of Forms
1360-01-02-.05	Additional Requirements
1360-01-02-.06	Forms for Rulemaking

Chapter Number	Chapter Title
1360-01-03	Withdrawal of Rules, Stays of Effective Dates, and Withdrawal of Stay of Effective Date
Rule Number	Rule Title
1360-01-03-.02	Forms and the Completion of Forms

RULES  
OF  
THE TENNESSEE DEPARTMENT OF STATE

CHAPTER 1360-01-01  
NOTICE OF RULEMAKING

TABLE OF CONTENTS

1360-01-01-.01	Notice to Secretary of State of Tennessee	1360-01-01-.04	Repealed
1360-01-01-.02	Paper Size and Margins	1360-01-01-.05	Repealed
1360-01-01-.03	Forms and Completion of Forms		

**1360-01-01-.01 NOTICE TO SECRETARY OF STATE OF TENNESSEE.**

- (1) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process and is required to transmit a notice of such rulemaking hearing to the Secretary of State for publication in the Tennessee Administrative Register, that notice shall be filed using form SS-7037 prescribed by this chapter and made available on the Secretary of State's web site. The general information required for all notices shall be added by the agency on the prescribed form.

**Authority:** T.C.A. § 4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

**1360-01-01-.02 PAPER SIZE AND MARGINS.**

- (1) All notices of rulemaking hearings filed with the Secretary of State must be on white, medium bond paper, size eight and one-half by eleven inches. The margins of this form will be preselected by the Secretary of State. After the form is completed it can be printed and copies made for submission to the Secretary of State.

**Authority:** T.C.A. § 4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

**1360-01-01-.03 FORMS AND COMPLETION OF FORMS.**

- (1) A Notice of Rulemaking Hearing filed with the Secretary of State will require the following:
- (a) Three (3) original forms (SS-7037) documents with original signatures in hard copy or a single PDF copy of the signed original form (SS-7037). Signatures may be affixed electronically.
1. The following guidelines apply to the document:
    - (i) The documents must be clean and legible copies.
    - (ii) Use of capitals and lower case in all text. No "all caps."
    - (iii) No bold, underline or italic fonts.
    - (iv) No auto numbering on paragraphs in text of rule.
    - (v) Do not use the MS Word function "track changes."

(Rule 1360-01-01-.03, continued)

- (vi) No unneeded punctuation. Example: No comma between rule number and rule title or apostrophe after agency name in main heading.
  - (vii) Use T.C.A. for Tennessee Code Annotated.
  - (viii) No hard return at the end of lines within a paragraph. Use only at end of paragraph.
  - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting before or after the paragraph to create space. This function does not work with style pallets.
  - (x) Use hyphens on keyboard with no spaces between hyphen and rule numbers. Variations can cause search options to overlook target.
  - (xi) No single digits on rule and chapter numbers. Place "0" with single numbers. Example: 1200-5-5 = 1200-05-05.
  - (xii) Font style shall be Arial and point size 10.
- (b) ~~A digital version (diskette or CD) of the original form (SS-7037) filing shall accompany be submitted contemporaneously with the filing.~~
1. ~~The file must be transmitted to the Secretary of State Division of Publications in MS Word format via email to [publications.information@tn.gov](mailto:publications.information@tn.gov).~~
  2. ~~The disk or CD shall be labeled to email must include the following information within the body of the email:~~
    - (i) ~~File name.~~
    - (ii) ~~Software program and version.~~
    - (iii) ~~Chapter and rule number(s).~~
    - (iv) ~~Name, address, telephone number and e-mail of the technical contact who person who is responsible for the contents of the filing created the medium file.~~
    - (v) ~~Include only what is required on disk/CD. Label disk/CD with chapter number.~~
    - (iii) ~~ii) Files not required by the Secretary of State should not be included within the email, on the disk/CD accompanying the rule.~~
    - (iv) ~~Electronic submission of forms shall not be encrypted. Any transmission of encrypted material to the Secretary of State pursuant to the Uniform Administrative Procedures Act will be rejected and returned to the agency as noncompliant.~~
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.

(Rule 1360-01-01-.03, continued)

- (3) The substance of the proposed rules(s) shall be added to the form at the designated place. The text must be formatted according to the rules of the Secretary of State (see Rule 1360-01-02).
- (4) The Secretary reserves the right to reject any filing not in compliance with these rules or other rules pertaining to rulemaking.
- (5) A completed sample of form SS-7037 can be found at the Secretary of State's web site, [www.state.tn.us/sos](http://www.state.tn.us/sos).

**Authority:** T.C.A. § 4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed April 16, 1990; effective July 29, 1990. Amendment filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

**1360-01-01-.04 REPEALED.**

**Authority:** T.C.A. § 4-5-203. **Administrative History:** Original rule filed June 12, 1995; effective October 27, 1995. Repeal filed July 29, 2008; effective November 28, 2008.

**1360-01-01-.05 REPEALED.**

**Authority:** T.C.A. § 4-5-203. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment renumbering rule (formerly 1360-01-01-.04) filed June 12, 1995; effective October 27, 1995. Repeal filed July 29, 2008; effective November 28, 2008.

RULES  
OF  
THE TENNESSEE DEPARTMENT OF STATE

CHAPTER 1360-01-02  
FILING OF RULES

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1360-01-02-.01	Purpose	1360-01-02-.05	Additional Requirements
1360-01-02-.02	Definitions of Rules	1360-01-02-.06	Forms for Rulemaking
1360-01-02-.03	Paper Size, Margins and Numbering of Rules	1360-01-02-.07	Reservation of Right of Rejection by Secretary of State
1360-01-02-.04	Forms and Completion of Forms		

**1360-01-02-.01 PURPOSE.**

It is the intent of the Secretary of State to simplify the rulemaking process for state agencies with rulemaking authority by incorporating a series of forms that shall be completed by the agency and submitted to the Secretary. These forms are furnished at the Secretary of State web site, [www.state.tn.us/sos](http://www.state.tn.us/sos). The agency is then to go to the Publications Division within the site and follow the instructions. These forms are to be completed by computer and printed for submission to the Secretary of State.

**Authority:** T.C.A. §§ 4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1, 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

**1360-01-02-.02 DEFINITIONS OF RULES.** The following are definitions of types of rules that can be filed with the Secretary of State pursuant to the Uniform Administrative Procedures Act.

- (1) The term "rules" shall mean rulemaking hearing rules, proposed rules, and emergency rules. Each term mentioned is applicable to its own form.
- (2) Form SS-7039 is applicable to "rulemaking hearing rules." These are rules filed by an agency after a rulemaking hearing is conducted pursuant to T.C.A. § 4-5-202.
- (3) Form SS-7038 is applicable to "proposed rules." These are rules filed by an agency without a rulemaking hearing pursuant to T.C.A. § 4-5-205.
- (4) Form SS-7040 is applicable to "emergency rules." These are filed by an agency pursuant to T.C.A. § 4-5-208(a), where:
  - (a) An immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by this chapter would not adequately protect the public; or
  - (b) The rule only delays the effective date of another rule that is not effective; or
  - (c) It is required by the constitution or court order; or
  - (d) It is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedure described in this chapter might jeopardize a federal program or funds; or

(Rule 1360-01-02-.02, continued)

- (e) The agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.

(5) Reserved

**Authority:** T.C.A. §§ 4-5-202, 4-5-206, 4-5-208, 4-5-209 and Public Chapter 566 of the 106<sup>th</sup> General Assembly. **Administrative History:** (For history prior to June 22, 1984 see pages 1-1. 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendments filed August 24, 2009; effective January 29, 2010.

**1360-01-02-.03 PAPER SIZE, MARGINS AND NUMBERING OF RULES.**

- (1) All ~~rules~~ notices of rulemaking hearings filed with the Secretary of State must be on white, medium bond paper, size eight and one-half by eleven inches. The margins of this form will be preselected by the Secretary of State. After the form is completed it can be printed and copies made for submission to the Secretary of State.
- (2) Control Number. A four-digit number has been assigned to each state agency authorized by law to make rules or determine contested cases. This control number will be used on all rules filed for publication with the Secretary of State pursuant to the Administrative Procedures Act, Tennessee Code Annotated Title 4, Chapter 5.
- (3) Numbering Rules
  - (a) Where the agency is small and its functions are limited to one particular area, the second number designating the major division of primary subject matter may be dispensed with.

Example: 1200-06-01-.01

1200	06	01	.01
Control number	Division	Chapter	Rule

- (4) Rule Structure. All separate parts of a rule shall be designated by a letter or number. Rules shall be organized, numbered and referenced according to the following outline form:
  - (1) Paragraph
    - (a) subparagraph
      - 1. part
        - (i) subpart
          - (l) item
            - I. subitem
              - A. section
                - (A) subsection

**Authority:** T.C.A. §§4-5-206, 4-5-220 and 4-5-221. **Administrative History:** (For history prior to June 22 1984 see pages 1-1.001. Repeal and new rule filed May 23, 1984; effective June 22, 1 984. Amendment filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

(Rule 1360-01-02-.03, continued)

**1360-01-02-.04 FORMS AND THE COMPLETION OF FORMS.** The forms supplied by the Secretary of State through the web site ([www.state.tn.us/sos](http://www.state.tn.us/sos)) shall be completed by the rule filer and the following guidelines are to be followed:

- (1) A Proposed Rulemaking Form, Rulemaking Hearing Form and an ~~Temporary-Rule~~Emergency Rule Filing Form shall require the following:
  - (a) ~~Three (3) entire original forms documents completed with original signatures in hard copy or a single PDF copy of the signed original form document. Signatures may be affixed electronically.~~
    1. The following guidelines apply to the document:
      - (i) The documents must be clean and legible.
      - (ii) Use of capitals and lower case in all text. No "all caps."
      - (iii) No bold, underline or italic fonts.
      - (iv) Do not use auto-numbering on paragraphs in the text of rule.
      - (v) Do not use the MS Word function "track changes."
      - (vi) Do not use unneeded punctuation. Example: No comma between the rule number and rule title or apostrophe after agency name in main heading.
      - (vii) Use T.C.A. for Tennessee Code Annotated.
      - (viii) No hard return at the end of lines within a paragraph. Use at the end of a paragraph.
      - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting before or after the paragraph to create space. This function does not work well with style pallets.
      - (x) Use hyphens on keyboard with no space between hyphen and rule numbers. Variations can cause search options to overlook target.
      - (xi) No single digits on rule and chapter numbers. Place "0" with single numbers. Example: 1200-5-5 = 1200-05-05.
      - (xii) Responses to comments are not part of the Government Operations Committee statement. Compose responses on separate sheet of paper. If there were no comments to respond to, draft a memo stating that fact.
      - (xiii) Font style for all submissions shall be Arial and point size 10.
  - (b) ~~Diskette or CD submission of the material is required. Other requests for transmission of data can be accommodated; however, the filing agency must contact the division before submission. A digital version of the original form shall be submitted contemporaneously with the filing.~~
    1. The file must be transmitted to the Division of Publications in MS Word software format via email to [publications.information@tn.gov](mailto:publications.information@tn.gov). ~~Contact the division~~ Division of Publications if unsure about software requirements.

(Rule 1360-01-02-.04, continued)

2. ~~The disk or CD should be labeled and email must include the following information within the body of the email:~~
  - ~~(i) Software program and version.~~
  - ~~(ii) Chapter(s) and rule number(s).~~
  - ~~(iii) Name, address, telephone number and e-mail address of the person who made the disk file and is responsible for the contents of the filing.~~
  - ~~(iviii) Include only what is required on disk/CD. Label disk/CD with chapter number. Files not required by the Secretary of State should not be included within the email, on the disk/CD accompanying the rule.~~
  - ~~(iv) Any electronic submission of forms shall not be encrypted. Any transmission of encrypted material to the Secretary of State pursuant to the Uniform Administrative Procedures Act will be rejected and returned to the agency as non-compliant/noncompliant.~~
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.
- (3) Each rule filed with the Secretary of State shall clearly show at the bottom of that rule the statutory authority (rulemaking as well as substantive) for each rule. Where a particular group of rules has the same statutory authority, then that authority need only be cited once at the end of that group of rules.
- (4) ~~All rules filed with the Secretary of State shall be certified.~~
- ~~(5) New rules and amendments may be filed together with the same set of signatures so long as they are grouped and separated by the headings "New Rules" and/or "Amendments." When filing multiple amendments involving more than one rule and/or chapters within one document, the amendments must be in numeric order.~~

**Authority:** T.C.A. §§ 4-5-202, 4-5-202(c), 4-5-203(e), 4-5-206, 4-5-206(d), 4-5-208 and 4-5-209.  
**Administrative History:** (For history prior to June 22, 1984 see pages 1 - 1.001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed August 24, 2009; effective January 29, 2010. Amendment filed October 20, 2011; effective March 30, 2012.

**1360-01-02-.05 ADDITIONAL REQUIREMENTS.**

- (1) Responses to comments
  - (a) When filing rulemaking hearing rules, a document containing responses to comments submitted at the rulemaking hearing must accompany the rule filing as prescribed in T.C.A. § 4-5-222. One copy of the responses is required to be filed with the filing. This requirement states only agency responses to comments are required. Letters of inquiry from parties questioning the rule will not be accepted. These comments can be summarized.
  - (b) When no comments are received at the hearing then there will be no responses by the agency. In this case the agency should draft a memorandum or provide a statement on

(Rule 1360-01-02-.05, continued)

the filing stating such and send to the Secretary of State with the filing. Minutes of the meetings will not be accepted.

- (2) Joint Government Operations Committee Legislative Oversight
  - (a) The Secretary of State will forward the rule filings and the information submitted pursuant to T.C.A. § 4-5-225(i)(1) through (9) to the Government Operations Committee. This enables the required information to be received by the committee at the same time as the rule filings, thus facilitating the committee's review of the rule filings.
- (3) Regulatory Flexibility Act
  - (a) Pursuant to the Regulatory Flexibility Act all agencies shall submit a statement that will accompany the rule filing with relation to the impact on small businesses.
  - (b) Requirements of this section can be found in Public Chapter 464 of the Acts of 2007.
  - (c) If applicable, the statement shall be added to the rule filing document after the signature of the Secretary for publication in the Tennessee Administrative Register by the Secretary of State.
- (4) "Redline" Copy of Rule Filing
  - (a) Pursuant to Public Chapter 741 of the 105<sup>th</sup> General Assembly, all agencies shall submit a "redline" version of the filing in addition to the three (3) copies required by the Secretary of State. This copy will be forwarded to the General Assembly by the Secretary of State for review by the appropriate committees. When submitting the electronic copy via email, submit two files— one in PDF format including all signatures and one in redline format. Do not submit one file in redline format.
  - (b) "Redline" form is a copy of the filing that shall "denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule."
  - (c) Public Chapter 741 took effect July 1, 2008.

**Authority:** T.C.A. §§ 4-5-202, 4-5-206, 4-5-222, and Public Chapters 464 and 741 of the 105<sup>th</sup> General Assembly. **Administrative History:** Original rule filed June 12, 1995; effective October 27, 1995. Amendment filed August 17, 1998; effective December 29, 1998. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed May 9, 2012; effective October 29, 2012.

**1360-01-02-.06 FORMS FOR RULEMAKING.** The following forms are required for rulemaking. These forms can be found at the Secretary of State's web site: [www.state.tn.us/sos](http://www.state.tn.us/sos).

- (1) Proposed rule filing form is SS-7038.
- (2) Rulemaking hearing rule filing form is SS-7039.
- (3) Temporary-Emergency rule filing form (Emergency-Rules)-is SS-7040.

**Authority:** T.C.A. § 4-5-206 and Public Chapter 566 of the 106<sup>th</sup> General Assembly. **Administrative History:** (For history prior to June 22, 1984 see pages 1- 1. 001.). Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment renumbering rule (formerly 1360-01-02-.05) filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed August 24, 2009; effective January 29, 2010.

(Rule 1360-01-02-.05, continued)

**1360-01-02-.07 RESERVATION OF RIGHT OF REJECTION BY THE SECRETARY OF STATE**

The Secretary of State reserves the right to reject agency submittals for noncompliance with these rules.

**Authority:** T.C.A. §§ 4-5-202 and 4-5-206. **Administrative History:** Original rule filed July 29, 2008; effective November 28, 2008.

RULES  
OF  
THE TENNESSEE DEPARTMENT OF STATE OF TENNESSEE

CHAPTER 1360-01-03  
WITHDRAWAL OF RULES, STAYS OF EFFECTIVE DATES, AND WITHDRAWAL OF STAY OF  
EFFECTIVE DATE

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**1360-01-03-.01 DEFINITIONS.**

- (1) Withdrawal of Rules – An agency may, after filing, withdraw a rule prior to the effective date of the rule. The rule withdrawal shall take effect upon delivery of written notification of such withdrawal to the Department of State.
- (2) Stay of Effective Date of Rules – Prior to the effective date of a rule the agency proposing the rule may stay the running of the ninety (90) day period for a duration not to exceed seventy (75) days. Such stay shall become effective at such time as the agency files written notice with the Secretary of State and shall specify the effective length of the stay.
- (3) Withdrawal of Stay of Effective Date – Prior to its expiration, the stay may be withdrawn by the agency. Withdrawal or expiration of the stay shall reactivate the running of the balance of the ninety (90) day period that remained upon the date the stay was filed.

**Authority:** T.C.A. §§ 4-5-206, 4-5-214, 4-5-215 and Public Chapter 566 of the 106<sup>th</sup> General Assembly.  
**Administrative History:** (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendments filed August 24, 2009; effective January 29, 2010.

**1360-01-03-.02 FORMS AND THE COMPLETION OF FORMS.** The forms supplied by the Secretary of State through the web site ([www.state.tn.us/sos](http://www.state.tn.us/sos)) shall be completed by the rule filer and the following guidelines are to be followed.

- (1) A Notice of Withdrawal of Rules, Notice of Stay of Effective Dates, or Notice of Withdrawal of Stay of Effective Date (Form Number ~~SS-Form number-7041~~) shall require the following:
  - (a) Three (3) entire original forms documents completed with original signatures in hard copy or a single PDF copy of the signed original form document. Signatures may be affixed electronically.
    1. The following guidelines apply to the document:
      - (i) The documents must be clean and legible.
      - (ii) Use of capitals and lower case in all text. No "all caps."
      - (iii) No bold, underline or italic fonts.
      - (iv) Do not use auto-numbering on paragraphs in the text of rule.
      - (v) Do not use the MS Word function "track changes."

(Rule 1360-01-03-.02, continued)

- (vi) Do not use unneeded punctuation: Example: No comma between the rule number and rule title or apostrophe after agency name in main heading.
  - (vii) Use T.C.A. for Tennessee Code Annotated.
  - (viii) No hard return at the end of lines within a paragraph. Use at the end of a paragraph.
  - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting to add space before or after the paragraph. This function does not work well with style pallets.
  - (x) Use hyphens on keyboard with no space between hyphen and rule numbers. Variations can cause search options to overlook target.
  - (xi) No single digits on rule and chapter numbers. Place "0" with single numbers. Example: 1200-5-5 = 1200-05-05.
  - (xii) Font style for all submissions shall be Arial and point size 10.
- (b) ~~Diskette or CD submission of the material is required. Other requests for transmission of data can be accommodated; however, the filing agency must contact the division before submission. A digital version of the original form shall be submitted contemporaneously with the filing.~~
1. ~~The file must be transmitted to the Division of Publications in MS Word software format via email to [publications.information@tn.gov](mailto:publications.information@tn.gov). Contact the division Division of Publications if unsure about software requirements.~~
  2. ~~The disk or CD should be labeled and email must include the following information within the body of the email:~~
    - (i) ~~software program and version.~~
    - (ii) ~~Chapter(s) and rule number(s).~~
    - (iii) ~~Name, address, e-mail address and telephone number of the person who made the disk file and is responsible for the contents of the filing.~~
    - (iiiv) ~~Include only what is required on disk/CD. Files not required by the Secretary of State should not be included on the disk/CD accompanying the rule within the email.~~
    - (iv) ~~Electronic submission of forms shall not be encrypted. Any transmission of encrypted material to the Secretary of State pursuant to the Uniform Administrative Procedures Act will be rejected and returned to the agency as noncompliant.~~
- (2) Page numbering – Page one of all filings will be on the prescribed form. All additional pages will be numbered sequentially at the bottom, middle of the page.
- (3) ~~Each filing with the Secretary of State shall clearly show at the bottom of that rule the statutory authority (rulemaking as well as substantive) for each rule. The only exception is when a~~

(Rule 1360-01-03-.02, continued)

~~particular group of rules has the same statutory authority, then that authority need only be cited once at the end of that group of rules.~~

~~(4) All rules filed with the Secretary of State shall be notarized.~~

**Authority:** T.C.A. §§ 4-5-202, 4-5-206, 4-5-214 and 4-5-215. **Administrative History:** (For history prior to June 12, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984 effective June 22, 1984. Repeal and new rule filed July 29, 2008; effective November 28, 2008. Amendment filed May 9, 2012; effective October 29, 2012.

#### 1360-01-03-.03 RESERVATION OF RIGHT OF REJECTION BY THE SECRETARY OF STATE

The Secretary of State reserves the right to reject agency submittals for noncompliance with these rules.

**Authority:** T.C.A. §§ 4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Amendment filed April 16, 1990; effective July 29, 1990. New rule filed June 12, 1995; effective October 27, 1995. Repeal and new rule filed July 29, 2008; effective November 28, 2008.

#### 1360-01-03-.04 REPEALED.

**Authority:** T.C.A. §§ 4-5-202 and 4-5-206. **Administrative History:** (For history prior to June 22, 1984, see pages 1-1.001.) Repeal and new rule filed May 23, 1984; effective June 22, 1984. Repeal filed July 29, 2008; effective November 28, 2008.

\* 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 Department of State on June 10, 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: April 16, 2020

Rulemaking Hearing(s) Conducted on: (add more dates). June 10, 2020

Date: June 22, 2020

Signature: *Mary Beth Thomas*

Name of Officer: Mary Beth Thomas

Title of Officer: General Counsel

Agency/Board/Commission: Department of State

Rule Chapter Number(s): 1360-01-01; 1360-01-02; 1360-01-03

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

7/22/2020

Date

**Department of State Use Only**

Filed with the Department of State on: 7/24/2020

Effective on: 10/22/2020

*Tre Hargett*

Tre Hargett  
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Solid Waste Management

SUBJECT: Lead-Based Paint Abatement

STATUTORY AUTHORITY: 40 C.F.R. § 745.325 - Requirements of EPA-authorized state lead-based paint programs.  
40 C.F.R. Subpart L - Federal regulations regarding lead-based paint activities.  
Tennessee Code Annotated Title 68, Chapter 131, Part 4 - Tennessee Lead-Based Paint Abatement Certification Act of 1997

EFFECTIVE DATES: October 4, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: To continue operating the lead-based paint certification and training program, Tennessee must have requirements at least as protective as the respective federal program. This rulemaking hearing rule governs reduces Tennessee's notice period from 15 days to 5 business days, adds provisions allowing for emergency abatement orders, clarifies when updated notification is required, and provides greater guidance regarding what must be included in each notification of lead-based paint abatement. These provisions have been carefully modeled on the current federal rules regarding lead-based paint abatements to ensure that Tennessee's requirements are at least as protective as the respective federal program without creating any additional, unnecessary burdens. New, necessary definitions are also added for clarity regarding these provisions.

## Public Hearing Comments

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

- Comment: Multiple commenters requested clarification regarding the definition of "start date." One commenter requested that the definition be amended to mean "the first day of any lead-based paint activity or lead-based paint activities training course." Another stated that, by including training courses in the definition, training providers would be required to provide the notifications required of lead-based paint activities, and that requiring such notifications regarding training would be an undue cost. Another stated that it appeared that "start date" should only apply to lead-based paint activities.
- Response: "Start Date" in the Tennessee amended rule has the same definition outlined in 40 CFR 745.223 of the EPA federal program. The Tennessee program must conform to the federal program requirements pursuant to Tennessee Code Annotated Section 68-131-402. The Department understands that these amendments are required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Further, as used in Rule 1200-01-18-.01(8)(e)4, "start date" only applies to lead-based paint activities, as defined, which do not include training courses. Training courses have their own notification requirements that are largely set out in Rule 1200-01-18-.01(6)(c)9 and are not impacted by these changes.
- Comment: A commenter requested that the word "five" be replaced with the numeral "5" in proposed Rule 1200-01-18-.01(8)(e)4(i).
- Response: The Department disagrees. The word "five" is used in lieu of the numeral "5" to coincide with the writing standards adopted to ensure consistent written communication.
- Comment: A commenter requested that the following changes be made to Rule 1200-01-18-.01(8)(e)4(ii):
- (1) Remove the comma after "local emergency abatement order" or divide into multiple sentences.
  - (2) In the second sentence, replace "and/or" with "or".
  - (3) Change all references from "on or before the start date" to "before or on the start date" or "before or by the start date".
- Response: As to (1) and (3), the Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program. However, as to (2), the Department agrees that using "or" provides greater clarity with no potential loss of compliance and, as such, this change has been made.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(II) to change the language from "on or before the start date" to "before or on the start date" or "before or by the start date".
- Response: The Department disagrees. The amended Rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.
- Comment: A commenter requested that, for proposed Rule 1200-01-18-01(8)(e)4(iii)(I) and (II) that a comma be added after the dependent clause "For lead-based paint abatement activities beginning after the start date provided to the Division".
- Response: The Department agrees and has added commas in both instances.
- Comment: A commenter requested that the language "No firm or individual shall engage in lead-based paint abatement activities" in Rule 1200-01-18-01(8)(e)4(ix) be changed to refer to "lead-based paint activities".

- Response: The Department agrees. The amended Rule 1200-01-18-01(8)(e)4(ix) details the work-practice standards for conducting "lead-based paint abatement". The amended Rule will be changed to clarify that notification is required prior to initiating any "lead-based paint activity".
- Comment: A commenter asked to clarify if the notification requirement of this rule was meant to apply to all lead-based paint activities or only abatement activities.
- Response: The amended Rule 1200-01-18-01(8)(e)4(ix) will be changed to clarify that notification is required prior to initiating any "lead-based paint activity" as defined in paragraph (4) of Rule 1200-01-18-.01, which says: "Lead-based paint activities" means inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.
- Comment: Multiple commenters requested that the rule be amended to require all persons to notify of lead-based paint activities, not just certified firms or requested clarity regarding that provision.
- Response: Prospective Rule 1200-01-18-.01(8)(e)4(ix) requires notification from all firms and individuals irrespective of certification and so no further update to the language of prospective Rule 1200-01-18-.01(8)(e)4 is needed.
- Comment: A commenter requested that emergency abatements be required to be provided to the Division at least 24 hours in advance.
- Response: The Department disagrees and believes the amended notification requirements for an emergency abatement order associated with an elevated blood lead level (EBLL) case are consistent with the federal program requirements. Notification of an emergency abatement order must be received by the start date. This supports the State's diligence to allow for the quick identification and mitigation of lead-based paint hazards that are the source of EBLLs and childhood lead poisoning.
- Comment: A commenter stated that using the wording of the federal requirements would have been easier to understand.
- Response: The wording of the amended rule is equivalent to the federal requirements. The notice requirements were clarified to include lead hazard screen, clearance testing, and lead hazard reduction as lead-based paint activities.
- Comment: A commenter asked that the use of the term "lead-based paint activities training course" be updated to refer to "lead-based paint training course(s)."
- Response: Individuals are required to complete approved training courses to become certified to engage in lead-based paint activities. The State's use of the term "lead-based paint activities training course" is consistent with the federal program.
- Comment: A commenter stated that using the terminology "updated notification" instead of "Notification Revision # \_\_\_" would require staff to update their forms unnecessarily.
- Response: The Department disagrees. Using the terminology "updated notification" does not require the Department to make any changes in the form.
- Comment: Two commenters asked if training courses should be included in the definition of "lead-based paint activities."
- Response: Training courses are a separate category and the notification requirements are covered under Rule 1200-01-18-.01(6)(c) Requirements for the accreditation of training programs.
- Comment: A commenter stated that the definition of "Start Date Provided to the Division" is confusing and that allowing those performing lead-based paint activities to provide the most recent start date would create enforcement problems.

- Response: The Department disagrees. The use of the term "Start Date Provided to the Division" is consistent with the federal program.
- Comment: A commenter asked when the term acreage began to be used in the rules.
- Response: The term "acreage" was first used in the federal proposed notification rule that was published in the Federal Register / Vol. 66, No. 14 / Monday, January 22, 2001. The federal regulatory notification requirements were finalized in the Federal Register (Vol. 69, No. 68) Thursday, April 8, 2004.
- Comment: A commenter asked that proposed language for Rule 1200-01-18-.01(8)(e)4(vii) be clarified regarding whether or not electronic notification is acceptable.
- Response: Rule 1200-01-18-.01(8)(e)4(vii) allows for the use of electronic notification that is approved by the Commissioner. Means for electronic notification approved by the Commissioner will be detailed on the State's webpage.
- Comment: A commenter asked that the term "firm" in the proposed language for Rule 1200-01-18-.01(8)(e)4(ix) be updated to "certified firm" for consistency.
- Response: The Department disagrees. Prospective Rule 1200-01-18-.01(8)(e)4(ix) applies to all firms and individuals, not just certified firms.
- Comment: A commenter asked regarding the definition of the term "lead-based paint activities" but repeated usage in the proposed notification rules regarding "lead-based paint abatement activities." This commenter also asked if the terms as defined in Rule 1200-01-18-.01 had equal application in Rules 1200-01-18-.05 and .06.
- Response: The terms "lead-based paint activities" and "lead-based paint abatement activities" are often used interchangeably. The Department agrees and the distinction between these terms will be clarified. The terms defined in Rule 1200-01-18-.01 apply equally throughout Chapter 1200-01-18.
- Comment: Multiple commenters requested an online portal or method of submitting forms to the Division.
- Response: The Department agrees and will take this under advisement. However, this task is outside the scope of this rulemaking process.

## Regulatory Flexibility Addendum

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

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

Tennessee has 131 small business firms that conduct lead-based paint activities. The cost for complying with the amended Rule would be rolled up into the project costs that these firms charge. The Division estimates that more than 90% of all the project costs, for which notification will be required, are funded by HUD grants that specifically target the reduction of residential lead-based paint hazards in pre-1978 units. There are four HUD lead hazard reduction grantees in Tennessee who together estimate completing 400 units per year. This rule will positively affect more than 800 children less than six-years old that live in pre-1978 housing by removing lead-based paint hazards that cause childhood lead poisoning.

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

The Tennessee firms that must comply with the rule amendments currently comply with state regulatory record-keeping associated with lead-based paint activities. Their current infrastructure is sufficient to comply with this amendment without increased administrative costs.

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

This rule amendment reduces the amount of notice that small businesses must provide to the State before they conduct regulated lead-based paint activities. The reduced time is an advantage to small businesses and allows them to better serve their consumers.

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

There are no less burdensome, less costly or less intrusive alternative methods at this time. This rule amendment will make the current requirements less burdensome to small businesses.

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

The wording of the amended rule is equivalent to the federal requirements with the exception of words and phrases that denote State authority and jurisdiction or clerical changes that increase clarity without changing the meaning or scope of the underlying federal rules. The amended rule conforms to the federal program, which is required for Tennessee to maintain EPA authorization of the Lead-Based Paint Abatement Program.

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

Small business entities are the primary group that conducts lead-based paint activities in Tennessee. The amended rule is necessary for the Department to retain authorization of the federal lead-based paint abatement regulatory program from EPA. This authorization is required for the Department to continue to receive full federal funding for program operations. There are four jurisdictions in Tennessee that have received more than \$10-MM in HUD grants to identify and remove residential lead-based paint hazards. The award of the HUD grants is attributable to Tennessee having and maintaining a state lead-based paint certification and abatement program. The federal program does not allow for small business exemption.

### **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.INSOSfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule is not anticipated to have a projected impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

Tennessee, to continue operating the lead-based paint certification and training program, must have requirements at least as protective as the respective federal program. As such, this amendment reduces Tennessee's notice period from 15 days to 5 business days, adds provisions allowing for emergency abatement orders, clarifies when updated notification is required, and provides greater guidance regarding what must be included in each notification of lead-based paint abatement. These provisions have been carefully modeled on the current federal rules regarding lead-based paint abatements to ensure that Tennessee's requirements are at least as protective as the respective federal program without creating any additional, unnecessary burdens. New, necessary definitions are also added for clarity regarding these provisions.

- (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;

40 C.F.R. § 745.325 – Requirements of EPA-authorized state lead-based paint programs.  
40 C.F.R. Subpart L – Federal regulations regarding lead-based paint activities.  
Tennessee Code Annotated Title 68, Chapter 131, Part 4 - Tennessee Lead-Based Paint Abatement Certification Act of 1997

- (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;

Lead-based abatement firms are most directly affected by these rules. They would be expected to be supportive of this rule, as it shortens the notification period and allows for emergency abatement orders.

- (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 known.

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

There will be no fiscal impact resulting from this rulemaking.

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

Michael Driver  
Senior Associate Counsel  
Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 253-2027  
Michael.D.Driver@tn.gov

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

Horace Tipton  
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) 253-5339  
[Horace.Tipton@tn.gov](mailto:Horace.Tipton@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.
- Proposed action: To amend the rules of Tennessee's lead-based paint abatement program, in compliance with federal requirements, to reduce the notice period prior to lead-based paint activities from 15 days to 5 business days, add provisions allowing for emergency abatement orders, clarify when updated notification is required, and provide greater guidance regarding what must be included in each notification of lead-based paint abatement.
- Legal authority for the action: Tenn. Code Ann. § 68-131-406.
- Plan for implementing the action: These rules were implemented through a rulemaking hearing process.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.
- This action is the least-cost method to achieve the purpose, as the reduction in notification timeline cannot be achieved without rulemaking and the proposed deadline matches the federal requirement and, as such, cannot be further reduced.
- (3) A comparison of the cost-benefit relation of the action to nonaction.
- Nonaction would result in more-stringent rules staying in place – which are greater than current federal requirements - and, as such, there is greater benefit to reducing the notification requirements.
- (4) A determination that the action represents the most efficient allocation of public and private resources.
- This action represents the most efficient allocation of public and private resources, as this is a rulemaking within the authority of the Department under Tennessee Code Annotated Section 68-131-406 and creates greater compliance with current federal standards.
- (5) A determination of the effect of the action on competition.
- This action is unlikely to affect competition.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- This action is unlikely to affect the cost of living in any geographical area.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

This action is unlikely to affect employment in any geographical area.

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

This rulemaking hearing was held with existing Departmental resources and is not anticipated to have any significant ongoing costs.

- (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.

This action is unlikely to have any economic impact, although it should allow lead-based paint professionals to begin lead-based paint activities sooner, as less notice is now required prior to beginning such activities.

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

**For Department of State Use Only**

Sequence Number: 07-03-20  
 Rule ID(s): 9372  
 File Date: 7/6/2020  
 Effective Date: 10/4/2020

# Rulemaking Hearing Rule(s) Filing Form

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

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

**Agency/Board/Commission:** Environment and Conservation  
**Division:** Solid Waste Management  
**Contact Person:** Adrienne White  
**Address:** William R. Snodgrass TN Tower  
 312 Rosa L. Parks Avenue, 14th Floor  
 Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 532-0885  
**Email:** [Adrienne.White@tn.gov](mailto:Adrienne.White@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
1200-01-18	Lead-Based Paint Abatement
Rule Number	Rule Title
1200-01-18-.01	Lead-Based Paint Abatement

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

**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
 Rule ID(s): \_\_\_\_\_  
 File Date: \_\_\_\_\_  
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1200-01-18-.01	Lead-Based Paint Abatement

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 1200-01-18  
Lead-Based Paint Abatement

Amendments

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting the current definition "Start date" in its entirety and substituting instead the following definition "Start date" in alphabetical order:

"Start date" means the date on which activities begin on a first day of any lead-based paint abatement project requiring the use of certified individuals, and may include the abatement area isolation and preparation or any other activity which may disturb lead-based paint activities training course or lead-based paint activity.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by adding the following new definitions in alphabetical order to read as follows:

"Business day" means Monday through Friday with the exception of federal and state holidays.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, lead hazard screen, clearance testing, lead-based paint abatement, and lead hazard reduction as defined in this rule.

"Start date provided to the Division" means the start date included in the original notification or the most recent start date provided to the Division in an updated notification.

Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (e) of paragraph (8) of Rule 1200-01-18-.01 Lead-Based Paint Abatement is amended by deleting it in its entirety and substituting instead the following:

4. ~~Notification of the Commencement of Lead-Based Paint Abatement Activities in a residential dwelling or child-occupied facility or as a result of a Federal, State or local order shall be submitted to the Division on forms provided by the Division, at least fifteen (15) days before the beginning of abatement activities. A copy of the Inspection Report described in part (b)4 of this paragraph or the Risk Assessment report described in part (d)11 of this paragraph, shall be included with the Notification sent to the Division.~~ Notification: A certified firm must notify the Division of lead-based paint activities as follows:
  - (i) Except as provided in subpart (ii) of this part, the Division must be notified prior to conducting lead-based paint activities. The original notification must be received by the Division at least five business days before the start date of any lead-based paint activities.
  - (ii) Notification for lead-based paint activities required in response to an elevated blood lead level (EBL) determination, or federal, State, Tribal, or local emergency abatement order, should be received by the Division as early as possible before, but must be received no later than, the start date of the lead-based paint activities. Should the start date or location provided to the Division change, an updated notification must be received by the Division on or before the start date provided to the Division. Documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this

abbreviated notification period.

- (iii) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for lead-based paint activities that will begin on a date other than the start date specified in the original notification as follows:

  - (I) For lead-based paint activities beginning prior to the start date provided to the Division, an updated notification must be received by the Division at least five business days before the new start date included in the notification.
  - (II) For lead-based paint activities beginning after the start date provided to the Division, an updated notification must be received by the Division on or before the start date provided to the Division.
- (iv) Except as provided in subpart (ii) of this part, updated notification must be provided to the Division for any change in location of lead-based paint activities at least five business days prior to the start date provided to the Division.
- (v) Updated notification must be provided to the Division when lead-based paint activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Division on or before the start date provided to the Division, or if work has already begun, within 24 hours of the change.
- (vi) The following must be included in each notification:

  - (I) Notification type (original, updated, cancellation).
  - (II) Date when lead-based paint activities will start.
  - (III) Date when lead-based paint activities will end (approximation using best professional judgment).
  - (IV) Firm's name, Division certification number, address, and telephone number.
  - (V) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.
  - (VI) Property name (if applicable).
  - (VII) Property address including apartment or unit number(s) (if applicable) for abatement work.
  - (VIII) If using the abbreviated time period as described in subpart (ii) of this part, documentation showing evidence of an EBL determination or a copy of the federal/State/Tribal/local emergency abatement order.
  - (IX) Name and Division certification number of the project supervisor.
  - (X) Approximate square footage or acreage to be abated.
  - (XI) Brief description of abatement, risk assessment, inspection, lead hazard screen, lead hazard reduction, and clearance activities to be performed.
  - (XII) Name, title, and signature of the representative of the certified firm who prepared the notification.

- (vii) Notification must be made by written notification or electronically by such means approved by the Commissioner. Written notification can be accomplished using the Division form titled "Lead-Based Paint Activity Notification", or a successor to that form approved by the Division. All written notification must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the Division receives the notification by the required date).
- (viii) In the event of changes to the original notification, lead-based paint activities shall not begin on a date or at location other than that specified in either an original or updated notification.
- (ix) No firm or individual shall engage in lead-based paint activities prior to notifying the Division of such activities according to the requirements of this part.

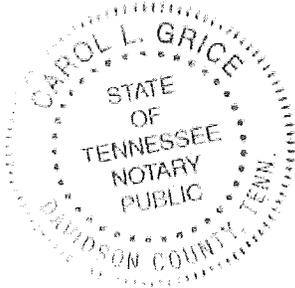
Authority: T.C.A. §§ 11-1-101, 68-131-401 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 02/04/2020, 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: 10/24/19

Rulemaking Hearing(s) Conducted on: (add more dates) 12/18/19



Date: February 4, 2020

Signature: [Handwritten Signature]

Name of Officer: David W. Salyers, P.F.

Title of Officer: Commissioner

Subscribed and sworn to before me on: February 4, 2020

Notary Public Signature: Carol L. Grice

My commission expires on: January 8, 2024

Agency/Board/Commission: Commissioner of the Department of Environment and Conservation

Rule Chapter Number(s): 1200-01-18

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

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
7/2/2020  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/6/2020

Effective on: 10/4/2020

Tre Hargett  
Tre Hargett  
Secretary of State

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2020 JUL 06 PM 2:27

SECRETARY OF STATE  
PUBLICATIONS

**G.O.C. STAFF RULE ABSTRACT**

AGENCY: Labor and Workforce Development

DIVISION: Bureau of Workers' Compensation

SUBJECT: Workers' Compensation Appeals Board

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-233

EFFECTIVE DATES: October 12, 2020 through June 30, 2021

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules are amendments to existing rules of the Workers' Compensation Appeals Board.

**Public Hearing Comments**

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

**PUBLIC COMMENTS AND RESPONSES:**

No public comments were 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 type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules should not affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have a negative impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: 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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

### **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 proposed rules will have little, if any, impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules are amendments to existing rules of the Workers' Compensation Appeals Board.

- (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. § 50-6-233: The bureau's administrator may promulgate rules and regulations implementing the workers' compensation law. Also, PC 929 (2018) requires certain policies to be promulgated as rules.

- (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;

Workers' compensation insurance carriers and employers, including self-insured employers, will be affected by the adoption or rejection of these rules, as will attorneys and self-represented employees.

- (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;

The overall effect will have minimal fiscal impact upon state or local government.

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

Troy Haley, Legal Services Director, Bureau of Workers' Compensation

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

Troy Haley, Legal Services Director, Bureau of Workers' Compensation

- (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

220 French Landing Dr. 1-B, Nashville, TN 37243 [troy.haley@tn.gov](mailto:troy.haley@tn.gov)

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

None.

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

**For Department of State Use Only**

Sequence Number: 07-19-20  
 Rule ID(s): 9373  
 File Date: 7/14/2020  
 Effective Date: 10/12/2020

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**Agency/Board/Commission:** Department of Labor and Workforce Development  
**Division:** Bureau of Workers' Compensation  
**Contact Person:** Troy Haley  
**Address:** 220 French Landing Dr, 1-B, Nashville TN  
**Zip:** 37243  
**Phone:** 615-532-0179  
**Email:** [troy.haley@tn.gov](mailto:troy.haley@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0800-02-22	Workers' Compensation Appeals Board
Rule Number	Rule Title
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Record on Appeal
0800-02-22-.03	Miscellaneous
0800-02-22-.04	Motions
0800-02-22-.05	Appeal of an Interlocutory Order
0800-02-22-.06	Appeal of a Compensation Hearing Order
0800-02-22-.07	Briefs
0800-02-22-.08	Oral Argument
0800-02-22-.09	Costs on Appeal; Settlement During Appeal
0800-02-22-.10	Appeal of Workers' Compensation Cases Filed Against the State; Notice to the Attorney General

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**RULES  
OF THE  
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**CHAPTER 0800-02-22  
WORKERS' COMPENSATION APPEALS BOARD**

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0800-02-22-.01	Filing of Notice of Appeal	0800-02-22-.04	Oral Argument; Costs on Appeal; Settlement During Appeal
0800-02-22-.02	Appeal of an Interlocutory Order	0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State
0800-02-22-.03	Appeal of a Compensation Order		

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**0800-02-22-.01 FILING OF NOTICE OF APPEAL.**

- (1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Bureau, with the clerk of the court of workers' compensation claims, in accordance with Chapter 0800-02-21 Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(2), the notice of appeal must be filed:
  - (a) Within seven (7) business days of the date an interlocutory order was filed by the workers' compensation judge; or
  - (b) Within thirty (30) calendar days of the date a compensation order was filed by the workers' compensation judge.
- (2) The appealing party shall serve a copy of the notice of appeal upon the opposing party or parties by any means as set forth in Chapter 0800-02-21 Rule 0800-02-21-.0908.
- (3) Any appeal in which the notice of appeal is not received by the clerk of the court of workers' compensation claims within the time provided by paragraph (1) shall be dismissed.
- (4) The appealing party is responsible for payment of a filing fee in an amount of set by the administrator pursuant to Tennessee Code Annotated section 50-6-217(d)(2).
  - (a) Within ten (10) calendar days after the filing of a notice of appeal, payment must be received by check, money order, or credit card. Payments can be made in person at any Bureau office or by United States mail, hand-delivery, or other delivery service.
  - (b) In the alternative, the appealing party may file an affidavit of indigency, on a form prescribed by the Bureau, seeking a waiver of the filing fee. The affidavit of indigency may be filed contemporaneously with the notice of appeal or must be filed within ten (10) calendar days thereafter. The appeals board will consider the affidavit of indigency and issue an order granting or denying the request for a waiver of the filing fee as soon thereafter as is practicable.

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(a)(c) Failure to timely pay the filing fee or file the affidavit of indigency in accordance with this section may result in dismissal of the appeal.

(3)(5) Upon the filing of a notice of appeal, the court of workers' compensation claims no longer has jurisdiction over the case, absent a remand, until a decision is filed by the appeals board; except, after a notice of appeal has been filed, the court of workers' compensation claims retains jurisdiction to rule on certain motions in accordance with these rules or any applicable rule of the Tennessee Rules of Civil Procedure.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

#### **0800-02-22-.02 RECORD ON APPEAL**

(1) The parties to an appeal have the responsibility to ensure a complete record on appeal. The record on appeal shall consist of: (1) all papers filed in the trial court except as hereafter provided; (2) exhibits; (3) a transcript or statement of the evidence, if any; (4) briefs filed before or after the filing of the notice of appeal; and (5) any other document(s) designated by a party and approved by the court of workers' compensation claims pertaining to the issues decided in that court and pertinent to an issue on appeal.

(a) The following papers filed in the court of workers' compensation claims are excluded from the record: (1) subpoenas or summonses for parties or witnesses unless admitted into evidence and pertinent to an issue on appeal; (2) papers relating to discovery unless admitted into evidence and pertinent to an issue on appeal; and (3) notices, motions, and orders relating thereto, unless pertinent to an issue decided by the court of workers' compensation claims.

(b) No paper shall be included in the record more than once.

(2) Any dispute regarding the contents of a joint statement of the evidence submitted in lieu of a transcript or regarding whether the record accurately discloses what occurred in the court of workers' compensation claims shall be submitted to and settled by the court of workers' compensation claims. The party requesting correction or modification of the record shall file a motion with the appeals board requesting that the case be remanded to the court of workers' compensation claims for resolution of the dispute. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.

(3) All pleadings, forms, transcripts, depositions, briefs, motions, other writings, and all exhibits, shall be maintained by the clerk of the appeals board during the pendency of the appeal.

(2)(4) After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Bureau.

#### **0800-02-22-.03 MISCELLANEOUS**

(1) The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex.

( )

- (2) In any appeal pending before the appeals board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission *pro hac vice* in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the appeals board. Any corporation or other artificial person must be represented by counsel in all proceedings before the appeals board. Any substitution or withdrawal of any attorney shall comply with Chapter 0800-02-21.
- (4)(3) Any brief, motion, or other writing submitted on behalf of a party to the appeals board must be signed by an attorney who has entered an appearance in the case for such party or by a self-represented individual in accordance with section 0800-02-22-.03(2). Any joint motion submitted to the appeals board involving a self-represented party must be signed by the self-represented party. An attorney may not sign an unrepresented party's name "by permission."
- (4) Attorneys and/or parties are prohibited from ex parte communications with any appeals board judge in any manner during the pendency of an appeal concerning or relating to the appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.
- (5) Any party seeking recusal of an appeals board judge shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration made under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (a) Upon the filing of a motion seeking recusal, the judge in question shall act promptly by written order and either grant or deny the motion.
- (a)(b) If the motion is denied, the judge shall state in the order the grounds upon which he or she denies the motion.
- (2)(6) If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of any such deceased party. If a party entitled to appeal should die before filing a notice of appeal, a notice of appeal may be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be effected in accordance with this section.

**0800-02-22-.04 MOTIONS**

- (1) Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided by one appeals board judge. An order will be issued as soon as practicable after the motion is filed. The appeals board cannot extend the time for filing a notice of appeal. If a notice of appeal is not timely filed, the appeals board is without jurisdiction to review the case.
- (2) Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the appeals board.

( )

- (3) With the exception of the filing of a notice of appeal, the appeals board may extend deadlines during the appeals process upon motion filed by a party or its own motion as provided in Tennessee Code Annotated section 50-6-217(d)(1).

**0800-02-22-.025 APPEAL OF AN INTERLOCUTORY ORDER.**

- (1) ~~The parties to an appeal have the responsibility to ensure a complete record on appeal. A party or parties may have a transcript of any hearing pertinent to the appeal of an interlocutory order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within ten (10) business days of the filing of the notice of appeal. The joint statement of the evidence must be approved by the trial judge before the record is submitted to the workers' compensation appeals board. Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the court of workers' compensation claims within ten (10) business days of the filing of the notice of appeal asking the trial court to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.~~
- (2) ~~The appellant shall file a brief with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of a transcript or joint statement of the evidence. If no transcript or statement of the evidence is filed or if expiration of the time to file a transcript or statement of the evidence, a dispute regarding a statement of the evidence or the contents of the record is submitted to the trial court, the appellant shall file a brief within ten (10) business days of the expiration of the time to file a transcript or statement of the evidence or within ten (10) business days of the date the trial court enters an order resolving any dispute concerning the contents of the record or a joint statement of the evidence, whichever is later. The appelleeThe brief shall specify the issues presented for review and include any argument in support thereof. A party opposing the appeal shall file a responsive brief in response with the clerk of the court of workers' compensation claims within ten (10) business days of the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board. If both parties appeal, each party shall file its brief as an appellant and as an appellee consistent with the above briefing schedule.~~
- (3) Briefs filed in support of an interlocutory appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall include: (1) a statement summarizing the facts of the case from the evidence admitted in the trial court; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief.
- (4) ~~The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.~~
- (5) ~~If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the decision affirming the interlocutory order is filed by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil~~

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penalty pursuant to Tennessee Code Annotated section 50-6-118. Upon the filing of a decision on an interlocutory appeal, the clerk of the workers' compensation appeals board shall ~~forward~~ transmit a copy of the decision to the parties by regular and/or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

- (1)(6) Following the filing of a decision affirming, reversing, and/or modifying and remanding an interlocutory order, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-118, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

#### 0800-02-22-.036 APPEAL OF A COMPENSATION ORDER.

- (1) ~~The parties to an appeal have the responsibility to ensure a complete record on appeal. A party or parties may have a transcript of any hearing pertinent to the appeal of a compensation order prepared by a licensed court reporter and filed with the clerk of the court of workers' compensation claims within fifteen (15) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a joint statement of the evidence within fifteen (15) calendar days of the filing of the notice of appeal, or a notice that no transcript or statement of the evidence will be filed. A joint statement of the evidence must be approved by the trial judge before the record is submitted to the workers' compensation appeals board. Should there be a dispute between the parties regarding the contents of a joint statement of the evidence or the contents of the record on appeal, the parties shall file a motion with the appeals board within fifteen (15) business days of the filing of the notice of appeal asking the appeals board to remand the case to the court of workers' compensation claims within fifteen (15) business days of the filing of the notice of appeal asking the trial court to resolve any such disputes. If necessary, the appeals board may direct that a supplemental record be submitted to the appeals board.~~
- (2) The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.
- (3) ~~The appellant shall file a brief within fifteen (15) calendar days after the issuance of the docketing notice with the clerk of the appeals board. Any opposing party The appellee shall have fifteen (15) calendar days after the filing of the appellant's brief or the expiration of the time for the filing of the appellant's brief, whichever is earlier, to file a brief with the clerk of the appeals board. No reply brief shall be filed unless the appellee raises an issue or issues on appeal not previously addressed in the appellant's brief. Under such circumstances, the appellant may file a reply brief within five (5) business days addressing only the issue or issues not previously addressed.~~
- (3)(4) Briefs filed in support of a compensation appeal shall specify the issues presented for review and include legal argument in support thereof. All briefs shall contain: (1) a statement of the facts summarizing the facts from the evidence admitted during the trial; (2) a statement of the case summarizing the trial court's disposition of the case; (3) a statement of the issue(s) presented for review on appeal; and (4) an argument, citing relevant statutes, case law, or other legal authority. The argument section is limited to a maximum of fifteen (15) pages unless otherwise directed by the appeals board. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the self-represented party filing the brief. Briefs shall comply with the Practices and Procedures of the Workers' Compensation Appeals Board.

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~~(4)~~(5) Upon the filing of a decision on a compensation appeal, the clerk of the workers' compensation appeals board shall forward/transmit a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims. Petitions to rehear or reconsider the decision of the appeals board are disfavored. However, a party may petition the appeals board to rehear or reconsider its decision. Such petitions will be heard consistent with Rule 39 of the Tennessee Rules of Appellate Procedure.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Repeal and new rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

#### 0800-02-22-.07 BRIEF S of the case legal

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~~(2)~~(1) Briefs shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee," and (3) the name and address of the attorney of record or self-represented party filing the brief.

~~(3)~~(2) Any motion seeking to expand the page limit of a brief must be filed at least five business days prior to the date the brief is due. An order will be issued as soon as practicable after the motion is filed.

~~(3)~~ Issues or arguments not raised in the court of workers' compensation claims may be deemed waived on appeal.

#### 0800-02-22-.048 ORAL ARGUMENT; COSTS ON APPEAL; SETTLEMENT DURING APPEAL.

~~(1)~~ The appeals board shall base its decision on the record on appeal and the arguments of the parties. Evidence not contained in the record on appeal shall not be considered. Oral argument shall be allowed only upon motion of a party and/or by order of the appeals board. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument.

~~(1)~~(2) Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board. The clerk will advise the parties regarding the date and location of oral argument as determined by the appeals board. Once oral argument is scheduled, it shall not be continued absent a showing of exceptional circumstances.

~~(2)~~(3) Oral argument shall be conducted under the supervision of the appeals board's presiding judge or, if the presiding judge is not a member of the panel to hear oral argument, by the appeals board judge designated by the presiding judge to preside at oral argument. The judge presiding at oral argument shall regulate all procedural matters arising during the course of argument.

~~(3)~~(4) Unless the appeals board otherwise orders, each side shall be permitted no more than twenty minutes for presentation of the party's oral argument. The appellant may reserve a portion of the appellant's allotted time for rebuttal. If a party believes additional time will be necessary for the adequate presentation of the case, the party may request additional time by motion filed in advance of the date fixed for oral argument. A party is not obligated to use all of the time allowed, and the appeals board may terminate the argument when in its judgment further argument is unnecessary.

~~(4)~~(5) No party may present oral argument unless the party has filed a brief on appeal.

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- (5)(6) The appellant is entitled to open and conclude the argument. If both parties filed notices of appeal, the appeals board shall determine the order of the argument.
- (6)(7) No more than two parties requesting the same relief will be heard except by leave of the appeals board. Divided arguments are disfavored, and care should be taken to avoid duplication of argument.
- (7)(8) If a party fails to appear for oral argument, the appeals board may hear argument on behalf of the parties participating. If no party appears, the case will be decided on the record and the briefs unless the appeals board otherwise orders. If oral argument is granted upon motion of a party and that party fails to appear or participate in oral argument in the manner designated, the appeals board may tax costs to such party. A party represented by an attorney will be considered present at oral argument upon the appearance of the attorney.
- (8)(9) If the appeals board determines that additional analysis of an issue or issues may be beneficial, the appeals board may, by order, direct the parties to submit arguments or additional briefing addressing those issues whether or not oral argument is held. Alternatively, the appeals board may correspond via email with the parties, through the clerk of the appeals board, directing that specific issues be addressed whether or not oral argument is held. Any party directed to submit arguments or additional briefing shall submit a response to the clerk by email within five (5) business days of the transmission of the questions. Any other party shall respond to the initial response by email to the clerk within five (5) business days of the transmission of the initial response. A reply to such response, if any, shall be submitted within three (3) business days of the transmission of the response. No further responses shall be permitted unless otherwise directed by the appeals board.

No request to rehear or reconsider the decision of the appeals board will be granted.

#### 0800-02-22-.09 COSTS ON APPEAL; SETTLEMENT DURING APPEAL

- (1) Costs on appeal may be assessed as ordered by the appeals board. If an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the appeals board; if a judgment or order is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment or order is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated or modified, costs shall be allowed ~~taxed~~ as ordered by the appeals board. Costs on appeal may include filing fees and costs associated with ensuring a complete record on appeal, among other necessary and reasonable costs.
- (2) If any party who has filed a notice of appeal elects to dismiss the appeal voluntarily, such party shall file a motion to dismiss the appeal with the clerk of the appeals board. Any party opposing the dismissal shall file a response to the motion within five (5) business days of the filing of the motion to dismiss. The appeals board will then act on the motion.
- (a) If the motion is granted with respect to the appeal of an interlocutory order, the case shall be remanded to the court of workers' compensation claims for any further proceedings that may be necessary. If the motion is denied, the appeal shall proceed as directed by the appeals board.
- (a)(b) If the motion is granted with respect to the appeal of a compensation order, the appeals board shall certify the order of the court of workers' compensation claims as final and dismiss the appeal.
- (2)(3) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion signed by all parties requesting the appeal be held in abeyance and the case

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be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.

- ~~(3) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue absent a remand.~~
- (4) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

**Authority:** T.C.A. §§ 4-3-1409, 50-6-217, 50-6-225, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

**0800-02-22-0510 APPEAL OF WORKERS' COMPENSATION CASES FILED AGAINST THE STATE;  
NOTICE TO ATTORNEY GENERAL.**

- (1) The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.
- (2) When the validity of a statute of this state or an administrative rule or regulation of this state is drawn into question in any appeal of a matter to which the state or an officer or agency of the state is not a party, the party raising such question shall serve a copy of the party's notice of appeal, and any subsequent brief on the Attorney General of Tennessee ("Attorney General").
- (3) Proof that service has been made on the Attorney General shall be filed with the brief or position statement of the party raising such question.
- (4) The Attorney General is entitled, within the time allowed for the filing of a responsive brief by a party, to file a brief. The Attorney General is also entitled to be heard orally if oral arguments are scheduled in the case.

**Authority:** T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402, 50-6-217, 50-6-233, and 50-6-237. **Administrative History:** Original rule filed June 22, 2015; effective September 20, 2015. Amendments filed November 7, 2017; effective February 5, 2018.

\* 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 Bureau of Workers' Compensation (board/commission/other authority) on 03/26/2020 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/16/2019

Rulemaking Hearing(s) Conducted on: 12/17/2019

Date: 03/26/2020

Signature: *Abbie Hudgens*

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

Agency/Board/Commission: Bureau of Workers' Compensation

Rule Chapter Number(s): 0800-02-22

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

7/1/2020  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/14/2020

Effective on: 10/12/2020

*Tre Hargett*  
Tre Hargett  
Secretary of State

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