

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Judicial Conduct

SUBJECT: Board Meetings / Board Chairperson and Vice-Chairperson / Confidentiality / Records Retention

STATUTORY AUTHORITY: Public Chapter 496 of the 111th General Assembly

EFFECTIVE DATES: October 7, 2019 through April 4, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: In Public Chapter 496, the 111th General Assembly reconstituted the Board of Judicial Conduct effective July 1, 2019. These emergency rules govern general procedures of the Board.

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 emergency rules will have a minimal impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The 111th General Assembly reconstituted the Board of Judicial Conduct effective July 1, 2019. 2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.* These rules govern general procedures of the 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;

2019 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.*).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules most directly effect Tennessee's judiciary. The Board has received no objections to these rules.

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

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 Board of Judicial Conduct does not expect that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Board also believes that its fiscal impact is minimal.

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

Judge Dee David Gay
Sumner County Criminal Justice Center
1117 West Smith Street
Gallatin, Tennessee 37066
(615) 452-5526
Judge.Dee.Gay@tncourts.gov

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

Judge Dee David Gay
Sumner County Criminal Justice Center
1117 West Smith Street
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- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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

None.

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 Email: publications.information@tn.gov

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Sequence Number: 10-06-19
 Rule ID(s): 9260
 File Date: 10/7/19
 Last Effective Day: 4/4/20

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: Board of Judicial Conduct
Division: N/A
Contact Person: Judge Dee David Gay
Address: Sumner County Criminal Justice Center, 1117 West Smith Street, Gallatin TN
Zip: 37066
Phone: (615) 452-5526
Email: Judge.dee.gay@tncourts.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Statement of Necessity:

Public Chapter 496 of the 111th General Assembly—codified as Tenn. Code Ann. §§ 17-5-101, *et seq.*--reconstituted the Tennessee Board of Judicial Conduct effective July 1, 2019. As the reconstituted Board came into existence on July 1, 2019, it did not have time to promulgate these rules in a non-emergency fashion. The Board is unable to perform its functions without these emergency rules, and "[t]he regulation of judicial conduct is critical to preserving the integrity of the judiciary and enhancing public confidence in the judicial system." Tenn. Code Ann. § 17-5-101.

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
-01	General
Rule Number	Rule Title
-01-01	Meetings
-01-02	Chairperson and Vice-Chair of the Board
-01-03	Confidentiality
-01-04	Records Retention

-01-.01 MEETINGS.

- (1) TIME AND PLACE OF MEETING – The Board shall meet at 10:00 am on the fourth (4th) Tuesday in February and the fourth (4th) Tuesday in July in the conference room of the Administrative Office of the Courts and at such other times and places as the chairperson or a majority of the members of the Board may deem necessary. Members finding it more convenient may also attend the meeting by video or phone conference.
- (2) NOTICE OF MEETING – The chairperson shall give a minimum of ten (10) days' notice of the time and place of meetings to all members of the Board.
- (3) QUORUM – Nine (9) members of the Board, whether meeting in person or by video or phone conference, shall constitute a quorum.

Authority: T.C.A. § 17-5-201(f).

-01-.02 CHAIRPERSON AND VICE-CHAIR OF THE BOARD.

- (1) CHAIRPERSON ELECTION AND REMOVAL – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a chairperson to serve for a period of one (1) year. The chairperson shall be elected from the members of the Board by a majority present and voting. The chairperson may be removed by a two-thirds vote of the members of the Board, with or without cause.
- (2) VICE-CHAIR ELECTION, REMOVAL, AND DUTIES – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a vice-chair to serve for a period of one (1) year. The vice-chair shall be elected from the members of the Board by a majority present and voting. The vice-chair may be removed by a two-thirds vote of the members of the Board, with or without cause. If at any meeting the chairperson is not present, the vice-chair shall act as chairperson for that meeting. If the chairperson is recused with respect to a matter, the vice-chair shall act as chairperson with respect to that matter.
- (3) CHAIRPERSON DUTIES – In addition to the duties and responsibilities set forth in T.C.A. §§ 17-5-101, *et seq.*, the Chairperson shall preside at all meetings of the Board and at trials. The chairperson shall rule upon the admission or exclusion of evidence. However, the chairperson's ruling upon the admission or exclusion of evidence may be appealed to the full hearing panel. The chairperson and only the chairperson shall be the spokesperson for all matters pending before the Board, except that if the chairperson is recused with respect to a matter pending before the Board, the vice-chair and only the vice-chair shall be the spokesperson for the Board with respect to that matter. After the trial of any matter, the chairperson shall write or shall designate a member of the hearing panel that heard the matter to write the majority opinion. Any member of the hearing panel that heard the matter may write a concurring or dissenting opinion. The chairperson shall have such other duties and responsibilities as are necessary in fulfilling the office.

Authority: T.C.A. § 17-5-201(f).

-01-.03 CONFIDENTIALITY.

- (1) Except as required under T.C.A. § 17-5-303(f), matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with the Board's disciplinary counsel. However, nothing in this rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding before the Board or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute, or may adversely affect the administration of justice, the chairperson in his or her discretion may (a) confirm that an investigation is in progress, (b) clarify the procedural aspects of any proceedings, and (c) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

Authority: T.C.A. §§ 17-5-201(f), -202(e), -303(f).

-01-.04 RECORDS RETENTION.

When a complaint is received from an outside source or is created internally, both a physical and an electronic file shall be created. The physical file shall contain the complaint and all relevant documentation and correspondence pertaining to the complaint. Relevant portions of all complaints and documentation, including correspondence, shall be scanned and maintained in the electronic file. Correspondence generated by the office to either the complainant or the subject judge shall also be maintained in an electronic file in word-processing format, without the necessity of scanning the printed document. Voluminous public records such as transcripts, court dockets, or pleadings filed in any court, which are retrievable by other means, need not be scanned into the electronic file. The Board's disciplinary counsel shall maintain a backup copy of all electronic files that shall be backed up daily and kept on storage media apart from the computer's internal hard drive. A physical file may be destroyed by an appropriately secure method, such as a commercial shredding service, no sooner than one (1) year after the final action and closing of that file, but the electronic file shall never be destroyed, regardless of the disposition of the case.

Authority: T.C.A. §§ 17-5-201(f). -202(e).

* 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)
Dee David Gay	X				
Andrew G. Brigham	X				
Jeffrey M. Atherton	X				
H. Allen Bray				X	
Robert Carter, Jr.	X				
Edwena I. Crowe	X				
Rita Ellison	X				
William C. Koch, Jr.	X				
Camille R. McMillen	X				
Albert Mosley	X				
Benjamin Purser, Jr.	X				
Richard Rogers	X				
Dan Springer	X				
Terica Smith	X				
John Whitworth	X				
Robert W. Wilkinson	X				

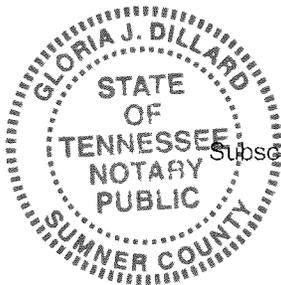
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: Oct 4 2019

Signature: [Handwritten Signature]

Name of Officer: Dee David Gay

Title of Officer: Criminal Court Judge



Subscribed and sworn to before me on: October 4, 2019

Notary Public Signature: Gloria J. Dillard

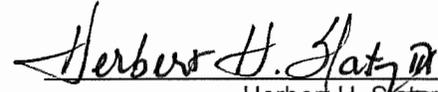
My commission expires on: 12/21/19

Agency/Board/Commission: Board of Judicial Conduct

Agency/Board/Commission: Board of Judicial Conduct

Rule Chapter Number(s): Need chapter assigned, -01 General

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
9/11/2019
Date

Department of State Use Only

Filed with the Department of State on: 10/7/19

Effective for: 180 *days

Effective through: 4/4/20

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


Tre Hargett
Secretary of State

2019 OCT -7 PM 2:15
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety and Homeland Security

DIVISIONS: Highway Patrol

SUBJECT: Rules of Ignition Interlock Device Program, Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 55-10-409, 55-10-401, 55-10-407, 55-10-406, 55-10-413, 55-10-417, 55-10-418, 55-10-419, 55-10-425

EFFECTIVE DATES: January 28, 2020 through June 30, 2020

FISCAL IMPACT: The estimated total increase in state revenue following the implementation of the new ignition interlock program rules is estimated at \$623,380 annually based on the collection of fees listed in the rules.

STAFF RULE ABSTRACT: These rules govern the regulation of the Ignition Interlock Device program in Tennessee. This impacts all persons required to operate motor vehicles with Ignition Interlock installed pursuant to a DUI conviction. This rulemaking hearing rule changes requirements for providers, manufacturers and customers. The rule also makes updates relative to new law changes for toll periods and fee changes relative to the cost of maintenance and installation.

Public Hearing Comments

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

**CHAPTER 1340-03-06
RULES OF IGNITION INTERLOCK DEVICE PROGRAM****OCTOBER 22, 2018, RULEMAKING HEARING
RESPONSES TO QUESTIONS AND COMMENTS**

The Department has reviewed all of the comments and questions put forth in response to the proposed Ignition Interlock Device Program rule changes. This document will address and provide responses to those questions and comments.

1340-03-06-.02 Definitions

It was recommended that on (4) we replace "breath" with "alcohol" so that it reads, "Breath Alcohol Concentration (BrAC) - means the amount of alcohol, expressed in weight per volume (w/v) based upon grams of alcohol per 210 liters (L) of breath." We acknowledge that the wording should be changed and agree to update this definition to reflect this.

It was recommended a change be made to (6) to reflect the National Highway Traffic Safety Administration (NHTSA) naming convention; we decline to make this change as our current definition was pulled from the Association of Ignition Interlock Program Administrators (AIIPA) list of definitions.

The Department received comments on the definition of "GPS Technology" (12). One commenter wanted to do away with the definition completely, which we decline to do. The Department wishes to reiterate that GPS Technology will not be used to track an individual's location at all times; it will capture a latitude and longitude when an event occurs that requires a photo to be taken, basically geo-tagging photos. Another submitted comments in general support of the adoption of GPS technology and in response to potential privacy concerns regarding GPS technology and how it will be used; they are below:

The American Association of Motor Vehicle Administration (AAMVA) Ignition Interlock Program Best Practice Guide dated September 2018 recommends the use of advanced technology being camera, GPS, and real time reporting.

Currently, the following states require GPS: Arizona, Missouri with court order, Minnesota with court order, New York, Oregon, South Dakota, and Washington. Advanced technology such as camera, GPS, and real time reporting can help limit "false" violations and obtain better evidence for "valid" violations.

GPS verifies the exact location of a violation and the jurisdiction in which it occurs in cases where an offender argues that the violation occurred outside the jurisdiction of the state or the court.

GPS verifies whether the vehicle was in motion in the event of a power interruption which is helpful in determining tampering. The results of advanced technology is that it reduces offender complaints and challenges by offenders resulting in cost savings and time for those overseeing the ignition interlock program.

The Driver's Privacy Protection Act of 1994 is a federal law governing the privacy and disclosure of personal information gathered by the state Department of Motor Vehicles. This federal law prohibits a state Department of Motor Vehicles from disclosing personal information without the express consent of the person to whom such information applies. However, there are exceptions to the law's nondisclosure requirement. Personal information may be disclosed by any government agency including any court or law enforcement agency, or any private person or entity acting on behalf of a Federal, State, or local agency to carry out its functions.

Chapter 25 of the Tennessee Uniform Motor Vehicle Records Disclosure Act follows the federal Driver's Privacy Protection Act of 1994. Pursuant to TCA §55-25-105(a) personal information can be disclosed for use in connection with matters of motor vehicle and driver safety. Tennessee has already determined that personal information can be disclosed for use in connection with matters of motor vehicle and driver safety when it allowed the use of the camera in conjunction with the BAIID.

Pursuant to TCA §§ 55-10-401 and 40-11-152, the Court may order anyone driving under the influence of alcohol to be subject to device monitoring or a GPS monitoring system. Pursuant to TCS §§ 55-10-409(b)(2)(D), a person who fails to take a blood or breath test may be court ordered to have a BAIID with or without geographic restrictions. Geographic restrictions can be monitored using GPS. In addition, TCA §55-25-106 states that if the written consent of the person has been obtained, personal information may also be disclosed. Intoxalock's written lease with the customer discloses that the BAIID includes a camera, GPS, and real time reporting and that the individual acknowledges and consents to these functions and their capabilities.

It was requested that we change (21) to be consistent with the AIIPA standardized definition by changing "bypassing" to "overriding". We accept this and will make this change to the definition of "Override Lockout".

Requests to change the definition of "Normal Business Hours" (22) from three (3) days per week to two (2) days per week were submitted; we decline to make this change as we feel that program participants would be hindered by only having two (2) days per week to obtain service. In the end we decided that three (3) days was still insufficient to effectively serve program participants and made this five (5) days per week.

A commenter asked that we change language within the definition of "Permanent Lockout" (24) from "...once five (5) violations have occurred..." to "...once a violation reset has occurred..." We decline to make this change.

It was requested that we modify (25) to clarify that the Permanent Lockout Fee is applicable even though the device may be accepting tests due to the use of an Override Lockout Code. We do not feel that this clarification is necessary and decline to make this change.

Comments were submitted requesting that the definition of "Random Retest" (28) be updated to make it compatible with electric and hybrid vehicles and to set an approved time interval for these tests. The Department realizes the importance of acknowledging changing vehicle technologies in these rules and will change this rule to state that Random Retests will be required while the vehicle is being operated. We will also clarify that the first retest shall be required five (5) to fifteen (15) minutes after vehicle start, and every fifteen (15) to forty-five (45) minutes thereafter.

In regards to the definition of "Real Time Reporting" (29), we have received several comments. One asks that we clarify the meaning of "particular events" within the definition; we will clarify this reflect that we mean any event that requires a photo to be captured. We have been asked to change the wording "as the event occurs" to "within five minutes of the event occurring"; we decline to make this change as it would not then be real-time. One commenter asked that we remove this definition all together, which we decline to do. We did receive some comments in general support of the Real Time Reporting requirement and they are listed below:

Real Time Reporting allows reporting of specific violations as near as possible to the event, allowing better monitoring authority. Both those would have ignition interlock devices. It also expedites addressing violations rather than allowing violations to accumulate for a period of time before they are reported. It provides the opportunity to reduce impaired driving collisions. And I'd also like to say that the American Association of Motor Vehicle Administration, AAMVA, ignition interlock program best practice guide dated September 2018, recommends the use of advanced technology including Real Time Reporting.

The Department received multiple comments on (33). It has been requested that the definition of "Tampering" specifically include the camera. We are in agreement that the camera is an important component of the BAIID, especially in determining who committed a violation, and will change the language to say "a BAIID and all of its components". We will also clarify that removing the handset once the vehicle has been turned off is allowable.

It has been requested that we remove the definition of "Temporary Lockout Code" (37); we decline to make this change.

The Department has received comments requesting that definitions for "Circumvent- means to bypass the correct operation of a BAIID by starting the vehicle, by any means, without first providing a breath test" and "Camera- A feature of the device that incorporates photo identification or digital images of the person who is providing the breath test in all light conditions" be added to these rules. We agree that these definitions should be incorporated and will add them to our list of definitions. It was also requested that we add a definition for "Delinquency Days", however, this is not a standardized definition and we decline to make this change.

1340-03-06-.03 Manufacturer Application Procedures

It was requested that we change language in (1) from "Any individual or business..." to "A manufacturer..." we decline to make this change as any individual or business may apply to be a certified manufacturer.

A commenter requested that we remove "BAIID" from (1)(a)(1) and (2), which we decline to do as we feel that the distinction is necessary. The question was also posed if there could be a timeframe associated with (2) and we agree that there should be ten (10) year limit on how far back this list should go.

Several commenters asked who would be responsible for providing a background check (1)(a)(3) on the application if the manufacturer is owned by a corporation or business entity. We will add language to clarify that in this case the manufacturer's state representative would be the person who would need to provide the background check. We will also add "Manufacturer State Representative" to our list of definitions.

It was asked if for instances where the manufacturer is also a service center, do applications for both need to be provided and will application fees apply to both. The answer is yes to both; each role has to be applied for and approved by the Department.

The recommendation was made that we remove the reference to "manufacturing standards" in (1)(a)(5) to align the language with that used by NHTSA; we agree to remove the reference to "manufacturing standards" in this section. It was also suggested that we specify which specifications and ISO standard the devices adhere to. We decline to make this change because we require all devices to be up to the most recent NHTSA model specifications; making this rule that specific could hinder us in the future as those specifications are updated. It was suggested that we make device certification a part of the manufacturer application process; we currently do this before approving a new manufacturer or device. We require a representative to come in to our office and demonstrate the use of their device, its calibration, and accuracy.

In relation to (1)(a)(9) one commenter noted that they allow their service centers to set their own pricing within the Department's pricing guidelines and asked if this rule meant they would have to submit a fee schedule for all of their service centers with their application. We took this into consideration and decided to remove (9) from this section. We will only require fee schedules to be submitted with the service center provider applications.

Commenters asked for clarification on (1)(a)(6). Financial responsibility refers to section 13-1340-03-06-.16 of these rules and the requirement to maintain comprehensive general liability insurance in minimum amounts determined by the Department. We referred to section 13-1340-03-06-.15 mistakenly and will correct that in this section.

A couple of commenters requested clarification on who is the "affiliated device manufacturer" referred to in section (1)(b). We will change this language to say "manufacturer's state representative" and will define this term. This language update will be made throughout the document.

One commenter requested that we set a thirty (30) day timeframe on review, decision, and notification of approval or denial of applications (2). Due to extended testing periods of devices and technical capabilities we cannot set a timeframe for manufacturer approvals.

It was posed that we consider requiring approved manufacturers to carry a bond in the amount of \$100,000 to protect against vendor abandonment. After speaking with our legal department it was determined that this is not a requirement that we can make, we therefore decline to make this addition.

The rules proposed here include the addition of application fees to be paid by the manufacturers. The Department did receive comments in support of these fees; they are listed below:

It is recommended that to support the state's ignition interlock program that the initial and renewal fees for certifying a manufacturer be increased to cover the costs of certifying and testing the device and the state's involvement in the compliance based removal process.

1340-03-06-.04 SERVICE CENTER PROVIDER APPLICATION PROCEDURES

Additional language was suggested for (1)(a)(4), adding calibrating to the list of services; we are in agreement with this suggestion and will add "calibrating" so that it directly reflects our definition of "Service Center Provider".

Several commentators asked for clarification on who would be required to have background checks according to (1)(a)(5). It is only the people referenced in (1)(a)(2), those who will be installing, calibrating, servicing, or removing the BAIDs. It was also suggested that we add clarifying language to this section, which we will do.

Commenters asked for clarification on (1)(a)(7). Financial responsibility refers to section 13-1340-03-06-.16 of these rules and the requirement to maintain comprehensive general liability insurance in minimum amounts determined by the Department. We referred to section 13-1340-03-06-.15 mistakenly and will correct that in this section.

The request was made that we remove (1)(a)(8) from this section because it is ultimately a responsibility of the manufacturer; we agree with this and will remove from this section.

It was recommended that we allow service center providers to post the fee schedule (1)(a)(11) related to the services provided specifically by that location. The Department declines to make this change in the interest of transparency for the clients and minimizing pricing confusion.

Clarification was requested on the nature of exclusivity between manufacturers and service center providers in relation to (1)(a)(12) and (4). Any expectation of vendor exclusivity should be addressed in the contract between the manufacturer and the service center provider; the Department does not involve itself in those agreements.

One commenter would like the service center providers to have the opportunity to correct application deficiencies and/or request a hearing upon denial. We decline to make this change because all correspondence with the service center providers goes through the manufacturers and is conducted in a way that allows for the manufacturer to review and correct the applications before they are submitted to the Department. We do not allow a period for correction and reconsideration because the service center providers have certified that they are ready for inspection upon submitting applications to the manufacturer. It is neither financially feasible, nor does this unit have the manpower resources, for Troopers to return to a site for re-inspection.

It was requested that we provide a timeframe for (2) and (3). We decline to do this due to the current state of our manpower resources and the rapid growth of the Ignition Interlock Program.

It was suggested that we change language in (5)(a) to say "service center provider" rather than "manufacturer". The Department agrees with this suggestion and will make this change.

1340-03-06-.05 GENERAL REQUIREMENTS

In regards to (1) it was asked that we change "passed" to "enacted"; we decline to make this change. It was also requested that we give ninety (90) days of notice before any changes are implemented due to new or changed legislation. We agree that manufacturers and service centers should have a reasonable amount of time to prepare for any changes and will notify them as soon as possible of any new programmatic requirements, but decline to put a timeframe in these rules.

A commenter asked that we add language to (3), changing it to say, "... A-List System for any participant installed after November 18, 2016" and to say "forty-eight (48) business hours". We decline to add the "November 18, 2016" date to this section, but agree to add "business hours".

Commenters raised questions over the authorization process referenced in (6) and (7). This will be a pre-approval requested in writing for all out of state services.

A request was submitted asking that we add language to (7) authorizing manufacturers to recover devices from delinquent clients after a period of sixty (60) days. We will add to these rules a subsection stating that a manufacturer may be authorized, upon receipt of written request and approval from the Department, to immediately recover any BAIID after ninety (90) consecutive delinquent days. The service center provider may remove the delinquent device at any off-site location; the manufacturer and service center provider will hold the Department and the State of Tennessee harmless from any liability resulting from the recovery of a BAIID pursuant to this subsection.

1340-03-06-.06 APPROVED BAIID REQUIREMENTS

A language change was requested in (1) to remove "manufacturing standards" and only refer to "model specifications" to be in line with NHTSA language, and also to remove "fuel cell devices". The Department is in agreement with the removal of "manufacturing standards" and will make this change; we decline to remove "fuel cell devices".

Several commenters wished to see us note in section (2) that the requirement for devices to be equipped with and utilize "Real Time Reporting" and "GPS" technology will not immediately apply to all devices in use across the state, but will allow for a period of transition to these devices. The Department is in agreement and will clarify that the transition should take place beginning with new program participants, allowing the old technology to be phased out as participants complete the program. This transition will begin October 1, 2019, and should be completed with all participants having devices with the new technology by January 1, 2020. One commenter wanted the removal of all references to "Real Time Reporting" and "GPS"; we decline to make this change.

One commenter asked that we specify how the Quality Assurance Plan (QAP) referred to in (3) should be drafted. We are going to edit this to clarify that we meant the QAP document must be submitted and should include operating instructions for the BAIID and the step-by-step instructions of the process for checking the accuracy of the calibration of the BAIID. We decline to further explain how this document should be drafted because that we feel that stating what it must contain should suffice.

Clarification was requested for (4) and (5) in reference to what tests these will apply to and what the allowable time intervals are. We will change (4) and (5) to say "...a failed initial, retest, or random test". We have addressed the timing of random tests in the definitions section.

Multiple commenters would like to see a change made to (6) allowing devices to only activate the vehicle's horn upon failing to provide a passing random test, rather than the horn and lights; including one that didn't want either. This activation of the horn and lights is meant to alert law enforcement that may be in the area to the vehicle; for that reason we will not remove this requirement.

It was requested that we change (7) to initiate a violation lockout upon the BAIID recording circumvention or attempted circumvention. The Department declines to make these changes.

It was also requested that changes to (8) be made that would make each violation require the client to visit a service center for a violation reset; we decline to make this change because of the undue burden it would cause program participants.

Multiple commenters wanted clarification on (9) to ensure that the rules acknowledged that the lockout is only valid for a set period of time. The Department is in agreement and will add wording to this section noting that the lockout is not to be valid for a period of time exceeding 2 hours.

Several commenters asked that manufacturers be removed from the breath reduction approval process as much as possible. We agree that this should be between the Department and the participant and will change (11) to simplify this process and require all health related documentation to be collected only by the Department who will then notify the manufacturer of the approval or denial.

One commenter wanted changes made to this section to remove references to wet-bath testing, which we decline to make because wet-bath testing is currently accepted by AllPA. They also wanted us to elaborate on what is expected during a random retest. We will update (5) and (6) to state that upon request for a random test a participant should have six (6) minutes to provide an unlimited number of samples; upon providing a failing sample participants will have ten (10) minutes to provide a passing test. During these ten (10) minutes a participant should have, at minimum, 3 opportunities to provide a sample. The device must audibly alert the participant to the sample request; it may also light up or vibrate. Once a retest is in progress, failure to deliver a breath test below .020 within the time frame allowed shall: Activate the vehicle's horn to sound repeatedly until the engine is shut down, record a retest violation in the data storage system, and disable the free restart.

1340-03-06-.07 SERVICE CENTER PROVIDER-OWNER/TECHNICIAN REQUIREMENTS

It was requested that a grace period be in effect in regards to (4) for manufacturers currently approved. It is addressed in changes made to section 1340-06-06-.05 that we will implement a ninety (90) day grace period for any legislative or rule changes.

1340-03-06-.08 BAIID INSTALLATION REQUIREMENTS

In reference to the problem-solving guide that we require all service centers to have on hand and provide to all interlock program participants, it was requested that we allow a 24-hour phone number for the manufacturer to be listed in lieu of all of the service center providers. We agree that because of constant turnover of these providers that it is difficult to keep these guides up to date under the current rule and will make this requested change to remove the requirement of listing all of the approved service center providers and allow the manufacturer 24-hour phone number to suffice.

One commenter would like to see (10) changed to say, "If the participant is on supervised probation, the service center provider will notify the Department upon removal of the BAIID, if the participant does not provide authorization from the court of the Department to remove the BAIID." Because the program participant faces real consequences for unauthorized removal of the device, and manufacturers' service center providers and customer service representatives often give out incorrect information to clients, we decline to make this change. However, we will update (10) to say, "If the participant is on supervised probation, under no circumstance shall a BAIID be removed without written authorization from the court." This removes the Department from this process since the Department would not be the monitoring agency in these cases and would not provide removal authorization.

1340-03-06-.09 ORIENTATION OF PROGRAM PARTICIPANT

Clarification was requested on (3) regarding who would draft these summary letters and if the service center providers had to provide a copy to all program participants or just post them. The letters are written by the Department, so they are complete and accurate. The service center providers are only required to post them in a conspicuous location.

1340-03-06-.10 PROOF OF INSTALLATION OF A BAIID

The Department received comments on (2); one request to remove it entirely and one asking us to address what happens when a court refuses to supply the Order for Restricted Driver License before the BAIID is installed. After review, we have decided to update (2) to say, "Prior to the installation of the BAIID, the manufacturer shall ascertain the reason the BAIID is required, and if available shall obtain a copy of the participant's Order for Restricted Driver License form (SF-0680). We think this will cover any situations that may arise with situations where the ORDL may not be readily available, such as judges' refusal to issue, voluntary participants, or probationary requirements.

It was requested that we change (3) to state that upon completion of the installation of a BAIID, the manufacturer will provide the participant with installation verification. We agree that the onus for proof of BAIID installation to probation officers falls on the program participant so we will make this requested change.

1340-03-06-.11 MONITORING REQUIREMENTS

One commenter asked that we change the second sentence of (1) to say, "Unless otherwise authorized by the ignition interlock program, an authorized service center provider will not conduct a calibration or service any BAIID unless the vehicle is present at the approved facility and is in mechanically operable condition." We decline to make this change because we want all service carried out at facility that has been inspected and approved by the Department.

It was requested that we add language to the second sentence of (3), changing it to say, "Unless otherwise authorized pursuant to 1340-03-06.04(7) the certified technician..." We decline to make this change because the rule already states that, "The certified technician shall only service, calibrate, or remove the BAIID at an approved service center provider location within the geographical boundaries of the State of Tennessee or at a location that has been approved by the Department", thus allowing service and removal to be obtained at out of state locations with pre-approval by the Department.

It was requested that we change "...recorded in the Department's A-List system" to "submitted to the Department's A-List system" in (4). We will make this change.

One commenter requested a definition of non-operable vehicles. We stated in (1) that the vehicle must be in "mechanically operable condition" and feel that this clearly conveys that the vehicle must arrive under its own power and be drivable. We decline to add a definition.

A commenter wanted it noted in (5)(c) and (6)(c) that failing or skipping a random test would not be considered a violation if the participant was not in the vehicle at the time of the request. This is our current practice and is why all violations must be confirmed by camera. We will update these sections to read, "Failing to take or skipping a random retest while in the vehicle;".

1340-03-06-.12 REPAIR, REPLACEMENT, OR VEHICLE TRANSFER OF A BAIID

A commenter asked if the Transfer Report referred to in (1) was state generated. It is not; it is generated by the manufacturers and submitted to A-List similar to the Monthly Summary Reports. All manufacturers should currently have the ability to submit Transfer Reports.

1340-03-06-.13 PROGRAM COMPLIANCE BASED REMOVAL / NON-COMPLIANCE REPORT

It was requested that we address, in this section or in the definitions, when the 7-day grace period comes into effect in regards to a permanent lockout. This section does address the grace period in (1) and (1)(f); it is only for a missed appointment allowing participants to not be extended under the compliance based removal law if they have to miss their original appointment date due to extenuating circumstances. This does not mean that they have a 7-day grace period after their missed appointment that their vehicle continues to operate; the device can still begin a lockout countdown seventy-two (72) hours prior to day thirty (30), and may lockout after day thirty (30).

One commenter was unclear as to how compliance based removal works and asked, "Does this mean that they have to get their unrestricted license first and THEN go have their interlock device removed? Can someone without a Code 16 drive a vehicle with an interlock device on it?" In response, yes, the program participant must have their unrestricted license to remove the device. Someone without the code sixteen (16) can drive a vehicle with an interlock, but someone with a code sixteen (16) can only drive a vehicle with interlock.

The Department received the following in support of Real Time Reporting and application fees:

Real time reporting will allow reporting to occur at the conclusion of the violation free 120 days. By providing the report in real time truly allows for a 120 day review rather than waiting for the next calibration period which may result in a significant addition of time (i.e., more than 120 days) before the BAIID may be removed. To compensate the Department for the staff required to review compliance based removals, it is recommended that the manufacturer's initial and annual certification fee be increased as previously set forth in these rule comments.

In regard to compliance based removal which is Rule 1340-03-06-.13, successful Certificate of Compliance, we would recommend that consideration be given to adding wording to the section about the benefits of Real Time Reporting to be able to get the device removed very quickly after that 120-day violation-free period. If they are violation free during that 120-day period, that Real Time Reporting will allow that device to come off quicker than it would if they would have to go back to calibration. So let's say the 120 days is expired and their calibration isn't for another 20, 40, 60 days. By shoring up the compliance-based removal with Real Time Reporting, we think we have a real beneficial process shoring that up and streamlining that and making that more efficient.

1340-03-06-.15 FEES

A commenter requested that we change language in (1) to say, "...DUI monitoring fund and the client has been qualified to receive the funds. ...State Treasury Department who shall reimburse the costs..." The Department of Safety is not over the indigency fund. We cannot state that Treasury shall reimburse. We will update this section to say: Any BAIID program participant who has been declared indigent by the court pursuant to T.C.A. § 55-10-419(d), upon providing a copy of the Proof of Indigency Form signed by the judge and approval of application of indigency by the Department of Treasury, can be provided interlock service at the discretion of the BAIID manufacturer.

Multiple commenters would like to see the installation fee raised, either by dollar amount or maximum allowable hours, to cover the costs associated with longer install times on technologically advanced vehicles such as hybrid and electric, and those with push-button start. The Department is in agreement that the time it takes to install on these types of vehicles is longer than traditional vehicles. We will change (3) to increase the maximum time of three (3) hours.

A commenter would like (6) to read, "...permanent lockout, regardless of whether the device has been unlocked by use of an approved override lockout code". We agree that this clarification is helpful and will make this requested addition to the language.

One commenter requested clarification on whether this five dollar (\$5) fee (10) may be collected by the manufacturer from Participants in addition to, or inclusive of the allowed \$125 per month as outlined in (4). This is a fee assessed to and collected from the manufacturer, not the participant.

1340-03-06-.16 FINANCIAL RESPONSIBILITY REQUIREMENTS

Multiple commenters pointed out that the liability insurance requirements on the service center providers were too high (2). The Department is in agreement and will change these amounts to \$100,000 per event and \$300,000 aggregate.

1340-03-06-.18 AUDITS AND INSPECTIONS

It was requested that (3) be changed to read, "...non-compliance notification will be given to the service center provider and forwarded to the service center provider's manufacturer representative. The notification will state the cause of the non-compliance and what needs to be done to remedy the non-compliance. The manufacturer representative will have ten (10) business days from receipt of the notification to correct the stated deficiencies and notify the Department in writing of such correction." We decline to make this change because the current process for notification of non-compliance found during inspections is detailed in the 3rd Party Compliance processes and documentation.

The commenter then went on to ask that (3)(a) be changed to read, "If the cause of non-compliance found cannot be corrected immediately, a one hundred dollar (\$100) non-compliance fee may be assessed to cover the expenses incurred by the Department for a re-inspection, if a re-inspection is necessary as determined by the Department." We decline to make this change; the \$50 fee is for minor violations that we see often but can be remedied while on-site. The commenter then asked that (3)(b) read, "The manufacturer representative may request a hearing pursuant to Rule 1340-03-06-.19." We decline to make this change; hearing requests are addressed in section 1340-03-06.20.

It was requested that we add a section stating, "All inspection fees will be transferred by ACH to the Department's Ignition Interlock Program. The manufacturer representative will submit a detailed payment report to the Ignition Interlock Program Administrator on the day that the non-compliance fees are paid. The report will contain a list of service center inspections incurring fees and the fees associated with each." This is addressed in the first paragraph of (3).

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.

If approved the rules would affect most of or not all of the 162 interlock installation facilities. As most of these facilities are in rural areas the increase for installation and monthly service for the interlock device could affect the hourly wages of the ignition interlock technicians.

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 an impact on local government.

Additional Information Required by Joint Government Operations Committee

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

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

These rules govern the regulation of the Ignition Interlock Device program in Tennessee. This impacts all persons required to operate motor vehicles with Ignition Interlock installed pursuant to a DUI conviction. The updates include changes to requirements for providers, manufacturers and customers. There are also updates relative to new law changes for toll periods. There are fee changes relative to the cost of maintenance and installation.

- (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;

TCA 55-10-409 Restricted License, 55-10-401 Driving Under the Influence, TCA 55-10-407 penalty for violation of TCA 55-10-406, TCA 55-10-409 Restricted License, TCA 55-10-413 Ignition Interlock Fee, TCA 55-10-417 Ignition Interlock Devices, TCA 55-10-418 Maximum Allowable Fee (Ignition Interlock Devices), TCA 55-10-419 DUI Monitoring Fund, TCA 55-10-423 Confidentiality of Information about Interlock Program Participants, TCA 55-10-425 Compliance Based Removal of Ignition Interlock

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rule changes would affect the citizens of Tennessee required to have the ignition interlock device to obtain a restricted license. The rule changes would affect the eight approved ignition interlock manufacturers and their respected service centers. If approved these rules would affect the Tennessee Department of Treasury. These adopted rules would affect the Tennessee Department of Safety and Homeland Security Ignition Interlock Program. Tennessee Department of Safety and Homeland Security Driver License Division.

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

The Department is not aware of any Attorney General Opinion or judicial ruling directly related to these rules.

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

The estimated total increase in state revenue following the implementation of the new ignition interlock program rules is estimated at six hundred twenty-three thousand three hundred eighty dollars (\$623,380) annually based on the collection of fees listed in the rules.

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

Elizabeth Stroecker, Director of Legislation and Assistant General Counsel
 Liz Hale, Deputy General Counsel
 Terry Seay, Sergeant, RPD
 Stephanie Waye, Program Administrator, RPD

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

Elizabeth Stroecker, Director of Legislation and Assistant General Counsel
 Liz Hale, Deputy General Counsel

Terry Seay, Sergeant, RPD
Stephanie Waye, Program Administrator, RPD

(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

312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;
Elizabeth.Stroecker@tn.gov 615-251-5199
Lizabeth.Hale@tn.gov 615-251-5349
1150 Foster Avenue, Nashville, TN 37243
Terry.Seay@tn.gov 615-743-3916
Stephanie.Waye@tn.gov 615-743-4960

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

**Department of State
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-29-19
Rule ID(s): 9267
File Date: 10/30/19
Effective Date: 1/28/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Safety & Homeland Security
Division:	Highway Patrol
Contact Person:	Elizabeth Stroecker
Address:	312 Rosa L. Parks Avenue, 25 th Floor
Zip:	37243
Phone:	615-251-5199
Email:	Elizabeth.Stroecker@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
1340-03-06	Rules of Ignition Interlock Device Program
Rule Number	Rule Title
1340-03-06-.01	Purpose and Scope
1340-03-06-.02	Definitions
1340-03-06-.03	Manufacturer Application Procedures
1340-03-06-.04	Service Center Application Procedures
1340-03-06-.05	General Requirements
1340-03-06-.06	Approved BAIID Requirements
1340-03-06-.07	Service Center-Owner/Technician Requirements
1340-03-06-.08	BAIID Installation Requirements
1340-03-06-.09	Orientation of Program Participant
1340-03-06-.10	Proof of Installation of a BAIID
1340-03-06-.11	Monitoring Requirements
1340-03-06-.12	Repair, Replacement, or Vehicle Transfer of a BAIID
1340-03-06-.13	Program Compliance-Based Removal/Non-Compliance Report
1340-03-06-.14	Toll of the Required Consecutive Day Period
1340-03-06-.15	Fees
1340-03-06-.16	Financial Responsibility Requirements

1340-03-06-.17	Liability
1340-03-06-.18	Audits and Inspections
1340-03-06-.19	Denial, Suspension, or Revocation of Certification
1340-03-06-.20	Administrative Hearings

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>.

Amendments: These amendments make substantial changes to Chapter 1340-03-06, including adding two new rules at 1340-03-06.04 and 1340-03-06.14. Thus, these amendments delete the original version of Chapter 1340-03-06 and replace it with the version set out below.

**RULES
OF
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY
HIGHWAY PATROL DIVISION**

**CHAPTER 1340-03-06
RULES OF IGNITION INTERLOCK PROGRAM**

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1340-03-06-.0405	General Requirements	1340-03-06-.4213	Program Status
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		1340-03-06-.4719	Suspension, Revocation or Denial
		1340-03-06-.4820	Denial, Suspension, or Revocation of Certification
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1340-03-06-.01 PURPOSE AND SCOPE.

To establish uniform, statewide, minimum, standards for ignition interlock devices, for the certification of ignition interlock device installers and the approval of such installers pursuant to T.C.A. § 55-10-412, manufacturers and service centers, and for program participant monitoring pursuant to T.C.A. §§ 55-10-417, 55-10-418, and 55-10-425.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.02 DEFINITIONS.

- (1) ~~Approved Ignition Interlock Device Installer means an individual or business which has been approved and certified by the Department as meeting all of the minimum requirements set forth in these rules.~~
- (2) ~~Commissioner means the commissioner of the Tennessee Department of Safety.~~
- (3) ~~Department means the Tennessee Department of Safety.~~
- (4) ~~Ignition Interlock Device means a device which connects a motor vehicle ignition system to a~~

breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

- ~~(5) Ignition Interlock Device Provider means a person or company engaged in the business of manufacturing, selling, leasing, servicing and/or monitoring ignition interlock devices.~~
- ~~(6) Ignition Interlock Device Installer means a person or company, affiliated with an Ignition Interlock Device Provider and engaged in the installation, monitoring, maintaining, and removal of ignition interlock devices.~~
- ~~(7) Ignition Interlock Device Installer Certificate means a certificate provided by the Department, once the Department is satisfied that the Ignition Interlock Device Installer complies with all of the minimum requirements set forth in this rule.~~
- ~~(8) Ignition Interlock Program means the Department of Safety's system of regulating ignition interlock devices, installers, and providers.~~
- ~~(9) Ignition Interlock Program Participant means an individual who has been ordered by a court, pursuant to the provisions of T.C.A. § 55-10-412, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.~~
- (1) Accuracy Check - confirming the calibration of the equipment used for the BAIID's calibration.
- (2) Administrative Fee - a fee collected by the manufacturer from each participant.
- (3) A-List - The Department of Safety and Homeland Security's secure data reporting system.
- (4) Breath Alcohol Concentration (BrAC) - the amount of alcohol expressed in weight per volume (w/v) of breath based upon grams of alcohol per 210 liters (L) of breath.
- (5) Breath Alcohol Ignition Interlock Device (BAIID) - a device that is designed to allow a driver to start a vehicle if the driver's BrAC is below the set point and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point.
- (6) Calibration - the process of testing and/or adjusting the BAIID to ensure accuracy by using a wet bath or dry gas standard as defined by the current National Highway Traffic Safety Administration (NHTSA) model specifications for calibration units.
- (7) Camera - a feature of the device that incorporates photo identification or digital images of the person who is providing the breath test in all light conditions.
- (8) Circumvent - to bypass the correct operation of the BAIID by starting the vehicle without first providing a breath test.
- (9) Commissioner - the Commissioner of the Tennessee Department of Safety and Homeland Security.
- (10) Compliance-Based Removal - the authorized removal of the BAIID as determined by the participant meeting terms set by T.C.A. § 55-10-425.
- (11) Department - the Tennessee Department of Safety and Homeland Security.

- (12) Geotag - the process of adding geographical identification metadata to various media such as a geotagged photograph or video.
- (13) GPS Technology - global positioning system technology that has the ability to report the location of the participant's BAIID.
- (14) Hearing Officer - the officer designated by the Commissioner to preside over administrative hearings.
- (15) Ignition Interlock Program - the Department of Safety and Homeland Security's program of regulating BAIIDs, manufacturers, service centers, and technicians in the State of Tennessee.
- (16) Ignition Interlock Service Center Inspection Checklist - a form (SF-1535) to be completed by the manufacturer or service center prior to initial and/or annual renewal inspection.
- (17) Manufacturer - a person or organization responsible for the design, construction, and/or production of the BAIID, which has been approved and certified by the Ignition Interlock Program as meeting all of the minimum requirements set forth in these rules.
- (18) Manufacturer Certificate of Compliance - a certificate of compliance issued by the manufacturer to a participant who has been compliant with the program conditions for the required period.
- (19) Manufacturer/Service Center Non-Compliance Fee - a fee charged to the manufacturer for non-compliance with any of the requirements stated in Chapter 1340-03-06.
- (20) Manufacturer Representative - an individual designated by the manufacturer as a direct point of contact for the ignition interlock program administrator in the State of Tennessee.
- (21) Non-Compliance - failure to meet the minimum requirements set forth in state law, these rules, a court order, or the device configuration requirements.
- (22) Normal Business Hours - standard workdays of Monday through Saturday between the hours of 7:00 am and 7:00 pm at a minimum of five (5) days per week, excluding state and federal holidays.
- (23) Participant - an individual who has been ordered by a court or the Department pursuant to the provisions of T.C.A. § 55-10-417 to operate a motor vehicle which has been equipped with a functioning BAIID.
- (24) Permanent Lockout - A condition where the device will not accept a breath test until serviced.
- (25) Probation - an entity appointed to investigate, supervise, and report on the conduct of program participants.
- (26) Program Administrator - an individual who is the direct point of contact with the general public, current and prospective service centers, manufacturers, and other government and private entities.
- (27) Random Retest - a breath test that is required after the initial engine start-up breath test and while the vehicle is being operated. Note: Commonly referred to as a rolling, random, or running retest.
- (28) Real Time Reporting - the contemporaneous transmission of data any time a photo is captured to a specified monitoring entity as the event occurs or as soon as cellular reception permits.
- (29) Remove Interlock Restriction Letter - a letter issued by the Department to a participant indicating program compliance.
- (30) Residual Mouth Alcohol - alcohol found in the oral cavity that dissipates over a short period of time.

- (31) Service Center - the entity designated by the manufacturer and approved by the Ignition Interlock Program to provide services to include, but not limited to, installation, inspection, maintenance, and removal of the BAIID within Tennessee.
- (32) Service Center Certificate - a certificate provided by the Ignition Interlock Program once the Ignition Interlock Program is satisfied that the service center complies with all of the minimum requirements set forth in Chapter 1340-03-06.
- (33) Tampering - an attempt to physically disable, disconnect, adjust, or otherwise alter the proper operation of a BAIID and/or any of its components; to remove the BAIID and/or any of its components without authorization. Note: Disconnecting the handset once the vehicle is turned off is permissible unless the vehicle was turned off during a random retest.
- (34) Technician - a person affiliated with a service center and engaged in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (35) Technician's Certificate of Training - a certificate issued to the technician by the manufacturer certifying that the technician has been properly trained in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (36) Technician Training - type(s) of training provided to the technician by the manufacturer including hands-on training, paper materials, and training videos.
- (37) Temporary Lockout Code - a temporary code issued by the manufacturer to a participant whose BAIID is in lockout mode.
- (38) Violation - non-compliance with a law, regulation, or rule.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.03 MANUFACTURER APPLICATION PROCEDURES.

- (1) ~~Any individual or business shall apply to be an approved and certified Ignition Interlock Device Installer~~manufacturer using forms supplied by the Department Ignition Interlock Program.
 - (a) ~~The application~~Manufacturer Application (SF-1573) shall be completed in full and shall include the following:
 1. ~~Name and physical address of individual or business applying to be an Approved Ignition Interlock Device Installer;~~
 2. ~~The physical addresses of planned installation locations in Tennessee;~~
 3. ~~A list of the names of the persons who will be installing, servicing or removing the ignition interlock devices;~~
 4. ~~Three (3) or more business references;~~
 5. ~~Information pertaining to the business' or individual's experience in providing the services of installing, servicing and removing ignition interlock devices in other jurisdictions.~~
 6. ~~A statewide criminal history background check performed through the Tennessee~~

Bureau of Investigation (TBI);

- ~~7. A copy of the current fee schedule for installation, monitoring, servicing, leasing, maintaining, and removal of devices; and~~
- ~~8. The name and address of the Ignition Interlock Device Provider that the applicant intends to be affiliated with (installing that provider's device).~~

- 1. A list of all states for which you are currently an approved BAIID manufacturer.
- 2. A list of all states where the BAIID manufacturer is currently or has previously been suspended or revoked within the last ten (10) years.
- 3. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued. If the manufacturer is not an individual but a business entity, the background check should be completed on the Manufacturer Representative.
- 4. Verification that the manufacturer is not an employee of the Department.
- 5. Verification that the BAIID meets or exceeds the most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA).
- 6. A Quality Assurance Plan (QAP) that includes the operating instructions for the BAIID and step-by-step instructions of the process for checking the accuracy of the calibration of the BAIID.
- 7. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.
- 8. Verification that the manufacturer has the ability to submit automated reports via a web service program into A-List.
- 9. A copy of the materials used to train the participant on the proper use of the BAIID.
- 10. The physical addresses of planned installation locations in Tennessee. A certified manufacturer will have ninety (90) days to establish their service center locations within the geographical boundaries of Tennessee or the manufacturer will be removed from the certified manufacturer list and must reapply. At a minimum, each approved manufacturer must open and maintain one (1) service center in each of the eight (8) Tennessee Highway Patrol districts.
- 11. A two hundred and fifty dollar (\$250.00) non-refundable application fee transferred by Automated Clearing House (ACH) to the Ignition Interlock Program.

(b) All applications will be submitted to the Ignition Interlock Program by the Manufacturer Representative.

~~(2) Upon receipt of the application, the Department will process the application and conduct an on-site inspection; and (3)(2) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the applicant shall receive the Ignition Interlock Installer; manufacturer will receive a Certificate which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason for denial.~~

- ~~(4) An entity desiring to become an approved installer must apply separately for each Ignition Interlock Device Provider that they intend to be affiliated with, including submission of an application and all required information under (1)(a).~~
- ~~(3) In order to continue as an approved manufacturer, an application to renew must be submitted to the Ignition Interlock Program annually.~~
- ~~(a) The renewal application consists of all the required information under (1)(a) and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.~~
- ~~(b) At the time the application to renew is submitted, a one hundred dollar (\$100.00) non-refundable renewal fee shall be transferred by ACH to the Ignition Interlock Program.~~
- ~~(c) If the application to renew, including background checks and proof of financial responsibility, is not submitted at a minimum of sixty (60) days prior to the expiration of the current certificate, the non-refundable renewal fee will increase to two hundred and fifty dollars (\$250.00).~~
- ~~(d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for renewal.~~
- ~~(4) The Ignition Interlock Program shall notify the manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer shall receive a certificate valid for one (1) year. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.~~

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.04 SERVICE CENTER APPLICATION PROCEDURES.

- ~~(1) Any individual or business shall apply to be a certified service center using forms supplied by the Ignition Interlock Program.~~
- ~~(a) The Service Center Application (SF-1377) shall be completed in full and shall include the following:~~
- ~~1. Name and physical address of individual or business applying to be a service center.~~
 - ~~2. A list of the names and a Technician Application (SF-1378) for each of the persons who will be installing, calibrating, servicing, or removing the BAIID.~~
 - ~~3. The individual's or business's experience in installing, servicing, and removing BAIIDs in other jurisdictions.~~
 - ~~4. A statewide criminal history background check of the owner and all technicians performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued.~~
 - ~~5. Verification that the service center owner and technicians are not employees of the Department.~~
 - ~~6. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.~~
 - ~~7. A copy of the technicians' certificates of training issued by the manufacturer.~~

8. The name of the manufacturer that the applicant is affiliated with.
 9. An Ignition Interlock Service Center Inspection Checklist (SF-1535).
 10. A two hundred and fifty dollar (\$250.00) non-refundable application fee per service center transferred by ACH to the Ignition Interlock Program.
- (b) All applications will be submitted to the Ignition Interlock Program by the affiliated Manufacturer Representative.
- (2) Upon receipt of the application and fee, the Ignition Interlock Program will process the application and conduct an on-site inspection of the service center.
 - (3) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the manufacturer and service center will receive a certificate which shall be valid for one (1) year. If the application is denied, the applicant's affiliated manufacturer will be informed of the reason for denial.
 - (4) An entity desiring to become a service center must apply separately through each manufacturer that it intends to be affiliated with, including submission of an application, application fee, and all required information under (1)(a).
 - (5) In order for a service center to maintain its certification, every year its affiliated manufacturer(s) shall submit an application to renew to the Ignition Interlock Program.
 - (a) The renewal consists of all the required information under (1)(a) for each service center and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.
 - (b) At the time the application to renew is submitted a one hundred dollar (\$100.00) non-refundable renewal fee for all service centers will be transferred by ACH to the Ignition Interlock Program.
 - (c) If the application to renew, including background checks, proof of financial responsibility, and the facility checklist, is not submitted at least sixty (60) days prior to the expiration of the current certificate, the non-refundable renewal fee will be increased to two hundred and fifty dollars (\$250.00) and the renewal inspection may be delayed.
 - (d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for a renewal.
 - (6) If the application to renew and all other required documents are received at least sixty (60) days prior to the expiration of the current certificate, the Ignition Interlock Program will notify the service center and its manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer and the service center shall receive a certificate valid for one (1) year. This certificate shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425.

1340-03-06-.0405 GENERAL REQUIREMENTS.

- (1) The rules, regulations, and requirements established herein are minimums and may be exceeded by the Approved Ignition Interlock Device Installer and Provider service center or manufacturer. The Ignition

Interlock Program reserves the right to implement new procedures and requirements not found in these rules on an interim basis until these rules are amended in order to comply with the requirements of any new legislation passed by the Tennessee General Assembly. Certified manufacturers and service centers will be notified of the new procedures or requirements in writing prior to the enactment of said procedure or requirement. Service centers and manufacturers may not waive any requirement of these rules or pass any requirement imposed on the service center or manufacturers to a program participant through contract or other means.

- ~~(2)~~ The Approved Ignition Interlock Device Installer and Provider~~service center and manufacturer shall comply with all applicable state laws, administrative rules, and regulations that the Department may promulgate concerning the Ignition Interlock Program.~~
- ~~(3)~~ An Approved Ignition Interlock Device Installer and Provider shall have the ability to carry out the requirements as stated in this rule.
- ~~(3)~~ The manufacturer shall have the ability to accurately submit automated reports via a web service program into A-List. Upon request of the Ignition Interlock Program, incomplete or missing reports must be resubmitted into A-List within forty-eight business (48) hours.
- ~~(4)~~ An Approved Ignition Interlock Device Installer~~A service center shall provide and maintain a service center~~their business within the geographical boundaries of Tennessee, which is easily accessible and open during normal business hours. The location will be easily accessible and open during normal business hours. The service center's hours of operation and the manufacturer's twenty-four (24) hour emergency phone number shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If at any time the service center changes hours of service, the Ignition Interlock Program shall be immediately notified.
- ~~(5)~~ Approved manufacturers must open and maintain service centers at a distance no greater than one hundred (100) miles from each other. If an existing service center closes, the manufacturer shall have thirty (30) days to submit an application for a replacement service center within that immediate geographic area.
- ~~(5)(6)~~ An Approved Ignition Interlock Device Installer~~A service center shall comply with all minimum requirements for installation and any other Tennessee state and federal laws applicable to ignition interlock devices or providers~~BAIIDs and manufacturers.
- ~~(6)~~ In order to continue as an Approved Ignition Interlock Device Installer, the Ignition Interlock Device Provider shall submit to the Department an application to renew the installer's certification and criminal history background checks on all installers sixty (60) days before the expiration of its certificate. The Department shall notify the Ignition Interlock Device Installer and Provider of its decision before the expiration date of the current certificate. If reapproved, the Approved Ignition Interlock Installer and Provider shall receive a certificate valid for one (1) year. If re-certification is denied, the Department will make a written finding of the reason for denial. The Ignition Interlock Provider shall have ten (10) days from the date of notification to correct any deficiencies and notify the Department in writing of such correction. The Ignition Interlock Provider may also request a hearing pursuant to Rule 1340-03-06-.18.
- ~~(7)~~ All BAIIDs that are required by Tennessee courts or the Department shall have all calibrations, data downloads, and servicing completed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.
- ~~(8)~~ All BAIIDs that are required by Tennessee courts or the Department shall only be installed and removed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.

(9) A manufacturer may request approval to recover a BAIID after ninety (90) consecutive delinquent days. The manufacturer may only remove the delinquent BAIID at an off-site location upon approval by the Ignition Interlock Program. The manufacturer and service center will hold the Department and the State of Tennessee harmless from any liability resulting from the recovery of a BAIID pursuant to this subsection. The option to recover a BAIID for delinquency must have been included in the contract signed by the program participant in order to be approved by the Ignition Interlock Program.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.056~~ APPROVED IGNITION INTERLOCK DEVICE BAIID REQUIREMENTS.

- (1) ~~Only ignition interlock devices~~ BAIIDs that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all devices ~~BAIIDs meet or exceed the manufacturing standards~~ most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register/Vol. 57, No. 67/ Tuesday, April 7, 1992. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute — or another commensurate laboratory approved by the Department ~~Ignition Interlock Program.~~
- (2) All BAIIDs installed must include a camera component to comply with T.C.A. §§ 55-10-417 and 55-10-425. All BAIID cameras that are not integrated into the handset shall be mounted on the passenger side of the vehicle cabin facing toward the driver.
- (3) A photo should be captured when:
 - (a) An initial test is requested;
 - (b) A random retest is requested; or
 - (c) Any time a breath sample is provided.
- (4) When a photo is captured, it must be geotagged using GPS technology.
- (5) All BAIIDs installed on a participant's vehicle, beginning six (6) months after the effective date of these rules, must be equipped with and utilize Real Time Reporting and GPS technology.
- (6) A breath alcohol content (BAC) of .020 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (7) The BAIID must allow the participant to provide a minimum of three (3) retests within ten (10) minutes of any failed initial test or random retest.
- (8) The first random retest should occur five (5) to fifteen (15) minutes after initial start-up and subsequent tests should occur fifteen (15) to forty-five (45) minutes from the conclusion of the previous retest.
- ~~(3)~~(9) All installed devices must cause the vehicle's horn to blow and the hazard lights to flash upon a violation of a random retest and stop only upon the ignition being turned off or a passed retest.
- ~~(4)~~(10) A violation will be recorded for any of the following reasons:
 - (a) The engine is started without passing a breath test or while in a lockout state;
 - (b) The user fails or refuses to take a random retest;
 - (c) The user delivers a breath sample above the violation level of .020; or

- (d) The user tampers with or attempts to circumvent the device.
- ~~(5)~~(11) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lockout and prevent the vehicle from starting. This shall not apply to BAIDs equipped with real time reporting technology.
- (12) The service center or manufacturer is authorized to issue a temporary lockout code to a participant whose device is in a permanent lockout mode. The temporary lockout code will allow the vehicle to be started one (1) time, provided a proper breath test is submitted and passed, and should be valid for a period of time not to exceed two (2) hours. The temporary lockout code shall only be issued one (1) time in a thirty (30) day period for the purpose of allowing a participant to drive their vehicle to a service center for service.
- (13) The BAID manufacturer must notify the Ignition Interlock Program before any software changes are made to the BAID.
- (14) All breath reductions of the BAID shall be approved by the Ignition Interlock Program. The required breath volume shall be set at 1.5 liters unless granted a medical exemption. If a reduction is approved the required breath volume shall not be set at less than 1.2 liters. The process for requesting a medical exemption breath reduction is as follows:
- (a) The client must obtain a plain-language statement from their primary care physician or pulmonary specialist that details why they are unable to utilize the BAID.
- (b) The participant shall request permission from the Ignition Interlock Program to lower the required breath volume on the BAID by sending the physician's statement to the Ignition Interlock Program at 1150 Foster Avenue, Nashville, TN 37210, by U.S. mail or electronically to safety.interlock@tn.gov.
- (c) The Ignition Interlock Program will review the documentation and forward approvals to the manufacturer.
- (d) The manufacturer will advise the service center how to calibrate the BAID.

Authority: T.C.A. §§ 4-3-2009~~and 55-10-412, 55-10-417, and 55-10-425.~~ Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.067 IGNITION INTERLOCK INSTALLER OWNER/PERSONNEL SERVICE CENTER-OWNER/TECHNICIAN REQUIREMENTS.

- (1) Service center owner(s) of an Approved Ignition Interlock Device Installer business shall not be an employee of the Department; shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years prior to the date of the application or any conviction of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Personnel Technician(s) who works for of an Approved Ignition Interlock Device Installer business a service center shall not be an employee of the Department, shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years of the date of the application or of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The applicant must technician shall not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application, and that none of

~~such~~where none of these convictions must have occurred within five (5) years from the date of application or renewal. At no time may a technician who is required to operate a vehicle equipped with a BAIID utilize a device that the technician is certified to service.

- (3) ~~Falsification on any application shall be sufficient grounds for denial of the application and suspension of all Ignition Interlock Device Installer certificates issued to the same Ignition Interlock Device Installer company.~~
- (4) The manufacturer shall train all technicians in a timely manner to ensure the proper installation, servicing, and removal of the device prior to the inspection of the facility. The training of the technician shall include hands-on training by a representative of the manufacturer. Once the technicians are properly trained the manufacturer shall submit a Technician's Application and a certificate of training to the Ignition Interlock Program by U.S. mail or electronically. The certified technician shall only install and service the approved BAIID at fixed facilities that have been inspected and approved by the Ignition Interlock Program.

Authority: T.C.A. §§ 4-3-2009, and ~~55-10-412~~ 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.078 ~~IGNITION INTERLOCK~~BAIID INSTALLATION REQUIREMENTS.

- (1) ~~An ignition interlock device~~A BAIID shall be installed, serviced, and removed in all makes and models of motor vehicles only by ~~personnel~~technicians who have been certified by the manufacturer of the ignition interlock deviceBAIID in the installation, servicing, and removal of such device. The certified personnel shall only install, service or remove the approved ignition interlock devices at fixed facilities that have been inspected and approved by the Department. (2) ~~Under no circumstances will the Ignition Interlock~~
- (2) ~~Under no circumstances will the Ignition Interlock Program P~~participant be allowed to watch the installation or removal of the ignition interlock deviceBAIID. Adequate security measures shall be taken to ensure that areas where installations of ignition interlock devicesoccur the installations and removals of BAIIDs shall not be visible to participants. Participants shall be confined to enclosed areas within the facility.
- (3) A reference and problem-solving guide developed by the ~~Approved Ignition Interlock Device Provider~~manufacturer shall be given to the Ignition Interlock Pprogram Pparticipant at the time of the installation. This guide shall include information on the correct operation of the ignition interlock deviceBAIID, ~~location of service centers~~a twenty-four (24) hour customer service phone number, service and procedures, emergency procedures, and how the ignition interlock deviceBAIID detects non-compliance with the Ignition Interlock Program Participant's court order and device requirements.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper proof seals, installation instructions, and files of other Ignition InterlockBAIID Pprogram Pparticipants.
- (5) ~~The Approved Ignition Interlock Device Installer shall follow all written instructions from the manufacturer of the ignition interlock device for device installation and removal.~~
- (5) The service center is required to inspect all vehicles prior to installation and to determine whether the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, a BAIID will not be installed unless the vehicle is capable of supporting such installation. The service center and the manufacturer shall maintain a log of such inspections.
- (6) ~~The Approved Ignition Interlock Device Installer will furnish hours of operation and a twentyfour (24) hour phone number to all Ignition Interlock Program Participants for use in the event of emergencies with the ignition interlock device.~~

- ~~(5)~~(6) The Approved Ignition Interlock Device Installer service center shall follow all written instructions from the manufacturer of the ignition interlock device for device for the BAIID installation and removal. Installations shall be executed according to accepted trade standards and the manufacturer's instructions.
- ~~(7)~~ The Approved Ignition Interlock Device Installer is required to inspect all vehicles prior to installation and determine if the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, no ignition interlock device will be installed until and unless the vehicle is capable of supporting such installation. The Approved Interlock Ignition Device Installer and Provider shall maintain a log of such inspections and use the vehicle's inspection in the removal process.
- ~~(7)~~ Tamper proof seals should be on every connection and must be proprietary to the manufacturer. A visual inspection should be done during each service visit to affirm that the seals are intact.
- ~~(8)~~ Removal of the ignition interlock devicesBAIID shall be carried out so that the ignition may be operated; reasonable wear and tear excepted, in the same manner as before installation of the ignition interlock devicein the same manner as before installation of the BAIID. All severed wires will be permanently soldered and insulated with heat-shrink wrap or its equivalent. Reasonable wear and tear is expected.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425.~~ Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.089 ORIENTATION OF PROGRAM PARTICIPANT.

- ~~(1)~~ The Approved Ignition Interlock Device Installer service center shall conduct an orientation on the correct use of the ignition interlock deviceBAIID for the Interlock Program Participant and for any family member or friend who may drive the vehicle. Interlock Program participants will be informed of the need to ensure that all vehicle users are adequately trained, which may require a subsequent visit.
- ~~(a)~~ The service center shall advise the BAIID participant that residual mouth alcohol is the responsibility of the offender to prevent and avoid.
- ~~(b)~~ The service center shall advise the BAIID participant that all breath tests must be performed within view of the camera.
- ~~(2)~~ During orientation, the service center shall make the participant aware of the compliance-based removal requirements of T.C.A. § 55-10-425, as well as the Ignition Interlock Program website <https://www.tn.gov/safety/ignitioninterlock>, where the participant may read the entire compliance-based removal law. The summary of this law provided by the Ignition Interlock Program shall be posted in a conspicuous place at the service center's office.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.0910 PROOF OF INSTALLATION OF IGNITION INTERLOCK DEVICESA BAIID

- ~~(1)~~ Within two (2) working days of installing the ignition interlock device, a BAIID, the Ignition Interlock Device Providermanufacturer shall complete the appropriate form as designated by the Department, and submit it to the Department as proof of installation by mail, electronic transmission or facsimileenter the installation in A-List. This notice shall include:
- ~~(a)~~ Name, address and telephone(as it appears on the participant's driver license), date of birth, and driver license number of the Ignition Interlock Program participant;
- ~~(b)~~ OwnerVehicle make, model and year, Vehicle Identification Number (VIN), and license plate number of the vehicle to which the interlock ignition device is installedin which the BAIID is installed;

- ~~(c) Serial number of the ignition interlock device installed; and~~
- ~~(d) Length of ignition interlock device term, date of monitoring checks, and payment schedule.~~
- (c) BAIID model number and BAIID serial numbers of the handset, camera, and relay; and
- (d) Next calibration and monitoring check date of the BAIID.
- ~~(2) When an Ignition Interlock Program Participant arrives at the installation location after having been ordered to install an ignition interlock device on their vehicle, the installer or provider shall inspect the restricted license order and ascertain the reason that the device is required. This information MUST be included on the installation report that is sent to the Department.~~
- ~~(3) If the restricted license order does not contain this information, the customer shall be refused service by the installer and told to return to the court of jurisdiction to have the form completed properly. This shall ensure that the data can be properly acquired.~~
- (2) If the participant is on supervised probation, the manufacturer will notify Probation of the installation of the BAIID by U.S. mail or electronically.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.~~1011~~ MONITORING REQUIREMENTS.

- ~~(1) Servicing, inspection, and monitoring of each ignition interlock device shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The Ignition Interlock Provider shall maintain records on every Ignition Interlock Program Participant, including the results of every monitoring check. Violations or evidence of non-compliance and the reasons for such will be reported to the Department by mail, electronic transmission or facsimile within forty-eight (48) hours of detection.~~
- (1) At the time of servicing or calibration of the BAIID, the technician is required to conduct an inspection to determine if there is evidence of tampering or circumventing the device. The technician should also confirm that the tamper proof seals are intact. A technician shall not conduct a calibration or service any BAIID unless the vehicle is present at the approved facility and is in mechanically operable condition. Participants shall not be allowed to remove or install any component of the BAIID during the time of servicing or calibration.
- (2) Within two (2) working days of performing any removal of a device, whether the removal was authorized or unauthorized, Ignition Interlock Device Provider shall send to the Department by mail, electronic transmission or facsimile, the following: the manufacturer shall report the removal in A-List and, if applicable, to Probation.
 - ~~(a) Name of Ignition Interlock Program Participant whose device was monitored;~~
 - ~~(b) Number of miles driven during the monitoring period;~~
 - ~~(c) Charges for monitoring visit;~~
 - ~~(d) Date of next scheduled monitoring visit;~~
 - ~~(e) Any type of repair work performed on the ignition interlock device and probable cause for its need; and~~
 - ~~(f) Any areas of discussion with the Ignition Interlock Program Participant concerning problems or questions with the device or the status of the Participant.~~

- (3) Serviceing, inspecting, and monitoring of each BAIID and all of its components shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The thirty (30) day BAIID calibration schedule is calculated to begin with the date of the previous calibration service. The technician shall only service, calibrate, or remove the BAIID at a service center location within the geographical boundaries of Tennessee or at a location that has been approved by the Ignition Interlock Program.
- (4) The manufacturer shall maintain records on every program participant, including the results of every monitoring check. Violations or evidence of non-compliance, and the reasons for such, will be submitted to A-List within forty-eight (48) hours of detection.
- ~~(3)~~(5) Within two (2) working days of performing a monitoring check, the Ignition Interlock Device Provider shall report to the Department by mail, electronic transmission or facsimile any evidence of manufacturer shall send the following information by electronic transmission to A-List and, if applicable, to Probation:
- ~~(a)~~ Altering, tampering with, bypassing, or removal of the ignition interlock device;
 - ~~(b)~~ Failure to abide by the terms and conditions of the court order or lease agreement, including failure to appear for a monitoring visit;
 - ~~(c)~~ Lockouts or violations and reasons for such;
 - ~~(d)~~ Indications of non-compliance, such as failure to take a random or time test; and/or
 - ~~(e)~~ Data indicating that the Ignition Interlock Program Participant has attempted to start the vehicle while under the influence of alcohol.
 - ~~(a)~~ BrAC above 0.020%;
 - ~~(b)~~ Evidence of tampering or circumventing the device;
 - ~~(c)~~ Failing to take or skipping a random retest if the driver is in the vehicle;
 - ~~(d)~~ Failing a random retest;
 - ~~(e)~~ Removing or causing the removal of the BAIID at any time during the three hundred sixty-five (365) day consecutive day period;
 - ~~(f)~~ Failing to appear at the BAIID service center when required for calibration, monitoring, or inspection of the device;
 - ~~(g)~~ Name and driver license number of the participant;
 - ~~(h)~~ Date of next scheduled monitoring check; and
 - ~~(i)~~ Odometer reading at the end of each monitoring period.
- ~~(6)~~ If the use of a BAIID is a bond condition or a requirement of supervised probation, under no circumstance shall a BAIID be removed without authorization from the court or Probation. This only applies to participants not required to have a BAIID under T.C.A. § 55-10-425 or by the Department.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1112 REPAIR OR REPLACEMENT OF IGNITION INTERLOCK DEVICE REPAIR, REPLACEMENT, OR VEHICLE TRANSFER OF A BAIID.

- (1) ~~The Approved Ignition Interlock Installer or Provider~~service center or manufacturer shall respond to all service inquiries by phone within one (1) hour of initial contact during normal business hours. Repair or replacement of an ~~ignition interlock device~~any BAIID shall be conducted within forty-eight (48) hours of initial contact. The ~~Approved Ignition Interlock Device Provider~~manufacturer shall notify the ~~Department~~Ignition Interlock Program of any changes in the ~~ignition interlock device (i.e., Serial #, Type, etc.)~~ by ~~facsimile or electronic transmission~~BAIID by submitting a transfer report into A-List within forty-eight (48) hours of the changes. The transfer report must include the vehicle year, make, model, VIN, license plate number, and odometer reading, as well as the BAIID's model number; serial numbers of the handset, relay, and camera; and the next calibration date.
- (2) ~~The Approved Ignition Interlock Device Installer or Provider~~service center shall be available to answer questions and to troubleshoot any mechanical problems relating to the ~~ignition interlock device~~BAIID in the vehicle, or to repair/replace an inoperable or malfunctioning BAIID during normal business hours.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412, 55-10-417, and 55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1213 PROGRAM STATUS/COMPLIANCE-BASED REMOVAL / NON-COMPLIANCE REPORT.

~~(1) At the half-way point at which the ignition interlock device is installed in the Ignition Interlock Program Participant's vehicle, the Ignition Interlock Device Provider shall submit a status report to the Department's Research, Planning, and Development Section by mail, electronic transmission or facsimile, which summarizes all problems related to the monitoring and servicing of the ignition interlock device, as well as any written complaints received concerning the ignition interlock device or the Ignition Interlock Device Provider. The reports shall include the following categories:~~

- ~~(a) Ignition Interlock Program Participant error in operation and reasons for such;~~
- ~~(b) Faulty automotive equipment;~~
- ~~(c) Apparent misuse or attempts to circumvent the ignition interlock device, which did or did not cause damage, and the reasons for such; and~~
- ~~(d) Ignition interlock device failure due to material defect, design defect, and/or workmanship errors in construction, installation, or calibration.~~

(1) Program Compliance Criteria:

- (a) A participant who is required to install and use a functioning BAIID shall be required to maintain the BAIID in working order for a three hundred and sixty-five (365) consecutive day period or for the entire period of the driver license revocation period, whichever is longer. The BAIID cannot be lawfully removed from the vehicle during the required period, except for necessary maintenance, replacement, or repair as determined by the Ignition Interlock Program. If the participant fails to comply with the requirements of T.C.A. § 55-10-425, the entire required period will restart on the date the BAIID is reinstalled and properly functioning.
- (b) If a participant fails to appear at the service center when required for the monthly calibration, monitoring, and inspection of the device, the entire required period will restart.
- (c) During the final one hundred and twenty (120) day period for which the BAIID is required, the participant shall not:
 - 1. Attempt to start or operate the vehicle with a BrAC in excess of 0.02% (The participant shall not be in violation if a subsequent retest within ten (10) minutes shows a BrAC of two hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same participant performed both tests);

2. Tamper with or circumvent the BAIID;
3. Fail to take or skip a random retest;
4. Fail a random retest with a BrAC in excess of 0.02%;
5. Remove or cause the BAIID to be removed at any time during the three hundred sixty-five (365) consecutive day period; or
6. Fail to appear at the service center when required for a monthly calibration, monitoring, and inspection of the device.

(2) Successful Certificate of Compliance:

Upon completion of the period for which the participant is required to use a BAIID, the participant shall request that the manufacturer certify that the participant has complied with the conditions for the required period. The manufacturer shall determine whether the participant has complied with the conditions for the required period and either issue a certificate of compliance for the participant or notify the participant of non-compliance and the resulting extension of the BAIID requirement. If the manufacturer determines that the participant has complied with the conditions for the required period it shall upload the certificate of compliance into A-List within three (3) business days from the date of the participant's last calibration appointment.

(3) Program Non-Compliance:

(a) If the manufacturer notifies the participant that its records indicate the participant has not complied with the conditions of the BAIID during the required period, the participant may either accept the extension of the BAIID requirement or request that the manufacturer reconsider the finding of non-compliance, based on evidence of compliance provided by the participant. If the manufacturer confirms the finding of non-compliance, the participant may either accept the extension of the BAIID requirement or request an administrative compliance review by the Ignition Interlock Program.

(b) A participant may request, in writing, an administrative compliance review by the Ignition Interlock Program, and the participant shall include in the request any evidence of compliance. This request for review must be made within thirty (30) days from the date of notification by the manufacturer of the extension. The Ignition Interlock Program shall review any evidence provided by the participant and the records provided by the manufacturer within thirty (30) days of receiving the request and shall notify the participant and the manufacturer of the Ignition Interlock Program's determination by mail. If the Ignition Interlock Program determines that the participant has complied for the required period, the manufacturer shall issue a certificate of compliance to the participant. If the Ignition Interlock Program determines that the participant has not complied for the required period, the participant may seek judicial review of the Ignition Interlock Program's administrative compliance review determination as provided by T.C.A. § 4-5-322.

(4) Compliance-Based Removals:

(a) Prior to lawfully removing the BAIID of a compliance-based program participant, the manufacturer must first receive written authorization from the Ignition Interlock Program. Once the manufacturer receives written authorization from the Ignition Interlock Program for removal of the BAIID, the manufacturer must contact their appropriate service center to authorize the removal of the BAIID from the program participant's vehicle. The manufacturer may in good faith rely on a participant's Remove Interlock Restriction Letter issued by the Department.

- (b) A participant is required to only operate a vehicle that is equipped with a BAIID until they obtain a valid driver license without the ignition interlock restriction (code 16).

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.14 TOLL OF THE REQUIRED CONSECUTIVE DAY PERIOD.

- (1) A participant whose vehicle is inoperable due to damage from an accident or other uncontrollable circumstance where the participant's intoxication was not a proximate cause; or due to repairs based on normal wear and tear of a vehicle, or due to a recall, may request the Ignition Interlock Program toll the required consecutive day period, beginning on the date of the incident that led to the vehicle being inoperable. The participant must submit proof to the manufacturer that the vehicle was involved in a traffic crash, is being repaired, or was rendered inoperable due to some other circumstance beyond the participant's control.
- (2) If the vehicle was in an accident and a law enforcement agency issued a crash report, the crash report must be submitted. Other proof may consist of, but is not limited to:
 - (a) A written statement from the insurance company regarding repairs;
 - (b) A written statement from a repair shop showing the damage being repaired and the estimated time of completion for repairs; or
 - (c) Other documentation acceptable to the Ignition Interlock Program.
- (3) The manufacturer shall forward the request and documentation to the Ignition Interlock Program within five (5) business days of receipt.
- (4) The Ignition Interlock Program shall notify the participant and the manufacturer by U.S. mail or electronically, if the tolling period has been granted or denied, and, if denied, the reason for the denial.
- (5) At the end of any thirty-day toll period, if no new request has been submitted and granted, then the required consecutive day period shall resume with the participant being required to maintain a BAIID for the period of time that was remaining on the day the tolling period began.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425.

1340-03-06-.1315 FEES.

- (1) Whenever a participant ordered to install a BAIID pursuant to T.C.A. § 55-10-409 or § 55-10-417 asserts to the court that the participant is indigent and financially unable to pay for a BAIID, the court shall conduct a full and complete hearing as to the financial ability of the participant to pay for such device and, thereafter, make a finding as to the indigency of such participant. Any participant who has been declared indigent by the court pursuant to T.C.A. § 55-10-419(d), upon providing a copy of the Proof of Indigency Form signed by the judge, shall not be refused service by a manufacturer as long as funds are available in the Electronic Monitoring Indigency Fund (EMIF). The manufacturer shall submit the required documentation to the State Treasury Department to recover the costs associated with the lease, purchase, installation, removal, and maintenance of BAIIDs or with any other cost or fee associated with a BAIID required by this part.
- ~~(1)~~(2) The fees for leasing, buying, monitoring, servicing, installing, and removing the ignition interlock deviceBAIID shall be at a reasonable rate set by the manufacturer.
- ~~(2)~~(3) The fee for installation of ignition interlock devices shall not exceed \$150.00a BAIID shall not exceed an hourly rate of seventy-five dollars (\$75.00) per hour with a three (3) hour maximum.

- ~~(3)~~(4) Approved Ignition Interlock Installers/Manufacturers shall charge reasonable and customary fees, not to exceed a total of \$100one hundred and twenty-five dollars (\$125.00) per month for leasing, monitoring, and maintenance of devicesBAIIDs. If a participant is extended in the program due to non-compliance, the fee for the leasing, monitoring, and maintenance of the BAIID will not exceed five dollars (\$5.00) per day or one hundred and twenty-five dollars (\$125.00) per month during the extension, whichever is less.
- (4)(5) Approved Ignition Interlock Installers/Manufacturers shall charge reasonable and customary fees, not to exceed a total of seventy-five dollars (\$75.00), for the removal of the devicesBAIID.
- (6) Manufacturers shall charge reasonable and customary fees, not to exceed a total of fifty dollars (\$50.00), for resetting a BAIID that is in permanent lockout mode due to five (5) or more violations.
- (7) Manufacturers may charge reasonable and customary fees, not to exceed a total of twenty-five dollars (\$25.00), for a temporary lockout code.
- (8) A manufacturer shall charge an annual administrative fee of twelve dollars and fifty cents (\$12.50) to each new BAIID user. This fee will be collected from each participant at the time of the installation of the BAIID and again annually for the duration of the required period. By the fifth (5th) day of each month, the manufacturer shall send the Ignition Interlock Program the proceeds from this fee by an ACH transfer and a report of the participants' names, driver license numbers.
- ~~(5)~~(9) The ~~(above)~~ fee rates shall be posted in a conspicuous place at the Approved Ignition Interlock Installer'sservice center's office. The Approved Installer shall file a copy of the installation company's current fee schedule with the Department.
- (10) All manufacturers will pay a BAIID certification fee of five dollars (\$5.00) per BAIID per month by ACH transfer to the Ignition Interlock Program by the tenth (10th) day of each month. The manufacturer will submit a monthly report listing the name, date of birth, and BAIID installation date of all current participants as well as the total BAIID certification fees submitted for the month.

Authority: T.C.A. §§ 4-3-2009, 55-10-412 and, 55-10-417, 55-10-418, 55-10-423, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.4416 FINANCIAL RESPONSIBILITY REQUIREMENTS.

- (1) ~~The Approved Ignition Interlock Device Installer and Provider shall protect, save and hold harmless the State, all State Departments, Agencies, Boards and Commissions, as well as all Officials, Employees, Agents and Servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of an omission by the Approved Ignition Interlock Device Installer or Provider in the performance of its duties set forth in the law or these rules.~~
- (1) The manufacturer shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence with a three million dollar (\$3,000,000.00) aggregate total liability that shall cover defects or problems with product design and materials; workmanship during manufacture; and BAIID calibration, installation, use, and removal. Th manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy.
- (2) The service center shall maintain comprehensive general liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) per occurrence with a three hundred thousand dollar (\$300,000.00) aggregate total liability that shall cover defects or problems with the BAIID calibration, installation, use, and removal. The manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy held by any of its service centers.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, ~~55-10-417~~, and ~~55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.1517~~ LIABILITY.

- (1) ~~The Approved Ignition Interlock Device Installer and Provider~~service center and manufacturer shall protect, save, and hold harmless the State, all State Departments, Agencies, Boards, and Commissions, as well as all officials, employees, agents, and servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of any omission by the ~~The Approved Ignition Interlock Device Installer and Provider~~service center or manufacturer in the performance of its duties set forth in the law or these rules.

Authority: T.C.A. §§ ~~4-3-2009 and 55-10-412~~, ~~55-10-417~~, and ~~55-10-425~~. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

~~1340-03-06-.1618~~ AUDITS AND INSPECTIONS.

- (1) ~~Approved Ignition Interlock Device Installer and Provider~~Service centers shall be subject to unannounced inspections and reviews of all records and to being temporarily placed out of service, suspension, or revocation of certification, if sufficient cause exists as determined by the Department~~Ignition Interlock Program that the Approved Ignition Interlock Device Installer~~service center does not meet the requirements of any applicable law or these rules. The scope of service center inspections can be found on SF-1508 On-Site Inspection and SF-1512 On-Site Interim Inspection.
- (2) ~~Service centers shall be subject to an accuracy check on their dry gas and wet bath equipment. The accuracy check by the Ignition Interlock Program will consist of:~~
- ~~(a) Verification that the certification label, lot number, and expiration date are on the dry gas tank;~~
 - ~~(b) Verification of the empty wet bath solution bottle's lot number and expiration date for the current solution being used;~~
 - ~~(c) Verification that the equipment is stored and used in a climate-controlled environment;~~
 - ~~(d) Inspection of the tubing leading from the solution tower to the BAIID for wet bath stations, ensuring:

 - ~~1. Maximum length of six (6) inches,~~
 - ~~2. No moisture, and~~
 - ~~3. Cleanliness;~~~~
 - ~~(e) Verification that the wet bath solution is being changed after a maximum of thirty (30) days or thirty (30) calibrations, whichever comes first (Note: Service centers must maintain a log of the dates when the wet bath solution is changed; the log must also contain the solution lot number, bottle number, and BrAC value);~~
 - ~~(f) Verification that the temperature of the wet bath solution is thirty-four (34) degrees Celsius at a quantity of five hundred (500) milliliters; and~~
 - ~~(g) Verification that the BrAC in the dry gas and wet bath solution is accurate (.005 +/-) according to the manufacturer's QAP.~~
- (3) ~~If the Ignition Interlock Program finds that the service center is not in compliance at the time of an interim or renewal inspection, a non-compliance fee will be assessed to the service center's manufacturer. The ACH will transfer all non-compliance fees to the Ignition Interlock Program. The manufacturer will submit~~

a detailed payment report to the Ignition Interlock Program on the day that the non-compliance fees are paid. The report will contain a list of service centers incurring fees and the non-compliance fees associated with each.

(a) If the cause of non-compliance is a minor violation of these rules and is corrected immediately, the manufacturer(s) must pay a non-compliance fee of fifty dollars (\$50) for the inspection.

(b) If the cause of non-compliance cannot be immediately corrected, the manufacturer(s) must pay a non-compliance fee of one hundred dollars (\$100) to cover the expenses incurred by the Ignition Interlock Program re-inspection.

(4) Failing a facility inspection may delay a service center's re-inspection for a maximum of thirty (30) days.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1719 SUSPENSION, REVOCATION OR DENIAL OF CERTIFICATION DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION.

(1) Failure to comply with any requirements set forth in the law or these rules may result in the denial, suspension or revocation of the Ignition Interlock Device Installer Certification a penalty of being placed temporarily out of service; being assessed a non-compliance fee; or the denial, suspension, or revocation of the service center's or manufacturer's certification, which may prevent the service center from installing, inspecting, and/or removing BAIIDs. Other reasons for denial, suspension, or revocation may include, but are not limited to the following:

(a) Non-compliance with any of the minimum requirements stated in this Chapter 1340-03-06;

(b) Providing false or inaccurate information to the Department Ignition Interlock Program;

(c) Assisting in or providing information that will enable the Ignition Interlock Program Participant to circumvent or tamper with the ignition interlock device; or enabling the participant's circumvention of or tampering with the BAIID;

(d) Installing devices other than those supplied by the Provider referenced on the approved applications service center's manufacturer.

(2) If a service center's or manufacturer's certification is revoked subsequent to the administrative hearing process, the manufacturer will be responsible for all costs associated with the removal of their BAIIDs. Manufacturers aggrieved by the application of this rule have a right to request a hearing pursuant to Rule 1340-03-06-.20.

(3) If a manufacturer's certification is revoked, suspended, or canceled for any reason in any other state, the manufacturer shall notify the Ignition Interlock Program within seven (7) days.

(4) Submission of certification fees and non-compliance fees will be the sole responsibility of the manufacturer for their respective service centers. If a manufacturer is more than thirty (30) days delinquent in the payment of any required BAIID administrative, certification, or non-compliance fees listed in Rules 1340-03-06-.03, 1340-03-06-.04, 1340-03-06-.14, 1340-06-06-.15, or 1340-03-06-.18, the manufacturer's or service center's certification will be suspended until there is proof that all of the delinquent fees have been paid.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

1340-03-06-.1820 ADMINISTRATIVE HEARINGS.

- ~~(1) An Approved Ignition Interlock Device Installer or Provider may request in writing an administrative hearing within ten (10) days of written notification of any proposed denial, suspension or revocation. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act.~~
- (1) A manufacturer may request in writing an administrative hearing within ten (10) days of written notification of any suspension, revocation, or denial of certification.
- (2) All hearings shall be recorded. A copy of the recording will be provided to the complainant upon receipt of a written request.
- (3) Only the Hearing Officer is allowed to ask questions during hearings, and the rules of evidence shall not apply.
- (4) The Hearing Officer shall open and preside over each hearing as follows:
- (a) Read or permit a member of the Ignition Interlock Program to read the reason for suspension, revocation, or denial of certification;
 - (b) Permit an attorney to attend and speak and answer questions on behalf of a manufacturer;
 - (c) Accept documentary proof;
 - (d) Hear the testimony of witnesses, if any;
 - (e) Ask questions, if deemed appropriate;
 - (f) Reconvene the hearing within seven (7) working days for other witnesses unable to attend, if deemed appropriate; and
 - (g) Conclude the hearing.
- (5) At the conclusion of the hearing, the Hearing Officer shall take the matter under advisement and render a written "Hearing Officer's Determination" within fifteen (15) working days of the date of the hearing.
- (6) Appeal of the Hearing Officer's Determination:
- (a) In the event the manufacturer wishes to appeal the Hearing Officer's Determination, the party shall file a written appeal with the Administrative Support Bureau Lieutenant Colonel within fifteen (15) working days of the date of the Final Hearing Officer's Determination.
 - (b) The Administrative Support Bureau Lieutenant Colonel, acting as the Commissioner's Designee, shall review the Hearing Officer's Determination.
 - 1. Such review shall be solely on the record compiled by the Hearing Officer, which shall include the recording of the hearing and any documentation submitted during the hearing.
 - 2. The Lieutenant Colonel shall review the record and render a written decision in thirty (30) working days.
 - 3. Such decision shall be the final decision of the Department.
- (6) Any party wishing to appeal the Administrative Support Bureau Lieutenant Colonel's decision shall have sixty (60) days from the date of the decision to file a Petition for Review in the Chancery Court of Davidson County, pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-3-2009 and ~~55-10-412~~, 55-10-417, and 55-10-425. Administrative History: Original rule filed December 17, 2012; effective May 31, 2013.

* 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 Safety (board/commission/ other authority) on 10/23/19 (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: (8/24/2018)

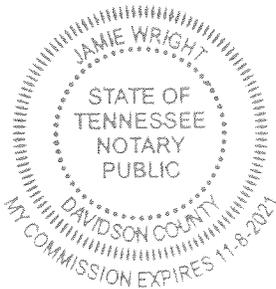
Rulemaking Hearing(s) Conducted on: (add more dates). (10/22/2018)

Date: October 23 2019

Signature: Elizabeth R. Strocker

Name of Officer: Elizabeth Strocker

Title of Officer: Director of Legislation



Subscribed and sworn to before me on: October 23, 2019

Notary Public Signature: Jamie Wright

My commission expires on: November 8, 2021

Agency/Board/Commission: Tennessee Department of Safety & Homeland Security

Rule Chapter Number(s): 1340-03-06

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
10/28/2019
 Date

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 PUBLIC AFFAIRS

Department of State Use Only

Filed with the Department of State on: 10/30/19

Effective on: 1/28/20

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Secretary of State

DIVISION: Division of Publications

SUBJECT: Tennessee Address Confidentiality Program General Provisions

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 40-38-611(c)

EFFECTIVE DATES: February 19, 2020 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules are intended to implement and control the operation of the Safe At Home Address Confidentiality Program, as established by Public Chapter 1004 passed by the 110th General Assembly in 2018. The purpose of the program is to protect the confidentiality of a program participants' confidential address, which will most often be their residential address. Once a program participant has been approved to participate in the program, they will be provided with a 'substitute' address. The program participant will then be able to use this 'substitute' address as their official mailing address for all state and local government purposes and for their children, including public school or public benefits enrollment, subject only to a few limited exceptions. By doing so, the participant's confidential address will not appear in public records relating to either themselves or their children. These rules govern and outline the application process, the responsibilities of both the program participant and the Office of the Secretary of State, and the process for government agencies to request disclosure of protected information in certain instances. Only minor changes relating to administration of the program have been made to the Emergency Rules currently in place for this program.

Public Hearing Comments

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

A public hearing was held on Tuesday, September 17, 2019. No public comments were received during this hearing.

Regulatory Flexibility Addendum

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

These proposed rules will have a negligible impact on small business.

Impact on Local Governments

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

The proposed rules will have a negligible 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 intended to implement and control the operation of the Safe At Home Address Confidentiality Program, as established by Public Chapter 1004 passed by the 110th General Assembly in 2018. The purpose of the program is to protect the confidentiality of a program participants' confidential address, which will most often be their residential address. Once a program participant has been approved to participate in the program, they will be provided with a 'substitute' address. The program participant will then be able to use this 'substitute' address as their official mailing address for all state and local government purposes and for their children, including public school or public benefits enrollment, subject only to a few limited exceptions. By doing so, the participant's confidential address will not appear in public records relating to either themselves or their children. These rules govern and outline the application process, the responsibilities of both the program participant and the Office of the Secretary of State, and the process for government agencies to request disclosure of protected information in certain instances. Only minor changes relating to administration of the program have been made to the Emergency Rules currently in place for this program.

- (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;

The Secretary of State has been granted authority to promulgate rules relating to the Safe At Home Address Confidentiality Program by the General Assembly through Public Chapter 1004 (2018), as codified at T.C.A. § 40-38-611(c).

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will most directly relate only to the Office of the Secretary of State and program participants. To the extent that any other Federal or State agency, whether law enforcement or administrative agency, would request the disclosure of confidential information held by the Office of the Secretary of State relating to a program participant, these rules outline the process by which such requests may be made, addressed and appealed as applicable. Based upon knowledge and belief, no administrative or law enforcement agency has expressed opposition to the adoption of these rules.

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

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 Department of State does not anticipate that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Agency also believes that the fiscal impact on the agency itself will be minimal, as the anticipated fiscal cost of operating the program does not exceed two percent (2%) of the Agency's annual budget or five hundred thousand dollars (\$500,000).

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

Lauren L. Topping
Assistant General Counsel
Office of the Secretary of State

(615) 532-0824 Lauren.L.Topping@tn.gov	
---	--

(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 Office of the Secretary of State (615) 741-2819 Mary.Beth.Thomas@tn.gov	
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(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 Office of Secretary of State State Capitol, 1st 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.

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

For Department of State Use Only

Sequence Number: 11-15-19
 Rule ID(s): 9274
 File Date: 11/21/19
 Effective Date: 2/19/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Secretary of State
Division: Division of Publications
Contact Person: Mary Beth Thomas
Address: State Capitol, 1st Floor
 Nashville, TN
Zip: 37243
Phone: (615) 741-2819
Email: 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
1360-11-01	Tennessee Address Confidentiality Program General Provisions
Rule Number	Rule Title
1360-11-01-.01	Definitions
1360-11-01-.02	Eligibility and Application Procedures
1360-11-01-.03	Participant Responsibilities
1360-11-01-.04	Service of Process
1360-11-01-.05	Cancellation of Participation; Withdrawal
1360-11-01-.06	Appeal Procedures
1360-11-01-.07	Disclosures
1360-11-01-.08	Application Assistants

**TENN. COMP. R. & REGS. 1360-11-01
TENNESSEE ADDRESS CONFIDENTIALITY PROGRAM
GENERAL PROVISIONS**

1360-11-01-.01 DEFINITIONS.

- (a) The terms defined in Tennessee Code Annotated Title 40, Chapter 38, Part 6, T.C.A. § 40-38-601 *et seq.*, shall have the same meaning for the purpose of these rules and definitions in these rules shall apply to T.C.A. § 40-38-601 *et seq.*
- (b) For purposes of these rules, "program participant" may also refer to the parent, guardian, or fiduciary who filed the initial application for program participation on behalf of a minor or a person with a disability who has been certified as a program participant. "Program participant" may also refer to the participant's minor children, if included on the initial application as a "co-applicant".
- (c) "Applicant" means the individual submitting an application to participate in the address confidentiality program, or the parent or fiduciary acting on such individual's behalf.
- (d) "Co-applicant" means an individual residing at the same residential address as an individual applicant who applies to participate in the program on the same application as the primary applicant. If a co-applicant is an adult, then the co-applicant must consent to participate in the program and abide by all program rules. In order to participate as a co-applicant, the co-applicant must not be prohibited from program participation by T.C.A. § 40-38-603.
- (e) "Date of application" or "time of application" means the date on which the application for enrollment is received for processing by the secretary of state. Applications must be completed, and all necessary supporting documentation provided, before an applicant and/or co-applicant will be approved to participate in the Safe at Home Address Confidentiality Program. Applications must be completed within 30 days from the date of application in order to be approved for enrollment unless, at the sole discretion of the secretary, just cause can be shown to excuse a delay.
- (f) "Residential address" means the address at which the applicant currently resides.

Authority: T.C.A. § 40-38-601 *et seq.*

1360-11-01-.02 ELIGIBILITY AND APPLICATION PROCEDURES.

- (a) To be eligible for participation in the Address Confidentiality Program, an individual must meet the following requirements:
 - (1) Be a victim of domestic abuse, stalking, human trafficking, or any sexual offense, including violent sexual offenses; and,
 - (2) Have moved to a new residential address, which is unknown to the victims' abuser, within the previous thirty (30) days, or presently intend to move to a new residential address unknown to the victims' abuser, within ninety (90) days from the date of application; or,
 - (3) Be a co-applicant residing at the residence of a primary applicant who satisfies the two criteria above.
- (b) A person who is required by law to be registered under any of the following is not eligible to participate in the address confidentiality program:
 - (1) Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and

Tracking Act of 2004, T.C.A. § 40-39-201 et seq.;

- (2) Tennessee Animal Abuser Registration Act, T.C.A. § 40-39-101 et seq.;
 - (3) Registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals, T.C.A. § 68-11-1001 et seq.; or
 - (4) Drug Offender Registry, T.C.A. § 39-17-436.
- (c) A prospective applicant may submit an application for program participation to the Office of the Secretary of State, with the assistance of an application assistant. An application for program participation must be submitted on the designated form prescribed by the Office of the Secretary of State. The application must include all of the following:
- (1) The mailing address and telephone number(s) at which the applicant may be contacted;
 - (2) The address or addresses of the applicant's residence address, school, institution of higher education, business and/or place of employment, and/or those of the applicant's minor children, which the applicant requests be treated as confidential;
 - (3) Documentary evidence that, either:
 - i. There exists an ongoing criminal case that may result in, or an ongoing criminal case that has resulted in, a conviction by a judge or jury or by a defendant's guilty plea, in which the applicant was a victim of domestic abuse, stalking, human trafficking, or any sexual offense; or,
 - ii. A court of competent jurisdiction has granted an order of protection to the applicant, which is in effect at the time of application;
 - (4) In the absence of an ongoing criminal case that may result, or an ongoing criminal case that has resulted, in a conviction or guilty plea, or an order of protection granted by a court of competent jurisdiction within this state which is in effect at the time of application, the applicant may submit a notarized statement by a licensed professional with knowledge of the circumstances, such as an attorney, social worker, or therapist, confirming that such individual believes that the applicant is in danger of further harm;
 - (5) Either of the following:
 - i. Documentary evidence that the applicant has moved to a new residential address, which is unknown to the applicant's abuser to the best of the applicant's knowledge and belief, within the previous thirty (30) days; or,
 - ii. A sworn statement by the applicant that the applicant has the present intent to move to a new address, which will be unknown to the applicant's abuser, within the ninety (90) days following the application date.
 - iii. The documentary evidence required by subdivision (i) above may consist of a rental agreement or utility service agreement bearing the name of the applicant as a party to the agreement, or any other documentary evidence which is determined to be acceptable by the Office of the Secretary of State,
 - (6) A sworn statement by the applicant that disclosure of the confidential address or addresses would endanger the safety of the applicant or the minor or the person with a disability on whose behalf the application is made;

- (7) A sworn statement by the applicant confirming that the applicant understands all of the following:
- i. That during the time the applicant chooses to have a confidential voter registration record, the applicant may vote only by absentee ballot;
 - ii. That the applicant may provide a program participation number instead of their residential address on an application for an absentee ballot or on an absentee voter's ballot identification envelope statement of voter with the voter's signature;
 - iii. That casting any ballot in person during program participation will reveal the applicant's precinct and residence address to precinct election officials and employees of the county election commission, and may reveal the applicant's precinct or residential address to members of the public; and,
 - iv. That if the applicant signs an election petition during program participation, the applicant's address will be made available to the public.
- (8) A knowing and voluntary designation of the Secretary of State as the applicant's agent for the purposes of receiving service of process and the receipt of mail;
- (9) A knowing and voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program, except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner;
- (10) A statement of the applicants consent for the Department of State to release their information, including their residential address, to the Department of Correction and/or the Board of Parole, if the participant is subject to probation and/or parole;
- (11) A statement of the applicants consent for the Department of State to release their information, including their residential address, to the Department of Children's Services, if the participant is receiving services from the Department of Children's Services or are otherwise required to participate in home visits with the Department of Children's Services.
- (12) The notarized signature of the applicant, the name and notarized signature of the application assistant who assisted the applicant, and the date on which the applicant and application assistant signed the application;
- (13) If, at the time of application, the applicant is subject to a court order or is involved in a court action related to the dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the applicant must also provide the name of the court, contact information for the court, and the case number(s) associated with those proceedings; and,
- (14) A voter registration form, if the applicant is eligible to vote and wishes to register to vote or update a current voter registration.
- (d) If an applicant submits an application based on the applicant's present intent to relocate to a new residential address within the ninety (90) days following the date of application, the applicant must submit documentation of the applicant's move to such residential address within ninety (90) days from the date of application. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement executed within ninety (90) days of the date of application.

- (e) Following receipt and certification of a properly submitted application, the Secretary of State shall issue to the program participant a unique substitute address, a unique participant identification number, and documentary evidence of such participation that may be used as proof of program participation, if requested, when the applicant requests that a governmental entity or third party use the substitute address as the participant's official address of record. The Secretary of State shall also issue to the participant all other informational documentation required by law.
- (f) Following certification of program participation, the Office of the Secretary of State will accept all first class mail and/or certified mail received at the substitute address and forward this material to the participant at the address designated by the participant on the participant's application within three (3) business days from the date of receipt. The Office of the Secretary of State will also accept all service of process received at the substitute address and shall immediately forward this material to the participant at the address designated by the program participant on the participant's application.
- (g) The Office of the Secretary of State will not accept or forward packages, periodicals, or marketing materials. If these materials are received by the Office of the Secretary of State, they will be immediately returned to sender or securely shredded as applicable. For these purposes, a package is defined as any piece of mail with any dimension greater than 12 inches wide, 15 inches long, 3/4 inches thick, or over 13 ounces in weight.
- (h) Mail received by the Office of the Secretary of State for forwarding cannot be retrieved by participants in person for any reason. Participants should not attempt to physically retrieve their mail from the Office of the Secretary of State at any time.

Authority: T.C.A. § 40-38-601 *et seq.*

1360-11-01-.03. PARTICIPANT RESPONSIBILITIES.

- (a) Program participants must provide the substitute address to all governmental and private entities to ensure the confidentiality of the program participant's confidential address. Program participants must also provide the substitute address to all governmental and private entities in matters relating to the participant's minor children to ensure the confidentiality of the program participant's confidential address.
- (b) Program participants are not permitted to use their substitute address for the following purposes, and must instead use their confidential address:
 - (1) For purposes of listing, appraising, or assessing property taxes and collecting property taxes; or
 - (2) On any document related to real property recorded with a county clerk and recorder.
- (c) If a program participant obtains a legal name change, the participant must provide evidence of the legal name change to the Office of the Secretary of State within ten (10) days of the date of the legal name change.
- (d) Program participants must notify the Office of the Secretary of State of any change in the participant's residential address and/or application information in writing within thirty (30) days after any change has occurred by submitting a Notice of Change Form to the Office of Secretary of State. This Notice of Change must be notarized; if the Notice of Change is not properly notarized, the Participant's information cannot be updated and the Participant may become subject to cancellation.
 - (1) Program participants will be required to provide documentation to verify any change in the

program participant's residential address to the satisfaction of the Office of the Secretary of State. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement, executed within thirty (30) days of the date of the reported change.

- (2) In the event that the participant moves to a new residential address, or the participant's contact information otherwise changes, and the participant does not provide notification of such to the Office of the Secretary of State, any materials received at the participant's substitute address may not be received by the participant upon forwarding of the materials by the Office of the Secretary of State and the program participant may be prevented from voting in any precinct other than the precinct established by the program participant's application. Any materials which cannot be delivered to the program participant will be maintained by the Office of the Secretary of State for a period of ~~forty-five (45)~~sixty (60) days and will then be destroyed if unclaimed.
- (3) In the event that a program participant moves to a new residential address outside of the State of Tennessee, the program participant may submit a Change of Address form showing the new, out-of-state address and the Office of the Secretary of State will forward program participant mail received at the substitute address for up to sixty (60) days or until the program participant enrolls in the state's address confidentiality program, if available. Participants who enroll in an address confidentiality program in another state should withdraw their program participation in Tennessee. If the program participant does not withdraw their program participation in Tennessee and does not return to Tennessee within the sixty (60) day forwarding period, program participation will be cancelled.
- (e) Program participants must request that any public record created within thirty (30) days prior to the date of the participant's application for participation and which contains the participant's confidential address be treated as confidential by the governmental entity holding the public record and/or that the confidential address be substituted with the substitute address, and must provide proof of program participation to the governmental entity.
- (f) Program participants must abide by all applicable voter registration and absentee deadlines, as well as any procedures established by the coordinator of elections for the submission and processing of absentee ballots by program participants.
- (g) Program participants must provide the substitute address and evidence of program participation to ~~any public schools~~schools for purposes of enrollment for themselves or their minor children in order to ensure the confidentiality of the program participant's confidential address. Public school officials must then contact the Office of the Secretary of State in order to obtain verification of eligibility for enrollment, if residential verification is required. The Office of the Secretary of State shall then provide confirmation or denial of enrollment eligibility based on the most recent information provided to the Office of the Secretary of State by the program participant.
- (h) Program participants may be required to provide their confidential residential address to a utility service provider for the purposes of obtaining utility services. Program participants must also provide the utility service provider with evidence of program participation and request that the utility service provider treat their residential address as confidential. The program participant may also request that the utility service provider use the substitute address as the program participant's official mailing address.
- (i) Program participation certification shall be valid for four (4) years following the date of filing of the application by the Office of the Secretary of State, unless participation is otherwise withdrawn or invalidated prior to the end of the four year term. A program participant who wishes to renew their participation beyond the current four (4) year term may do so by submitting a renewal application to the Office of the Secretary of State within the ninety (90) days prior to the termination of the current four (4) year term. The renewal application must contain all of the information required by

Rule 1360-11-01-.02(c).

- (j) Program participants are exempt from selection for state and municipal jury duty. In the event that the program participant receives a jury summons for either a state or municipal jury, it shall be the responsibility of the program participant to notify the summoning court of the participant's participation in the program and exempt status. Program participants may not fail to respond to a jury summons.
- (k) If an individual ceases to be a program participant, by reason of either cancellation or withdrawal, it shall be the responsibility of such individual to notify persons and entities that use of the substitute address is no longer valid.

Authority: T.C.A. § 40-38-601 *et seq.*

1360-11-01-.04. SERVICE OF PROCESS.

- (a) Upon request by a person who intends to serve process on an individual, the Office of the Secretary of State shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.
- (b) Any person intending or attempting to serve process on a program participant may do so by serving Secretary of State as agent of a program participant at Department of State, ~~Division of Business Services~~ Safe At Home Address Confidentiality Program, W.R. Snodgrass Tower, 3rd Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243. Service of process may be delivered by mail to: Department of State, ~~Division of Business Services~~ Safe At Home Address Confidentiality Program, W.R. Snodgrass Tower, 6th Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243.

Authority: T.C.A. § 40-38-601 *et seq.*

1360-11-01-.05. CANCELLATION OF PROGRAM PARTICIPATION; WITHDRAWAL.

- (a) Program participation shall be cancelled if any of the following occurs:
 - (1) The Office of the Secretary of State finds or determines that the participant's application contained one or more false statements;
 - (2) The program participant fails to relocate to a new residential address, or fails to provide documentary evidence of the new residential address to the Office of the Secretary of State, within ninety (90) days from the date of application;
 - (3) The program participant obtains a name change, unless the program participant provides the Office of the Secretary of State with documentation of a legal name change within ten (10) business days of the name change;
 - (4) The program participant's certification has expired and the program participant has not submitted a renewal application prior to the expiration of the current four (4) year term;
 - (5) The Office of the Secretary of State finds or determines that the program participant is unreachable for a period of sixty (60) days or more;
 - (6) The Office of the Secretary of State finds or determines that circumstances have changed such that the participant no longer meets the criteria outlined by statute or by Rule 1360-11-01-.02 for program participation; or
 - (7) The program participant submits to the Office of the Secretary of State a request to

withdraw from the program.

- (b) A program participant will be found to be unreachable when the Office of the Secretary of State has determined that any materials forwarded to the program participant at the designated address have been returned to the Office of the Secretary of State by the United States Postal Service, or other mail carrier, as either undeliverable or refused and the Office of the Secretary of State has been unable to reach the program participant by phone or electronic mail for a period of at least sixty (60) days.
- (c) A program participant may request to withdraw from program participation by submitting a written and notarized Withdrawal form to the Office of the Secretary of State. The Withdrawal form must include the following:
 - (1) The program participant's name, residential address and participant identification number;
 - (2) A statement that the participant wishes to cease being a program participant;
 - (3) An acknowledgement that the participant's address(es) will no longer be kept confidential, the Secretary of State will no longer accept or process mail received on their behalf, and participant's voter registration will no longer be kept confidential; and,
 - (4) A statement that the administrator of election should either treat the participant's voter registration in the same manner as other voter registration forms, or purge the participant's voter registration.
- (d) Upon finding that a program participant's participation should be cancelled, either by means of cancellation or withdrawal, the Office of the Secretary of State shall mail a notice of cancellation to the program participant at the last known address by certified mail. This notice shall set out the reason(s) for cancellation, the program participant's right to appeal the cancellation, and the procedures for appealing the notice of cancellation before an administrative law judge.
 - (1) In the event that cancellation occurs because the Office of the Secretary of State has found the program participant to have been unreachable for a period of ~~forty five (45)~~^{sixty (60)} days or more, and the notice of cancellation sent to the program participant by certified mail is returned to the Office of the Secretary of State as either undeliverable or refused, the program participant shall not have the right to appeal the cancellation of program participation.

Authority: T.C.A. § 40-38-601 et seq.

1360-11-01-.06.APPEAL PROCEDURES.

- (a) A program participant has the right to appeal the cancellation of program participation within thirty (30) days from the date of the notice of cancellation, unless otherwise limited by law or these rules. A petition for appeal may be submitted to the Office of the Secretary of State.
- (b) A program participant has the right to appeal the disclosure by the Office of the Secretary of State of the program participant's confidential address, or any other information pertaining to the program participant, disclosed to a state or federal agency within ten (10) business days of the Secretary's determination that such information should be disclosed.
- (c) Upon receipt of a petition for appeal, the Office of the Secretary of State will transmit the petition to the Administrative Procedures Division for a contested case hearing before an administrative law judge in accordance with the Uniform Administrative Procedures Act.

1360-11-01-.07.DISCLOSURES.

- (a) Except as otherwise allowed by law, the Office of the Secretary of State shall not disclose the confidential address or any other information contained within a program participant's file, other than the substitute address designated by the Secretary of State.
- (b) Public schools and other governmental entities that require verification of residency for purposes of public school enrollment or public benefits enrollment must submit to the Office of the Secretary of State a completed Request for Residency Verification form to verify a program participant's eligibility for enrollment and/or the eligibility for enrollment of the participant's minor children. The public school or other governmental entity seeking such verification must provide a written statement and ~~a map~~/or a map, as required by the Secretary of State, outlining the applicable residential district eligible for enrollment.
- (c) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request confirmation of program participation pertaining to a supposed program participant by submitting a Request for Program Participation Confirmation Form to the Office of the Secretary of State. The Office of the Secretary of State shall make a determination and respond to such requests within three (3) business days, unless emergency circumstances exist. ~~The Office of the Secretary of State shall provide an after-hours emergency line that may be called outside of regular office hours in case of emergency.~~
- (d) The Office of the Secretary of State shall provide an after-hours emergency phone number to the Chief Law Enforcement Official of every state law enforcement agency, county sheriff's office, and municipal police department that may be used only by such chief law enforcement official. In such emergency situations, where there exists a significant threat to the physical health or welfare of the program participant or a member of the program participant's immediate family, the Chief Law Enforcement Official of the requesting agency may request the immediate disclosure of the program participant's confidential address. The Office of the Secretary of State may require the requesting official to verify their identity prior to the release of the program participant's confidential address.
- (e) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request disclosure of information pertaining to a program participant by submitting a Request for Disclosure Form to the Office of the Secretary of State.
 - (1) Request for Disclosure Forms submitted by law enforcement officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. A program participant is not entitled to notice of the Secretary's determination prior to the disclosure of the requested information.
 - (2) Request for Disclosure Forms submitted by state or federal administrative agency officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. However, the program participant shall be notified of the nature of the request received and afforded an opportunity to respond to the request in writing stating any objections to the disclosure.
 - i. The program participant shall have ten (10) business days from the date of the notice issued to the program participant in which to respond to the notice. If no response from the program participant is received after ten (10) business days from the date of notice, then the information requested shall be disclosed to the requesting agency as soon as practicable.

- ii. If the program participant responds to the notice provided, the Secretary or the Secretary's designee shall review the objections received and weigh those objections against the reasons cited by the requesting agency official for the disclosure. The Secretary or the Secretary's designee shall then issue a determination within three (3) business days.
 - iii. Any party may appeal the Secretary's decision within ten (10) business days from the notice of the Secretary's determination by submitting a petition for appeal to the Office of the Secretary of State. If no request for appeal is received within ten (10) business days, the Secretary's decision shall be implemented according to its terms.
- (f) Disclosure of a participant's confidential address, or any other information contained within a program participant's file, shall be limited under the terms of the court's order or, in the absence of a court order, the secretary's determination, to ensure that the disclosure and dissemination of the confidential address will be no greater than necessary for the specific purpose for which it was requested.
 - (g) Individuals granted access to the program participant's confidential information, whether by court order or by virtue of the individual's position as an employee of a governmental entity, are prohibited from knowingly disclosing such information to unauthorized individuals, except as otherwise required by law.
 - (h) No person shall knowingly obtain a program participant's confidential address or telephone number from any governmental agency knowing that the person is not authorized to obtain the confidential information.
 - (i) The Secretary of State may grant a request for disclosure to a state or local government agency upon receipt of a program participant's written and notarized consent to do so. In the event that a program participant submits a written and notarized consent for disclosure relating to a specific request for disclosure, the requested information shall be disclosed as soon as practicable and the program participant shall have no further right to appeal the disclosure.
 - (j) In the event that the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality negligently or otherwise unlawfully discloses the program participant's confidential address, such entity must immediately upon learning of the disclosure notify the program participant of the disclosure and the full extent of the disclosure.

Authority: T.C.A. § 40-38-601 et seq.

1360-11-01-.08. APPLICATION ASSISTANTS.

- (a) Individuals seeking certification as an application assistant must:
 - (1) Be an employee or a volunteer at an approved agency or organization that serves victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense;
 - (2) Submit an application for certification as an application assistant to the Office of the Secretary of State; and,
 - (3) Receive training and instruction from the Office of the Secretary of State relating to the address confidentiality program and these rules to help prospective applicants to complete applications for program participation.

- (b) Application assistants may not offer legal advice to any prospective applicant for program participation or program participant, unless otherwise authorized to engage in the practice of law in this state.

Authority: T.C.A. § 40-38-601 *et seq.*

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

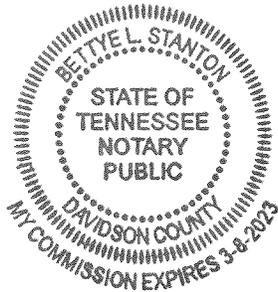
Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/24/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 09/17/2019



Date: 11/8/19

Signature: Mary Beth Thomas

Name of Officer: Mary Beth Thomas

Title of Officer: General Counsel

Subscribed and sworn to before me on: NOVEMBER 6, 2019

Notary Public Signature: Betty L. Stanton

My commission expires on: 3-8-2023

Agency/Board/Commission: Department of State

Rule Chapter Number(s): 1360-11-01

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

Herbert H. Slattery III
 Herbert H. Slattery III
 Attorney General and Reporter
11/15/2019
 Date

Department of State Use Only

NOV 21 AM 10:31
 SECRETARY OF STATE
 PUBLIC AFFAIRS

Filed with the Department of State on: 11/21/19

Effective on: 2/19/20

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Wildlife Resources Agency

DIVISION: Fisheries

SUBJECT: Fish Farming, Catch-Out Operations, and Bait Dealers

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

EFFECTIVE DATES: February 16, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule changes certain operating requirements for fish farmers, catch-out operations, and bait dealers operating in the state.

The rule defines each category of business and the export and import of aquatic life into the state.

The rule lists all fish that may be bought or sold by a licensed fish dealer and the specifications needed for invoices for each purchase.

The rule outlines the agency's authority to inspect licensed fish dealers.

The rule also sets forth the agency's authority to test for viruses and parasites that may occur and to destroy diseased wildlife, if necessary.

Public Hearing Comments

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

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

Attached hereto are the responses to public comments.

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.

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The rule changes certain operating requirements for fish farmers, catch-out operations, and bait dealers operating in the state. The rule defines each category of business and the export and import of aquatic life into the state. The rule lists all fish that may be bought or sold by a licensed fish dealer and the specifications needed for invoices for each purchase. The rule outlines the agency's authority to inspect licensed fish dealers. The rule also sets forth the agency's authority to test for viruses and parasites that may occur and to destroy diseased wildlife if necessary.

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

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;

Licensed fish dealers, catch-out operations, and bait dealers will be affected most directly by this rule. Those entities have expressed neither support nor opposition to the rule changes.

- (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;

There are no anticipated significant fiscal impacts to state or local revenues or expenditures as a result of the rule changes.

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

Chris Richardson, Assistant Director TWRA

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

Chris Richardson, Assistant Director TWRA

- (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

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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Sequence Number: 11-11-19
Rule ID(s): 9273
File Date: 11/18/19
Effective Date: 2/16/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Wildlife Resources Agency
Division: Fisheries
Contact Person: Chris Richardson
Address: 5107 Edmondson Pike, Nashville, TN,
Zip: 37211
Phone: 615-837-6016
Email: Chris.Richardson@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
1660-01-26	Rules and Regulations For Fish Farming, Catch-Out Operations, and Bait Dealers
Rule Number	Rule Title
1660-01-26-.01	Definitions
1660-01-26-.02	General Provisions
1660-01-26-.03	Fish Farming
1660-01-26-.04	Catch-Out Operations
1660-01-26-.05	Bait Dealers
1660-01-26-.06	Inspections

Chapter 1660-01-26
Rules and Regulations for Fish Farming, Catch-Out Operations, and Bait Dealers

Amendments

The table of contents for Chapter 1660-01-26 Rules and Regulations for Fish Farming, Catch-Out Operations, and Bait Dealers is amended by deleting the existing table of contents and substituting instead the following:

<u>1660-01-26-.01</u> Definitions	<u>1660-01-26-.0304</u> Rules Catch-Out Operation
<u>1660-01-26-.02</u> General Provisions	<u>1660-01-26-.0405</u> Rules-Bait Bait Dealer
<u>1660-01-26-.0203</u> Rules Fish Farming	<u>1660-01-26-.06</u> Inspections

Authority: T.C.A. §§ 70-1-206 and 70-2-221.

Rule 1660-01-26-.01 Definitions and General Information is amended by deleting it in its entirety and substituting instead the following:

~~1660-1-26-.01~~ 1660-01-26-.01 Definitions and General Information.

- (1) "Agency" or "TWRA" means the Tennessee Wildlife Resources Agency.
- ~~(4)~~(2) Fish Farming—The "Fish Farming" means the business of rearing for sale legal species of fish and other aquatic life, or the selling of legal species of fish and other aquatic life reared in private facilities. Selling may be by direct purchase or by catch-out operations.
- (3) Catch-Out Operation—The "Catch-Out Operation" means the business of making-legal species of fish placed in a pond, tank, or other constructed container available to persons wishing to purchase them after catching them by legal sport fishing methods. Sport fishing licenses are not required of customers, and statewide creel and size limits do not apply. The season is open year-round. A catch-out operation may be located at sites other than a fish farm.
- (4) Bait Dealer— "Bait Dealer" means the business of capturing legal species of fish and other aquatic life for the purpose of sale as bait, or the business of selling legal species of fish and other aquatic life for bait.
- (5) Person— "Person" means an individual, association, partnership, or corporation the plural as well as the singular, as the case demands, and includes individuals, associations, partnerships, firms, or corporations.
- (6) "Fish" means any life stage of any fish species, from egg through adult.
- ~~(2)~~(7) Fish Farm—A "Fish Farm" means a tract of land, including associated waters within, with an unbroken exterior boundary where fish farming occurs.
- (8) "Facility" means a body of water, building, or area contained within an unbroken tract of land where fish are reared or used for the purpose of buying or selling legal species of fish and other aquatic life; as opposed to merely where fish and other aquatic life are caught or harvested.
- (9) "Waters" means any and all water, public or private, on or beneath the surface of the ground, contained within, flow through, or bordering upon the State of Tennessee or any portion thereof.
- (10) "Import" means to transport, cause to be transported, or deliver to any person for the purpose of transportation from any place outside this state to any place in this state.
- (11) "Export" means to transport, cause to be transported or deliver to any person for the purpose of transporting from any place in this state to any place outside of this state.

Authority: T.C.A. §§ 70-1-206 and 70-2-221.

New Rule

Chapter 1660-01-26 Rules and Regulations for Fish Farming, Catch-Out Operations, and Bait Dealers is

amended by adding a new rule General Provisions and renumbering the current Rules 1660-01-26-.02 through 1660-01-26-.04 accordingly. The new rule 1660-01-26-.02 General Provisions shall read as follows:

1660-01-26-.02 General Provisions.

- (1) All statues, rules, and proclamations must be followed when procuring bait fish and other aquatic life from the wild and when importing bait fish and other aquatic life.
- (2) Fish used in catch-out operations must be reared fish or must be wild fish obtained by commercial fishers.
- (3) Fish from states having endemic disease problems in wild populations or hatchery stocks that could present a health hazard to native wildlife or the public are specifically prohibited from being imported, except for shipments that have been approved by the Executive Director of the TWRA.
- (4) A Fish Dealer's License is not required for the construction of a facility.

Authority: T.C.A. §§ 70-1-206 and 70-2-221.

Amendments

The current Rule 1660-01-26-.02 Rules – Fish Farming is amended by deleting it in its entirety and substituting instead the following:

~~1660-1-26-.02 Rules –~~ 1660-01-26-.03 Fish Farming.

- (1) ~~A Fish Dealer License is required. Upon receiving a completed application and appropriate fee, the TWRA will issue a license to the owner, lessee, or person controlling a fish farm. A separate license is required for each fish farm. A license will not be issued for a facility proposed to be located in public waters. Any person, firm, or corporation, before engaging in the business of fish farming, must purchase a Fish Dealer's License. A separate license is required for each fish farm.~~
- (2) Species ~~The following species are approved for use are as follows in fish farming operations:~~
 - (a) ~~All native non-game fish species; i.e., channel catfish, blue catfish, fathead minnows, golden shiners, gizzard shad.~~
 - (b) ~~All native game fish species may be sold live for stocking into private waters.~~
 - (c) ~~Bream 4" and less may be sold for bait.~~
 - (d) ~~All species of trout and salmon, and the striped bass (*Morone saxatilis*) x white bass (*Morone chrysops*) hybrid.~~
 - (e) ~~Triploid (sterile) grass carp.~~
 - (f) ~~Goldfish~~
 - (g) ~~Blue tilapia (*Oreochromis aureus*)~~
 - (h) ~~Nile tilapia (*Oreochromis nilotica*)~~
 - (i) ~~Mozambique tilapia (*Oreochromis mossambica*)~~
 - (j) ~~Other species, approved by the Executive Director of the TWRA, may be used as specified in the letter of approval.~~

<u>(a) Common Name</u>	<u>Scientific Name</u>
<u>Skipjack Herring</u>	<u><i>Alosa chrysochloris</i></u>
<u>Gizzard Shad</u>	<u><i>Dorosoma cepedianum</i></u>
<u>Threadfin Shad</u>	<u><i>Dorosoma petenense</i></u>

<u>Goldfish</u>	<u>Carassius auratus</u>
<u>Fathead Minnow</u>	<u>Pimephales promelas</u>
<u>Golden Shiner</u>	<u>Notemigonus crysoleucas</u>
<u>Sunfish</u>	<u>Lepomis spp. and their hybrids</u>
<u>Rainbow Trout</u>	<u>Oncorhynchus mykiss</u>
<u>Brown Trout</u>	<u>Salmo trutta</u>
<u>Atlantic Salmon</u>	<u>Salmo salar</u>
<u>Channel Catfish</u>	<u>Ictalurus punctatus</u>
<u>Blue Catfish</u>	<u>Ictalurus furcatus</u>
<u>Channel x Blue Catfish</u>	<u>Ictalurus punctatus x Ictalurus furcatus</u>
<u>Flathead Catfish</u>	<u>Pylodictis olivaris</u>
<u>Largemouth Bass</u>	<u>Micropterus salmoides</u>
<u>Florida bass</u>	<u>Micropterus floridanus</u>
<u>Largemouth X Florida Bass</u>	<u>Micropterus salmoides x M. floridanus</u>
<u>Smallmouth Bass</u>	<u>Micropterus dolomieu</u>
<u>Hybrid Striped Bass</u>	<u>Morone chrysops x M. saxatilis</u>
<u>Black Crappie</u>	<u>Pomoxis nigromaculatus</u>
<u>White Crappie</u>	<u>Pomoxis annularis</u>
<u>Black x White Crappie</u>	<u>Pomoxis nigromaculatus x P. annularis</u>
<u>Blue tilapia</u>	<u>Oreochromis aureus</u>
<u>Wami tilapia</u>	<u>Oreochromis urolepis</u>
<u>Nile tilapia</u>	<u>Oreochromis nilotica</u>
<u>Mozambique tilapia</u>	<u>Oreochromis mossambica</u>
<u>Common Carp and Koi</u>	<u>Cyprinus carpio</u>

- (b) Triploid Grass Carp (Ctenopharyngodon idella) certified by the United States Fish and Wildlife Service.
- (c) Sunfish (Bream) four inches (4") in length or smaller may be sold for bait.
- (d) Species of fish and aquatic life other than those listed may be used in fish farming with written approval of the Executive Director of the TWRA.
- (3) All game fish and other aquatic life other than non-game fish sold, donated, delivered, or otherwise disposed of, must be accompanied by an invoice signed by the licensee or his agent, and such invoices shall be consecutively numbered and must contain the name and location of the fish farm, the date of sale or delivery, and the species and number of fish delivered. The name and address of the person receiving the fish must also appear on the invoice. One copy of the invoice shall be retained by the licensee for a period of one year after issuance, and shall be available for inspection by any representative of the Wildlife Resources Agency at all times. Any person transporting or possessing game fish obtained from a fish farm must have a copy of the invoice on their person. Fish farming facilities must be constructed to prevent the movement of fish into or out of the facility.
- (4) A fish farmer shall make his records available for inspection by TWRA personnel. A fish farmer shall make available to TWRA personnel any specimens needed for laboratory analysis. Approved species may be sold live for stocking private ponds and lakes.
- (5) All fish and other aquatic life sold, donated, delivered, or otherwise disposed of, must be accompanied by an invoice that includes:
- (a) The signature of the licensee or his/her agent;
- (b) The name, license number, and location of the fish farm;
- (c) The date of sale or delivery;
- (d) The species and number of fish delivered; and
- (e) The name and address of the person receiving the fish or other aquatic life.
- (6) All invoices issued by a fish farming operation must be consecutively numbered.

- (7) The licensee shall retain a copy of the invoice for a period of one year after issuance, and shall make the copy available for inspection by any representative of the TWRA.
- (8) Any person transporting or possessing fish obtained from a fish farm must have a copy of the invoice on their person.

Authority: T.C.A. §§ 70-1-206 and 70-2-221.

The current Rule 1660-01-26-.03 Rules – Catch-Out Operation is amended by deleting it in its entirety and substituting instead the following:

~~1660-1-26-.03 Rules –~~ 1660-01-26-.04 Catch-Out Operation.

- (1) ~~Fish Dealer License is required. Upon receiving a completed application and appropriate fee, the TWRA will issue a license to the owner, lessee, or person controlling a catch-out operation. Before engaging in the business of a catch-out operation, a person, firm, or corporation must purchase a Fish Dealer's License. A separate license is required for each catch-out operation.~~
- (2) ~~Species~~ The following species are approved for use in catch-out operations are:
 - (a) ~~_____ Catfish (all native species)~~
 - (b) ~~_____ Trout – all species~~
 - (c) ~~_____ Salmon – all species~~
 - (d) ~~_____ Common carp, buffalo, and other legally obtained native non-game fish.~~

<u>(a) Common Name</u>	<u>Scientific Name</u>
<u>Rainbow Trout</u>	<u>Oncorhynchus mykiss</u>
<u>Brown Trout</u>	<u>Salmo trutta</u>
<u>Atlantic Salmon</u>	<u>Salmo salar</u>
<u>Channel Catfish</u>	<u>Ictalurus punctatus</u>
<u>Blue Catfish</u>	<u>Ictalurus furcatus</u>
<u>Flathead Catfish</u>	<u>Pylodictis olivaris</u>
<u>Common Carp</u>	<u>Cyprinus carpio</u>

 - (b) Triploid Grass Carp (Ctenopharyngodon idella) certified by the United States Fish and Wildlife Service.
 - (c) Species of fish and aquatic life other than those listed may be used in a catch-out operation with written approval of the Executive Director of the TWRA.
- (3) Catch-out facilities must be constructed to prevent the movement of fish into or out of the facility.
- (4) ~~Whenever the owner or operator of any catch-out facility shall sell, donate, deliver, or otherwise dispose operation sells, donates, delivers, or otherwise disposes of any game fish, alive or dressed, he the owner or operator shall immediately issue to the person reviewing receiving such fish and an invoice signed by him or his agent and such invoice shall be consecutively numbered and must contain the name and location of the catch-out facility, the date of sale or delivery, and the species and number of fish delivered. The name and address of the person receiving the fish must also appear on the invoice. One copy of the invoice shall be retained by the owner or operator of the catch-out facility issuing same for a inspection by any representative of the Wildlife Resources agency at all times. Any person transporting or possessing game fish obtained from a catch-out facility must have a copy of the invoice on their person. that includes:~~
 - (a) The signature of the licensee or his/her agent;
 - (b) The name, license number, and location of the catch-out operation;

- (c) The date of sale or delivery;
 - (d) The species and number of fish delivered; and
 - (e) The name and address of the person receiving the fish.
- (5) A catch-out operator shall make his records available for inspection by TWRA personnel. A catch-out operator shall make available to TWRA personnel any specimens needed for laboratory analysis. All invoices issued by a catch-out operation must be consecutively numbered.
- (6) The owner or operator of the catch-out operation shall retain a copy of the invoice and make the copy available for an inspection by any representative of the TWRA.
- (7) Any person transporting or possessing fish obtained from a catch-out operation must have a copy of the invoice on their person.

Authority: T.C.A. §§70-1-206 and 70-2-221.

The current Rule 1660-01-26-.04 Rules – Bait Dealer is amended by deleting it in its entirety and substituting instead the following:

~~1660-1-26-.04 RULES –~~ 1660-01-26-.05 Bait Dealer.

- (1) A Fish Dealer License is required of the capturing of approved bait fish and other aquatic life for sale or the selling of bait fish and other aquatic life, whether acquired from the wild or otherwise legally obtained. All proclamations and laws must be followed in procuring bait fish and other aquatic life from the wild and in importing bait fish and other aquatic life. Before engaging in the business of a bait dealer, a person, firm, or corporation must purchase a Fish Dealer's License. In addition, any person assisting in the capture of bait fish and other aquatic life approved for sale must possess a Fish Dealer's License. A separate license is required for each bait dealer location where bait is sold.
- (2) The taking and possession of crayfish from Mill Creek and its tributaries in Davidson and Williamson Counties, Tennessee is prohibited. The following species are approved for sale as live or dead bait:

<u>(a) Common Name</u>	<u>Scientific Name</u>
<u>Skipjack Herring</u>	<u>Alosa chrysochloris</u>
<u>Gizzard Shad</u>	<u>Dorosoma cepedianum</u>
<u>Threadfin Shad</u>	<u>Dorosoma petenense</u>
<u>Goldfish</u>	<u>Carassius auratus</u>
<u>Fathead Minnow</u>	<u>Pimephales promelas</u>
<u>Golden Shiner</u>	<u>Notemigonus crysoleucas</u>
<u>Sunfish</u>	<u>Lepomis spp. and their hybrids</u>
<u>Rainbow Trout</u>	<u>Oncorhynchus mykiss</u>

- (b) Sunfish (Bream) 4" in length or smaller may be sold for bait;
- (3) The following species are approved for sale as dead bait:

<u>(a) Common Name</u>	<u>Scientific Name</u>
<u>Brook Silverside</u>	<u>Labidethes sicculus</u>
<u>Inland Silverside</u>	<u>Menidia beryllina</u>
<u>Silver Carp</u>	<u>Hypophthalmichthys molitrix</u>
<u>Bighead Carp</u>	<u>Hypophthalmichthys nobilis</u>
<u>Black Carp</u>	<u>Mylopharyngodon piceus</u>
<u>Grass Carp</u>	<u>Ctenopharyngodon idella</u>

- (b) Any fish species that is not native to Tennessee and is imported in a preserved state (e.g. frozen, salted, pickled or dried).
- (4) Approved species may be imported by licensed bait dealers into Tennessee or exported from Tennessee as live or dead bait;
- (5) Licensed bait dealers can harvest and sell approved species as live or dead bait in Tennessee;
- (6) Whenever a licensed bait dealer sells, donates, delivers or otherwise disposes of Rainbow Trout, alive or dressed, the dealer shall immediately issue to the person receiving Rainbow Trout an invoice that includes:
 - (a) A signature by the licensee or his/her agent;
 - (b) Consecutive numbers;
 - (c) The name, license number, and location of the bait dealer;
 - (d) The date of sale or delivery date;
 - (e) The species and number of fish sold; and
 - (f) The name and address of the person receiving the fish.
- (7) All invoices issued by a bait dealer must be consecutively numbered.
- (8) A licensed bait dealer shall retain a copy of the invoice for a period of one year after issuance and make the copy available for an inspection by any representative of the TWRA.
- (9) Any person transporting or possessing Rainbow Trout obtained from a licensed bait dealer for bait must have a copy of the invoice on their person.
- (10) Bait dealers cannot harvest Sunfish (Bream) or Rainbow Trout from public waters for sale as bait.
- (11) Amphibians and crayfish may not be sold as bait.

Authority: T.C.A. §§ 70-1-206 and 70-2-221.

New Rule

Rule 1660-01-26-.06 Inspections is added as a new rule and shall read:

1660-01-26-.06 Inspections.

- (1) Any person, firm, or corporation possessing a Fish Dealer's License shall allow, during normal business hours and at reasonable times, any officer or employee of the agency to inspect all wildlife facilities and records relating to such wildlife for the purpose of ensuring compliance with the provisions of this rule.
- (2) Any holder of a Fish Dealer's License shall make available to TWRA personnel any specimens needed for virus and parasite analysis. If any specimen tested is found to contain a virus or parasite, then the TWRA may cause the specimen in question to be destroyed without being liable for damage from such destruction.

Authority: T.C.A. §§ 70-1-206, 70-2-221, and 70-2-212.

Department of State Use Only

Filed with the Department of State on: 11/18/19

Effective on: 2/16/20

Tre Hargett

Tre Hargett
Secretary of State

NOV 18 2019
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SECRETARY OF STATE
MONTGOMERY

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

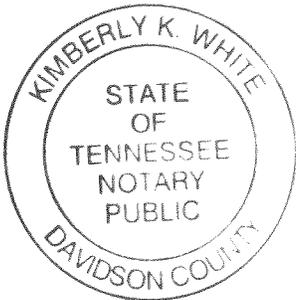
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Angie Box	✓				
Dennis Gardner	✓				
Jimmy Granbery				✓	
Kurt Holbert	✓				
Steve Jones	✓				
Connie King	✓				
Brian McLerran	✓				
Jim Ripley	✓				
Tony Sanders	✓				
James Stroud	✓				
Kent Woods	✓				
Tommy Woods	✓				
Hank Wright	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission (board/commission/ other authority) on 09/20/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/05/19

Rulemaking Hearing(s) Conducted on: (add more dates). 09/20/19



Date: 9/20/19

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 9/20/2019

Notary Public Signature: Kimberly K. White

My commission expires on: 11/8/2022

Agency/Board/Commission: Tennessee Fish and Wildlife Commission

Rule Chapter Number(s): 1660-1-26

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

Herbert H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter

11/4/2019
Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Examiners in Psychology

SUBJECT: General Rules Governing the Practice of Psychologists,
Senior Psychological Examiners, Psychological
Examiners, and Certified Psychological Assistants

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-210

EFFECTIVE DATES: February 25, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendments to Rule 1180-01-.09(1) change the version of the ethics code from June 1, 2003 to January 1, 2017 and incorporate the 2010 and 2016 amendments to the APA Ethical Code.

Public Hearing Comments

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

There were no comments received, either written or oral.

Regulatory Flexibility Addendum

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

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

These rules do not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

These rules are established with clarity, conciseness, and lack of ambiguity.

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

These rules do not establish any new reporting requirements.

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

These rules do not establish any new reporting requirements.

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

These rules do not establish any new reporting requirements.

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

These rules do not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

These rules do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Examiners in Psychology

Rulemaking hearing date: September 12, 2019

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

These rules affect licensees who are licensed through the Board of Examiners in Psychology as well as future applicants. The impact of these rules should be cost-neutral as the amendment does not impose any new requirements on the licensees or future applicants.

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

These rules should have a minimal impact on recordkeeping, reporting, or other administrative costs.

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

These rules should not impact businesses or consumers.

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

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

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

Federal: None.

State: 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.**

These rule amendments do not provide for exemptions for small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The amendments to Rule 1180-01-.09(1) change the version of the ethics code from June 1, 2003 to January 1, 2017 and incorporate the 2010 and 2016 amendments to the APA Ethical Code.

- (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;

2017 Public Chapter 215, which was signed by the Governor on April 28, 2017 and is now codified in T.C.A. § 4-5-210.

- (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 affect licensees who are licensed through the Board of Examiners in Psychology as well as future applicants.

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

None.

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

These rules should not impact revenues or expenditures.

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

Paetria Morgan, Associate General Counsel, Office of General Counsel, Department of Health.

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

Paetria Morgan, Associate General Counsel, Office of General Counsel, Department of Health.

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

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

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

None.

**Department of State
Division of Publications**

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Sequence Number: 11-20-19
Rule ID(s): 9276
File Date: 11/27/19
Effective Date: 2/15/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Board of Examiners in Psychology
Division:
Contact Person: Paetria Morgan, Associate General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: (615) 741-1611
Email: Paetria.Morgan@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
1180-01	General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants
Rule Number	Rule Title
1180-01-.09	Professional Ethics

Rule 1180-01-.08, continued)

1. The Internet
 2. Closed circuit television
 3. Satellite broadcasts
 4. Correspondence courses
 5. Videotapes
 6. CD-ROM
 7. DVD
 8. Teleconferencing
 9. Videoconferencing
 10. Distance learning
- (b) Licensees with disabilities or other hardships severely restricting travel away from home may petition the Board in writing to request exceptions to the manner in which they accumulate CE credits.
- (6) Documentation. Each licensee shall maintain documentation of CE hours for five (5) years and should prepare a summary report with documentation yearly. Documentation of completed CE hours must be produced for inspection and verification if requested in writing by the Board. The Board shall not maintain CE files.
- (7) Violations.
- (a) Any licensee who falsely certifies attendance and completion of the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.
 - (b) Any licensee who fails to obtain the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-11-104, 63-11-201, 63-11-206, and 63-11-218.

Administrative History: Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed March 21, 2005; effective June 4, 2005. Amendment filed November 9, 2005; effective January 23, 2006. Amendments filed April 4, 2014; effective July 3, 2014. Amendment filed November 18, 2015; effective February 16, 2016.

1180-01-.09 PROFESSIONAL ETHICS.

- (1) ~~The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.). The version adopted by the~~

(Rule 1180-01-.09, continued)

~~Board was approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.~~

- (1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board position statements, as its ethical standards the specific "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A.'s Council of Representatives on August 3, 2016 and became effective on January 1, 2017.
- (2) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's ethical standards shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-215 (b) (1).
- (3) A copy of the A.P.A. "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" may be obtained from the Order Department of the A.P.A. at 750 First Street, NE, Washington, DC 20002-4242 or by phone at (202) 336-5510, or on the Internet at <http://www.apa.org/ethics>.
- (4) Applicability of the Ethical Standards. The activity of a licensee or certificate holder subject to the Ethical Standards may be reviewed only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethical Standards.

Authority: T.C.A. §§ 4-5-202, 4-5-204, ~~4-5-210~~, 63-11-104, 63-11-201, 63-11-204, 63-11-206, 63-11-207, 63-11-208, 63-11-213, 63-11-214, and 63-11-215. **Administrative History:** Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective November 1, 2002. Amendment filed May 29, 2003; effective August 12, 2003.

1180-01-.10 DISCIPLINARY GROUNDS, ACTIONS, CIVIL PENALTIES, SETTLEMENTS, AND SCREENING PANELS.

- (1) Grounds and authority for disciplinary actions. The Board shall have the power to deny an application for a license or certificate to any applicant. The Board shall have the authority to suspend or revoke a license or certificate, reprimand or otherwise discipline by a monetary fine any licensee or certificate holder. Formal disciplinary proceedings before the Board shall comply with the Administrative Procedures Act, T.C.A. §§ 4-5-301, *et. seq.* The grounds upon which the Board shall exercise such power include, but are not limited to, the following:
 - (a) Unprofessional, dishonorable, or unethical conduct;
 - (b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Psychology Act or any lawful order of the Board issued pursuant thereto, or any criminal statute of the state of Tennessee;
 - (c) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a licensee;
 - (d) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice as a licensee or certificate holder;

* 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)
Mark C. Fleming, PhD.	X				
J. Dale Alden, Ph.D.	X				
Susan R. Douglas, PhD.	X				
H.R. Anderson, Sr. PE	X				
Todd M. Moore, Ph.D.	X				
Rebecca P. Staab, Ed.D, Ph.D.	X				
Mickey Tonos, MS, BCBA	X				
Deborah A. Carter , Ph.D.	X				
Jennifer K. Winfree				X	
Connie Mazza, Sr.PE	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners in Psychology (board/commission/ other authority) on 09/12/19 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/10/19 (mm/dd/yy)

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

Date: 9/18/19

Signature: Paetria Morgan w/permission pp

Name of Officer: Paetria Morgan

Associate General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 9-18-19

Notary Public Signature: Suzanne Mechkowski

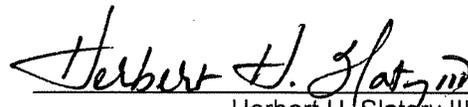
My commission expires on: _____

**My Commission Expires
January 26, 2021**

Agency/Board/Commission: Board of Examiners in Psychology

Rule Chapter Number(s): 1180-01

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


Herbert H. Slatery III
Attorney General and Reporter

11/4/2019
Date

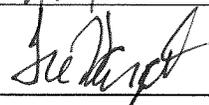
Department of State Use Only

Filed with the Department of State on:

11/27/19

Effective on:

2/25/20



Tre Hargett
Secretary of State

2019 NOV 27 PM 3:22
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Education

SUBJECT: Education Savings Account

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-2610

EFFECTIVE DATES: February 25, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 506 of the 111th General Assembly was signed into law on May 24, 2019, creating the Education Savings Account (ESA) Program for eligible students to use for educational purposes. The program provides options for parents of eligible students to choose the educational opportunities that best meet the individual needs of their child by giving them direct access to state and local public education funds. Public Chapter 506 authorizes the State Board of Education to promulgate rules for the ESA program. The State Board held a rulemaking hearing on October 1, 2019 to take public comment on the proposed rules, in addition to receiving written feedback via mail and email. These rules outline requirements and processes for applicants, the use of funds, monitoring and compliance, participating school and provider approval, appeal procedures, conflict of interest violations, and other elements of the program.

Public Hearing Comments

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

RESPONSES TO COMMENTS AT THE RULEMAKING HEARING

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-16 on October 1, 2019, in the Board of Regents Board Room, 1 Bridgestone Park, Nashville, Tennessee 37214. Two members of the public offered comments. Additional written comments were received by State Board staff via email and mail.

State Board and Tennessee Department of Education (TDOE) staff reviewed comments given at the hearing and in writing. Comments received that are not addressed in this response are those that only expressed general agreement or disagreement with the authorizing legislation itself and/or those comments which offered no suggestions regarding rule changes. Below is a summary of comments received and reasoning why the suggestion was or was not included in the final version of the rules.

- ESA students should be required to take all of the same standardized state tests as public school students. Response: This suggestion was not included in the rules as it is in conflict with the authorizing legislation which limits state testing to Math and English Language Arts.
- Students should be required to return any unused ESA funds at the end of the year and should not be able to use those funds for post-secondary education. Response: This suggestion was not included in the rules as it is in conflict with the authorizing legislation which specifically permits students with funds remaining in their ESA at graduation to use those funds for post-secondary education.
- The ESA program should not begin until the 2021-22 school year. Response: The rules do not address the start date of the program.
- The TDOE should ensure students receiving ESAs civil rights are protected across race, religion, sexual orientation, citizenship status, and disability status. Response: The rules are in alignment with the authorizing legislation which requires participating schools to certify that they will not discriminate against participating students or applicants on the basis of race, color, or national origin. Additionally, the rules require that as a condition of approval, all participating schools must submit their admissions policies for review by the TDOE. With regard to students with disabilities, the authorizing legislation requires that parents understand and agree that by removing their child from a public school and enrolling in the Program, they are waiving their rights to receive education services under the Individuals with Disabilities Education Act (IDEA). Private schools must still comply with obligations under the Americans with Disabilities Act (ADA).
- There should be accountability for the 2% management fee. Response: The rules are consistent with authorizing legislation which allows for a 2% management fee as an approved expense only if the fee is administered by a private or non-profit financial management organization approved by the TDOE.
- The rules should require the TDOE to report additional disaggregation of state assessment data and ensure clear communication to families on this data. Response: The rules are consistent with the authorizing legislation which requires TDOE to annually report participating student performance on annual assessments, aggregated by LEA and statewide. Parents will receive a TCAP performance report outlining their child's performance on the TCAP assessments. Additionally, the authorizing legislation requires the Office of Research and Education Accountability (OREA), in the office of the Comptroller of the Treasury, to report on academic performance indicators for participating students in the program including, but not limited to, data generated from the TCAP tests.
- Applications for the program should be available online and on paper. Response: The TDOE is tasked with implementation of the program and the development of the various applications. The ESA application will be exclusively online and will be compliant with Section 508 of the Rehabilitation Act. The application is mobile browser friendly and can be completed on a tablet or cell phone. Additionally, the TDOE will be holding open houses in Davidson and Shelby counties in public spaces like local libraries, where technical assistance and internet will be provided to families applying for participation in the program.
- Communication with families about the ESA program should be clear, transparent, and available in multiple languages. Response: The TDOE is tasked with implementation of the program and the development of the various applications. The TDOE is working on a number of guidance and FAQ

documents to ensure clarity and understanding by parents, students, providers and participating schools. Additionally, schools are required to submit their tuition and fees schedule as part of their application to become a participating school. All information will be publically posted on the TDOE's website. In compliance with federal law, the TDOE will ensure ESA documents, such as the application, are made available to families in their native language, if necessary, and/or in a format that accommodates their disability, if necessary. Additionally, the ESA call center has bi-lingual employees on staff and has a language line with over 150 available languages. Very few private schools offer translation services so it is important families work with their individual school to fully understand the translation services available at the school.

- Background check requirements for participating schools should not be more onerous than the requirements for public schools. Response: The background check requirements outlined in the rule are consistent with the requirements for public school employees. This includes fingerprint background checks and new background checks every five (5) years. These background check requirements protect the health and safety of students participating in the ESA program. The rules were amended on final reading to give discretion to participating schools on hiring employees with certain convictions. This is consistent with the discretion afforded to public schools on employee hiring decisions, but provides guidance to participating schools when reviewing background checks.
- Teacher's children should be eligible for ESA's regardless of income level. Response: This suggestion was not included in the rules as it is in conflict with the authorizing legislation.
- TDOE should use nationally normed assessments or the state assessment when evaluating participating schools' performance. Response: The authorizing legislation requires that participating students take state tests in math and English Language Arts and that the TDOE report school TVAAS data. The final version of the rules requires the TDOE to look at multiple measures of student success when determining if a school will be terminated for low academic performance. This includes nationally normed assessments and state assessments.
- Participating private schools should be held to the same requirements as public schools. Response: This suggestion was not included in the rules as it is in conflict with the authorizing legislation. The authorizing legislation allows for participation of Category I, II, and III private schools who by law and rule are granted varying degrees of flexibility and are not required to meet all of the same requirements as public schools.

Regulatory Flexibility Addendum

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

This rule does affect small businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES**(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;**

Some smaller Category I, II, or III eligible private schools would likely qualify as small business as they may employ fewer than 50 people. Additionally, eligible providers such as small tutoring businesses may employ fewer than 50 people.

(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;

Participating private schools and providers would be required to ensure that fingerprint background checks are completed in compliance with the rule. This requirement is no more than what is required of public schools and ensures that those employees of eligible private schools and providers are not a threat to the health and safety of children participating in the ESA program. Additionally, participating schools will be required to comply with reporting requirements and monitoring requirements outlined in the rule to ensure that funds are being properly utilized and that the school is complying with requirements for participation in the program. These monitoring and reporting requirements are essential to ensuring that public funds being utilized at participating schools are not being misused.

Participating private schools will need to designate an existing staff person as their contact for TCAP testing purposes, however, this should not result in any additional cost to the participating school.

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

Fingerprint background checks have an average cost of \$40.00 per person. These costs could be absorbed by the individual employee or the private school or provider. This cost is necessary to ensure that employees of eligible private schools and providers are not a threat to the health and safety of children participating in the ESA program.

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

There is no less burdensome, less intrusive, or less costly alternative method of achieving the purposes and/or objectives of the proposed rule.

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

Federal: The proposed rule has no federal counterpart.

State: In drafting these rules, the Department of Education and the State Board utilized similar language from the Individualized Education Account program rules already in effect in Tennessee. Additionally, staff researched how other states handle ESA and voucher programs, including North Carolina, Florida, and Indiana. Given the unique nature of the ESA statute in Tennessee, these rules do not align directly with any other state, but to the extent possible, reflect feedback received from other states regarding best practices and lessons learned.

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

The rule does not provide any exemptions for small businesses.

Impact on Local Governments

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

This rule does not have a financial impact on local governments beyond the authorizing legislation.

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 506 of the 111th General Assembly was signed into law on May 24, 2019, creating the Education Savings Account (ESA) Program for eligible students to use for educational purposes. The program provides options for parents of eligible students to choose the educational opportunities that best meet the individual needs of their child by giving them direct access to state and local public education funds. Public Chapter 506 authorizes the State Board of Education to promulgate rules for the ESA program. The State Board held a rulemaking hearing on October 1, 2019 to take public comment on the proposed rules, in addition to receiving written feedback via mail and email. These rules outline requirements and processes for applicants, the use of funds, monitoring and compliance, participating school and provider approval, appeal procedures, conflict of interest violations, and other elements of the program.

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

T.C.A. §§ 49-6-2601 *et seq.* establishes the Education Savings Account program.

T.C.A. § 49-6-2610 authorizes the State Board of Education to promulgate rules to effectuate the Education Savings Account program.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Tennessee Department of Education and State Board of Education are directly affected by this rule and both urge adoption.

Category I, II and III private schools, eligible educational providers and eligible parents and students are also directly affected by this rule. At the rulemaking hearing, two individuals spoke and provided feedback on the rules. Additional comments were received in writing from community members and advocacy organizations urging adoption, rejection, or revision of the rules and those public comments are addressed in the public comment portion of this filing.

- (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;

No fiscal impact beyond the authorizing legislation.

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

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

Nathan James
500 James Robertson Parkway, 5th Floor
Nashville, TN 37243
(615) 532-3528
Nathan.James@tn.gov

Elizabeth Fiveash
710 James Robertson Parkway, 9th Floor
Nashville, TN 37243
(615) 253-1960
Elizabeth.Fiveash@tn.gov

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

N/A

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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

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Agency/Board/Commission: State Board of Education
Division:
Contact Person: Angie Sanders
Address: 5th Floor, Davy Crockett Tower, 500 James Robertson Parkway,
 Nashville, TN
Zip: 37243
Phone: 615-741-2966
Email: Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.01	Purpose
0520-01-16-.02	Definitions
0520-01-16-.03	Application and Admission
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.05	Use of Funds
0520-01-16-.06	Term of the ESA
0520-01-16-.07	Monitoring and Compliance
0520-01-16-.08	Participating Schools
0520-01-16-.09	Providers and Postsecondary Institutions
0520-01-16-.10	Return to Local Education Agency

0520-01-16-.11	Appeal Procedures
0520-01-16-.12	Conflict of Interest

RULES
OF
STATE BOARD OF EDUCATION

CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS

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<u>0520-01-16-.01</u>	<u>Purpose</u>	<u>0520-01-16-.07</u>	<u>Monitoring and Compliance</u>
<u>0520-01-16-.02</u>	<u>Definitions</u>	<u>0520-01-16-.08</u>	<u>Participating Schools</u>
<u>0520-01-16-.03</u>	<u>Application and Admission</u>	<u>0520-01-16-.09</u>	<u>Providers and Postsecondary</u>
<u>0520-01-16-.04</u>	<u>Agreement and Funds Transfer</u>		<u>Institutions</u>
<u>0520-01-16-.05</u>	<u>Use of Funds</u>	<u>0520-01-16-.10</u>	<u>Return to Local Education Agency</u>
<u>0520-01-16-.06</u>	<u>Term of the ESA</u>	<u>0520-01-16-.11</u>	<u>Appeal Procedures</u>
		<u>0520-01-11-.12</u>	<u>Conflict of Interest</u>

0520-01-16-.01 PURPOSE.

The purpose of these rules is to effectuate the Tennessee Education Savings Account Program ("Program") as required by T.C.A. § 49-6-2601, et seq. Pursuant to T.C.A. § 49-6-2605, The Department of Education ("Department") may contract with a non-profit organization for some or all portions of the Program. If the Department contracts for some or all portions of the Program, any reference to the Department herein may be assigned to the contractor.

Authority: T.C.A. §§ 49-1-302, 49-6-2601, et seq. **Administrative History:**

0520-01-16-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in paragraph (17) of this section or a student who has reached the age of eighteen (18) who is approved by the Department to participate in the Program and signs the ESA agreement and is responsible for complying with all of the requirements of the Program.
- (2) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has reached the age of eighteen (18) and a designee of the Department, that qualifies the parent or student who has reached the age of eighteen (18) to participate in the Program.
- (3) "Computer hardware or technological devices" means computer hardware or technological devices approved by the Department that is used for the student's educational needs. Computer hardware and technological devices shall be purchased at or below fair market value through a participating school, private school, or provider.
- (4) "Contractor" means an entity that is paid by the Department to operate the Program or portions of the Program.
- (5) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in paragraph (22) of this section and employers of providers shall maintain documentation that any persons providing services to participating

students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation ("TBI") and forwarded by the TBI to the Federal Bureau of Investigation ("FBI") for processing pursuant to the National Child Protection Act. All participating schools shall maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the TBI and forwarded by the TBI to the FBI for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint-based criminal history records check conducted by the FBI.

- (6) "Department" means the Tennessee Department of Education.
- (7) "Early postsecondary opportunity courses" means a course and/or exam recognized by the Department that give students a chance to obtain postsecondary credit while still in high school.
- (8) "Educational therapy services" means individualized services provided by therapists that meet the requirements established by the Department and the State Board.
- (9) "Eligible postsecondary institution" means an institution operated by the Board of Trustees of the University of Tennessee; the Board of Regents of the state university and community college system; or a local governing board of trustees of a state university in this state; or a private postsecondary institution accredited by an accrediting organization approved by the State Board.
- (10) "Eligible private school" means a private school, as defined by § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the Department and the State Board for a Category I, II, or III private school, and applies to the Department to participate in the Program.
- (11) "Eligible student" means a Tennessee resident in grades kindergarten through twelve (K-12) who:
- (a) Meets one (1) of the following enrollment requirements:
 - 1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year for which the student receives an ESA;
 - 2. Is eligible for the first time to enroll in a Tennessee school; or
 - 3. Received an ESA in the previous school year;
 - (b) Is zoned to attend a school in Shelby County Schools, Metropolitan Nashville Public Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019; and
 - (c) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
- (12) "ESA" means a Tennessee Education Savings Account.

- (13) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a family member, parent, or participating student in accordance with the conflict of interest provisions set forth in these rules.
- (14) "IEP" means an Individualized Education Program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. § 1400, et seq.
- (15) "Legacy student" means a participating student who graduates from high school or exits the Program by reaching twenty-two (22) years of age; and
- (a) Has funds remaining in the student's ESA; and
- (b) Has an open ESA.
- (16) "Local Education Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system, or any other local public school system or school district created or authorized by the Tennessee general assembly.
- (17) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under T.C.A. § 49-6-3001.
- (18) "Participating school" means an eligible private school that has been approved to participate in the Program and seeks to enroll eligible students.
- (19) "Participating student" means an eligible student who is seventeen (17) years of age or younger and whose parent is participating in the Program or an eligible student who has reached the age of eighteen (18) and is participating in the Program.
- (20) "Private or non-profit financial management organization" means an institution selected by the Department to administer the education savings accounts.
- (21) "Program" means the ESA Program created in T.C.A. § 49-6-2602, et seq.
- (22) "Provider" means an individual or business that provides educational services in accordance with T.C.A. § 49-6-2601, et seq. and that meets the requirements established by the Department and the State Board.
- (23) "State Board" means the Tennessee State Board of Education.
- (24) "Summer education programs and specialized afterschool education programs" means educational programs approved by the Department that are operated outside of the regular school day or school year, which do not include afterschool childcare.
- (25) "Technology fees" means fees charged by a participating school, private school, or provider for the use of technology or technological devices.
- (26) "Tuition or fees" means tuition or fees of an instructional nature at a participating school, or an eligible postsecondary institution. Fees do not include: room and board, food, or consumable school supplies.

(27) "Tutoring services" means educational services provided by a tutor or tutoring facility that is approved by the Department and the State Board.

(28) "Qualified expenses" means the expenses outlined in T.C.A. § 49-6-2603(a)(4) and this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. ***Administrative History:***

0520-01-16-.03 APPLICATION AND ADMISSION.

(1) To apply to receive an ESA, the parent of an eligible student or an eligible student who has reached the age of eighteen (18), must submit a completed application through the Department's website by the deadline set by the Department.

(2) As part of the Program application, the parent of an eligible student or an eligible student who has reached the age of eighteen (18), must provide verification that the student is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.

(a) Income verification shall be established through:

1. Federal income tax returns from the previous year; or

2. Proof of eligibility for enrollment in the state's Temporary Assistance for Needy Families (TANF) program.

(b) The Department may require additional information to verify household income.

(c) Students identified as "at-risk" as defined in T.C.A. § 49-3-307(a)(6) shall automatically satisfy the income requirements for eligibility.

(3) If, in the application period for a school year, the number of Program applications received by the Department from eligible students exceeds the maximum number of students that may participate in the Program for that school year pursuant to T.C.A. § 49-6-2604(c), then the Department shall conduct an enrollment lottery process. Students who participated in the Program in the previous school year shall be reenrolled in the Program if renewal criteria is met and shall be excluded from entering into an enrollment lottery. If an enrollment lottery is conducted, then enrollment priority must be granted in the following order:

(a) Eligible students who have a sibling participating in the Program;

(b) Eligible students zoned to attend a priority school as defined by the state's accountability system pursuant to T.C.A. § 49-1-602, at the time of the enrollment lottery;

(c) Eligible students eligible for direct certification under 42 U.S.C. § 1758(b)(4); and

(d) All other eligible students.

(4) Once a completed application has been approved by the Department, the parent of an eligible student or an eligible student who has reached the age of eighteen (18) shall complete the enrollment procedures set by the Department to become enrolled in the Program.

Authority: *T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:*

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

(1) Upon notification by the Department that an ESA may be established, a parent of an eligible student or an eligible student who has reached the age of eighteen (18) shall sign an Agreement to:

(a) Ensure the provision of an education for the participating student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;

(b) Comply with the requirement that participating students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;

(c) Not enroll the participating student in a public school during the time the student is enrolled in the Program;

(d) Not enroll the participating student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;

(e) Release the LEA in which the participating student resides and the school for which the participating student is zoned to attend from all obligations to educate the participating student during the time the participating student is enrolled in the Program;

(f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414; and

(g) Comply with the acceptable uses of ESA funds and the responsibilities of the parent of a participating student or participating student who has reached the age of eighteen (18).

(2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.

(3) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has reached the age of eighteen (18) and a designee of the Department to be effective.

(4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.

- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds may not be used for tuition at a non-participating school.
- (7) The maximum annual amount to which a participating student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the Basic Education Program ("BEP") for the LEA in which the participating student resides, or the statewide per pupil average of required state and local BEP funds, whichever amount is less.
- (8) If a participating student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the participating student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1401 et seq.* **Administrative History:**

0520-01-16-.05 USE OF FUNDS.

- (1) Account Holders shall agree to use the funds deposited in the ESA for any, or any combination of, the following expenses:
 - (a) Tuition or fees at a participating school;
 - (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by:
 - 1. An individual tutor, including, but not limited to, a licensed Tennessee educator;
 - 2. A tutoring facility accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and

School Improvement ("NCA CASI"), the Northwest Accreditation Commission ("NWAC"), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement ("SACS CASI"), the Middle States Association of Colleges and Schools ("MSA"), the New England Association of Schools and Colleges ("NEASC"), the Western Association of Schools and Colleges ("WASC"), or the Council on Occupational Education ("COE");

- (d) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to and from:
 - 1. Participating schools; or
 - 2. Providers;
 - (e) Fees for early postsecondary opportunity courses and related examinations, or any examinations related to college admission;
 - (f) Computer hardware, technological devices, or other technology fees approved by the Department, if the computer hardware, technological device, or technology fee is used for the student's educational needs and is purchased at or below fair market value through a participating school, private school, or provider;
 - (g) School uniforms, if required by a participating school;
 - (h) Tuition and fees for summer education programs and specialized afterschool education programs, as approved by the Department, which do not include afterschool childcare;
 - (i) Tuition and fees at an eligible postsecondary institution;
 - (j) Textbooks required by an eligible postsecondary institution;
 - (k) Educational therapy services designed to improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements established by the Department and the State Board; and/or
 - (l) Fees for the management of the ESA by a private or non-profit financial management organization approved by the Department, not to exceed two percent (2%) of the funds deposited in an ESA account in a fiscal year.
- (2) Account Holders shall obtain pre-approval for tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services, summer education programs and specialized afterschool education programs, and any other expenses identified by the Department. If pre-approval is not obtained, the expense shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form in accordance with procedures developed by the Department.
- (3) Any tuition or fees charged by a participating school or postsecondary institution that exceed the ESA amount shall be the responsibility of the Account Holder.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a participating student shall remain eligible to participate in the Program until the participating student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the participating student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the participating student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the participating student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A participating student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
- (3) If a participating student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the participating student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the BEP account of the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) The Account Holder may transfer the participating student from the participating school to another participating school in accordance with procedures set by the Department.
- (5) In order for a participating student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
- (6) If a participating student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the participating student's open ESA, the participating student shall become a Legacy Student.

- (a) A Legacy Student may use ESA funds to attend or take courses from an eligible postsecondary institution and those expenditures are determined to be qualifying expenses.
- (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the BEP account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:
1. Upon a Legacy Student's graduation from an eligible postsecondary institution;
 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an eligible postsecondary institution; or
 3. After a Legacy Student is not enrolled in an eligible postsecondary institution for twelve (12) consecutive months.
- (7) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
- (8) The Department shall provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of parents of participating students and participating students who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, eligible students, participating students, and legacy students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.07 MONITORING AND COMPLIANCE.

- (1) The Department shall conduct fiscal and program compliance reviews of all ESAs pursuant to procedures developed by the Department.
- (2) The Department may conduct or contract for random, quarterly, or annual review of ESAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an Account Holder or participating school(s) of state laws, rules, or procedures relating to the Program. The Department shall conduct an inquiry of any report of fraud, or make a referral to the appropriate agency for an investigation.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.08 PARTICIPATING SCHOOLS.

- (1) Eligible private schools interested in enrolling students receiving ESAs shall submit an application to the Department by the deadline set by the Department.
- (a) The Department shall develop an application and application process for eligible private schools to participate in the Program. Such application shall be posted on the Department's website and shall request, at a minimum, the following information from an applicant:
1. The maximum number of students receiving ESAs the school has the capacity to enroll per grade level;
 2. Demonstration of financial viability to repay any funds that may be owed to the state by filing with the application financial information verifying the school has the ability to pay an aggregate amount equal to the amount of ESA funds expected to be paid during the school year. The school may comply with this requirement by filing an annual surety bond payable to the state from a surety, and in an amount determined by the Department; and
 3. The school's academic calendar, the school's admission policy, and the school's tuition and fee schedule.
- (b) The Department shall review the application and notify the school as to whether the school meets the requirements outlined in (a) to become a participating school and receive ESA funds from a participating student for qualified expenses including, tuition and fees.
- (c) If an eligible school is approved to be a participating school, the Department shall list the school on the Department's website, including grades served and any other information the Department determines may assist parents in selecting a participating school.
- (2) As a condition of approval to become a participating school, the school shall agree to the following:
- (a) Be academically accountable to the Account Holder for meeting the educational needs of the participating student by:
1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 2. Ensuring participating students in grades three through eleven (3-11) are administered the TCAP tests in math and English Language Arts, or successor tests approved by the State Board, each year the participating student is enrolled in the participating school.
- (b) Comply with all state and federal health and safety laws or codes that apply to nonpublic schools;
- (c) Comply with monitoring requirements set by the Department;

- (d) Certify that they shall not discriminate against participating students or applicants on the basis of race, color, or national origin;
- (e) Agree to accept reimbursement payments for tuition and fees from an Account Holder on the payment schedule identified by the Department;
- (f) Agree to participate in the Program for the full school year unless the school is suspended or terminated by the Department;
- (g) Comply with T.C.A. § 49-5-202;
- (h) Comply with the minimum kindergarten age requirement pursuant to T.C.A § 49-6-201(b)(3) and the State Board of Education Rule 0520-07-02;
- (i) Conduct criminal background checks on employees upon employment and at least every five (5) years thereafter; and
- (j) Exclude from employment:
 - 1. Any person not permitted by state law to work in a nonpublic school; and
 - 2. Any person who might reasonably pose a threat to the safety of students. Participating schools have ultimate discretion to determine whether or not a person might reasonably pose a threat to the safety of students; however, participating schools may consider excluding persons who have ever been convicted of any of the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:
 - (i) A sexual offense or a violent sexual offense as defined in T.C.A. § 40-39-202;
 - (ii) An offense listed in T.C.A. §§ 39-13-102 – 39-13-115;
 - (iii) An offense listed in T.C.A. §§ 39-14-301 and 39-14-302;
 - (iv) An offense listed in T.C.A. §§ 39-14-401 – 39-14-404;
 - (v) An offense listed in T.C.A. §§ 39-15-401 and 39-15-402;
 - (vi) An offense listed in T.C.A. § 39-17-417; and
 - (vii) An offense listed in T.C.A. title 39, chapter 17, part 13.
- (3) The funds in an ESA may be used only as provided in section .05 of this rule for educational purposes. Participating schools that enroll participating students shall provide Account Holders with a receipt for all qualifying expenses paid to the participating school using ESA funds.
- (4) Participating schools shall not charge an Account Holder or participating student additional tuition or fees that are not also charged to non-participating students.

- (5) Participating schools shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or participating student.
- (6) Within five (5) business days of receipt of a participating student's notice of withdrawal, a participating school shall notify the Department of the participating student's withdrawal.
- (7) Participating schools shall annually submit to the Department the graduation and completion information of participating students in accordance with procedures set by the Department.
- (8) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the Program by following the procedures developed by the Department.
- (9) The Department may suspend or terminate a participating school from participating in the Program if the Department determines the school has failed to comply with state law, rules, or procedures.
 - (a) If the Department suspends or terminates a school's participation, the Department shall notify the affected participating students, the Account Holder, and the participating school of the decision. If a participating school is suspended or terminated or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.
 - (b) A participating school may appeal the Department's decision pursuant to the appeals procedures set forth in these rules.
- (10) The Department may suspend or terminate a participating school from participating in the Program for low academic performance. Low academic performance is defined as failure of participating students to make academic progress as demonstrated by multiple performance measures, including, but not limited to, lack of progress or growth on the TCAP tests, or successor tests approved by the State Board, or any nationally normed assessment utilized by the participating school.
- (11) All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:**

0520-01-16-.09 PROVIDERS AND POSTSECONDARY INSTITUTIONS.

- (1) In order to receive pre-approval as required by T.C.A. § 49-6-2607(b), providers, at a minimum, shall:
 - (a) Maintain documentation that any person providing services to participating students has undergone a fingerprint-based criminal history records check conducted by the TBI and forwarded by the TBI to the FBI for processing pursuant to the National Child Protection Act, and
 - (b) Maintain documentation of the provider's credentials demonstrating the provider meets the qualifications set by the Department.

- (2) Providers and eligible postsecondary institutions shall provide Account Holders with a receipt for all expenses paid to the provider or eligible postsecondary institution using ESA funds.
- (3) Providers and eligible postsecondary institutions shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or participating student.
- (4) The Department may suspend or terminate a provider from participating in the Program if the Department determines the provider has failed to comply with the requirements of the Act, these rules, or the procedures set by the Department.
 - (a) If the Department suspends or terminates a provider's participation, the Department shall notify the affected participating students, the Account Holder, and the provider of the decision. If a provider is suspended or terminated or if a provider withdraws from the Program, affected participating students remain eligible to participate in the Program.
 - (b) A provider may appeal the Department's decision pursuant to the appeals procedures set forth in these rules.
- (5) All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a participating student enrolls in an LEA, the parent of a participating student or the participating student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the participating student's ESA and any remaining funds shall be returned to the state treasurer to be placed in the BEP Account of the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, if the parent or student who has reached the age of eighteen (18) requests an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.11 APPEAL PROCEDURES.

- (1) The following decisions of the Department may be appealed:

- (a) Denial of a school's application to become a participating school;
 - (b) Suspension or termination of a participating school from the Program;
 - (c) Suspension or termination of a provider from the Program;
 - (d) Denial of a parent's, or student who has reached the age of eighteen's (18), application to participate in the Program;
 - (e) Determinations regarding the use of funds by Account Holders; or
 - (e) Suspension, termination, or removal of a participating student from the Program.
- (2) All appeals shall be filed pursuant to the following two (2) step appeal process:
- (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the Commissioner of Education, or the Commissioner's designee, within ten (10) business days of notice of the decision being appealed. Notice of the decision being appealed shall be provided electronically and via first-class USPS mail and shall be deemed to be received three (3) business days after the date of postmark. The appeal shall be reviewed by the Commissioner of Education, or the Commissioner's designee, and a decision shall be issued within forty-five (45) calendar days of receipt of the appeal;
 - (b) Step two (2): The appellant shall be notified of the Commissioner's or Commissioner's designee's decision in step one (1) of the appeal process electronically and via first-class USPS mail. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the step one (1) decision shall be filed with the Commissioner by the appellant within thirty (30) calendar days of receipt and shall be heard as a contested case hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

0520-01-16-.12 CONFLICT OF INTEREST.

- (1) Use of ESA funds must be for the sole benefit of the participating student for which the ESA is established. ESA funds shall only be used by the Account Holder on qualifying expenses.
- (2) It is a conflict of interest and is considered a misuse of ESA funds and a violation of Program rules and procedures for an Account Holder to provide ESA funds directly to his or her family member(s), or to any company, corporation, or business owned by his or her family member(s). Family member shall include an Account Holder's spouse, parent, step-parent, parent-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, or any person who resides in the same household as a participating student.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. Administrative History:

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TN State Board of Education (board/commission/ other authority) on 11/15/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/07/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 10/01/2019

Date: 11/20/2019

Signature: *Angie Sanders*

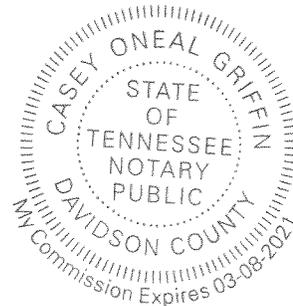
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: 11/20/19

Notary Public Signature: *C. Griffin*

My commission expires on: 3-8-21



Agency/Board/Commission: TN State Board of Education

Rule Chapter Number(s): 0520-01-16

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 by Tre Hargett
Herbert H. Slatery III

Attorney General and Reporter

Nov. 25, 2019

Date

Department of State Use Only

Filed with the Department of State on: 11/27/19

Effective on: 2/25/20

Tre Hargett

Tre Hargett
Secretary of State

2019 NOV 27 AM 9:53
SECRETARY OF STATE
PROTECTIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Public Utility Commission

DIVISION: Consumer Services

SUBJECT: Rules for Collecting Contributions from Telecommunications Providers and Distributing Assistive Telecommunications Equipment to the Qualified Individuals with Disabilities, Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 65-21-115(e)

EFFECTIVE DATES: January 30, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In 1999, the agency promulgated Rule 1220-04-10 for the purpose of developing practices and procedures for an assistive telecommunications device distribution program (aka, the Tennessee relay service/telecommunications devices access program or "TRS/TDAP"). Pub. Ch. 795 (2014), known as the "911 Funding Modernization and IP Transition Act," removed the Commission's duty to directly collect program contributions from telecommunications providers. Instead, the state emergency communications board ("911 Board") provides funding for the TRS/TDAP program. The amendments to the Rule are necessary in order to update certain references to the program's funding source and to delete outdated provisions related to the Commission's collection of contributions from telecommunications providers.

Other than formatting and corrections to certain cross-references, the amendments primarily consist of: 1) In 1220-04-10.01, Definitions, paragraph (7) "Link Up" is deleted as this service is no longer available; 2) In 122004-10.02, concerning funding of the program, paragraphs (1), (4), (5), (6), and (7) are deleted, and the remaining paragraphs are renumbered and updated to reflect that the state emergency communications board provides the program funding, consistent with T.C.A. 65-21-115(a); and, 3) 1220-04-10.03 related to the Commission's collection of

contributions is deleted in its entirety. Considering these changes, the title and table of contents of this rule chapter has also been amended.

Public Hearing Comments

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

There were no written or oral comments.

Regulatory Flexibility Addendum

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

This rule does not impact small businesses.

Impact on Local Governments

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

This rule does not impact local governments.

MEMORANDUM

From: Kelly Cashman Grams, General Counsel

RE: Public Hearing Comments
Rulemaking 1220-04-10
TPUC Docket No. 19-00013

Date: August 27, 2019

The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Secretary of State on May 24, 2019, and held a rulemaking hearing on the proposed new rule on July 15, 2019. During the rulemaking hearing, no one came forward to be heard concerning the rule. Despite leaving the docket file open for an extended period of time following the hearing, no written comments were filed in the docket file.

**ECONOMIC IMPACT STATEMENT
(Tenn. Code Ann. §4-33-104)**

(b) The economic impact statement shall include the following information:

(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;

In 1999, the agency promulgated Rule 1220-04-10 for the purpose of developing practices and procedures for an assistive telecommunications device distribution program (aka, the Tennessee relay service/telecommunications devices access program or “TRS/TDAP”). Pub. Ch. 795 (2014), known as the “911 Funding Modernization and IP Transition Act,” removed the Commission’s duty to directly collect program contributions from telecommunications providers. Instead, the state emergency communications board (“911 Board”) provides funding for the TRS/TDAP program.

The purpose of these amendments to the Rule is to update certain references to the program’s funding source and to delete outdated provisions related to the Commission’s collection of contributions from telecommunications providers. The Rule does not change the existing business practices of the agency or impose new requirements upon stakeholders. It is an administrative action to bring the agency’s rules in alignment with its responsibilities after the passage of the 911 Funding Modernization and IP Transition Act.

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

The proposed rule does not impose additional costs on a stakeholder group or the agency.

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

The proposed rule does not impose additional costs on a stakeholder group or the agency.

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

The proposed rule does not impose additional costs on a stakeholder group or the agency.

(5) A determination of the effect of the action on competition;

The proposed rule does not impose additional costs on a stakeholder group or the agency. The proposed rule will not impact the competitiveness of stakeholder groups.

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

The proposed rule does not impose additional costs on a stakeholder group or the agency. The proposed rule will not impact the cost of living in the state.

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

The proposed rule does not impose additional costs on a stakeholder group or the agency. The proposed rule will not impact employment in the state.

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

No revenue is required to implement these Rules.

(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.

These rules will not impose an undue economic impact on any stakeholder group.

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;

In 1999, the agency promulgated Rule 1220-04-10 for the purpose of developing practices and procedures for an assistive telecommunications device distribution program (aka, the Tennessee relay service/telecommunications devices access program or "TRS/TDAP"). Pub. Ch. 795 (2014), known as the "911 Funding Modernization and IP Transition Act," removed the Commission's duty to directly collect program contributions from telecommunications providers. Instead, the state emergency communications board ("911 Board") provides funding for the TRS/TDAP program. The amendments to the Rule are necessary in order to update certain references to the program's funding source and to delete outdated provisions related to the Commission's collection of contributions from telecommunications providers.

Other than formatting and corrections to certain cross-references, the amendments primarily consist of: 1) In 1220-04-10.01, Definitions, paragraph (7) "Link Up" is deleted as this service is no longer available; 2) In 1220-04-10.02, concerning funding of the program, paragraphs (1), (4), (5), (6), and (7) are deleted, and the remaining paragraphs are renumbered and updated to reflect that the state emergency communications board provides the program funding, consistent with T.C.A. 65-21-115(a); and, 3) 1220-04-10.03 related to the Commission's collection of contributions is deleted in its entirety. Considering these changes, the title and table of contents of this rule chapter has also been amended.

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

Tenn. Code Ann. § 65-21-115(e),
Funding for Tennessee Relay Services/Telecommunications Devices Access Program

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Telecommunications providers and State Emergency Communications Board (911 Board). Affected persons have not urged adoption or rejection of the amendments to the rule.

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

None identified.

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

No fiscal impact.

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

Kelly Cashman-Grams, General Counsel
Lisa Cooper, Director Consumer Services

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

Same as above

- (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

Kelly Cashman-Grams, General Counsel – 615-770-6856; Kelly.Grams@tn.gov;
Lisa Cooper, Director Consumer Services – 615-770-6868; Lisa.Cooper@tn.gov;
Andrew Jackson State Office Bldg., 502 Deaderick Street, 4th Floor, Nashville, TN 37243

- (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

For Department of State Use Only

Sequence Number: 11-01-19
 Rule ID(s): 9268
 File Date: 11-01-19
 Effective Date: 01-30-20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Public Utility Commission
Division:	Consumer Services
Contact Person:	Kelly Cashman-Grams, General Counsel
Address:	502 Deaderick Street, 4 th Floor
Zip:	37243
Phone:	615.770.6856
Email:	Kelly.Grams@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
1220-04-10	Rules for Collecting Contributions From Telecommunications Providers and Distributing Assistive Telecommunications Equipment to the Qualified Individuals with Disabilities
Rule Number	Rule Title
1220-04-10-.01	Definitions
1220-04-10-.02	Contributions of Providers Funding for the Tennessee Relay Services/ Telecommunications Device Access Program
1220-04-10-.03	Collection of Contributions
1220-04-10-.04	Minimum Eligibility Requirements
1220-04-10-.05	Purchase and Distribution of Assistive Devices
1220-04-10-.06	Maintenance and Repair
1220-04-10-.07	Monthly Telephone Charges
1220-04-10-.08	Confidentiality of Information and Nondiscriminatory Statement

**RULES
OF
TENNESSEE PUBLIC UTILITY COMMISSION**

**CHAPTER 1220-04-10
RULES FOR COLLECTING CONTRIBUTIONS FROM TELECOMMUNICATIONS PROVIDERS AND
DISTRIBUTING ASSISTIVE TELECOMMUNICATIONS EQUIPMENT TO THE QUALIFIED
INDIVIDUALS WITH DISABILITIES**

TABLE OF CONTENTS

1220-04-10-.01	Definitions	1220-04-10-.0605	Maintenance and Repair
1220-04-10-.02	Contributions of Providers Funding for the <u>Tennessee Relay Services/ Telecommunications Devices Access Program</u>	1220-04-10-.0706	Monthly Telephone Charges
1220-04-10-.03	Collection of Contributions	1220-04-10-.0807	Confidentiality of Information
1220-04-10-.0403	Minimum Eligibility Requirements		Nondiscriminatory Statement
1220-04-10-.0504	Purchase and Distribution of Assistive Devices		

1220-04-10-.01 DEFINITIONS.

- (1) "Act" refers to Chapter 417 of the Public Acts of 1999, now codified at Tenn. Code Ann. § 65-21-115.
- (2) "Applicant" means a person who applies to the Tennessee Public Utility Commission for a device to assist with communication through the basic telephone network.
- (3) "Qualified Applicant" is a person that because of a disability cannot use the basic telephone network effectively without the use of an assistive communications device.
- (4) "Assistive Communication Device" means special equipment that permits individuals who have a disability to communicate effectively over the telephone network.
- (5) "Commission" means the Tennessee Public Utility Commission.
- (6) "Lifeline" means a telephone assistance program that reduces the monthly telephone charges for qualified persons.
- ~~(7) "Link-up" means a telephone assistance program that reduces the non-recurring cost of installing telephone service for qualified persons.~~
- ~~(8)~~(7) "Provider" means a telecommunications service provider or a competing telecommunications provider as defined by Tenn. Code Ann. § 65-4-101 whose annual intra-state gross receipts are greater than five million dollars (\$5,000,000).
- ~~(9)~~(8) "Recipient" means the person whose application for an assistive communications device has been granted by the Commission.
- ~~(10)~~(9) "TDAP" or "Program" refers to the Telecommunications Devices Access Program administered by the Tennessee Public Utility Commission.
- ~~(11)~~(10) "TDAP Coordinator" refers to the individual employed by the Commission to manage the Program.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Amendment filed February 24, 2000; effective May 9, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to

"Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.02 CONTRIBUTIONS OF PROVIDERS FUNDING FOR THE TENNESSEE RELAY SERVICES/TELECOMMUNICATIONS DEVICES ACCESS PROGRAM.

- (1) ~~Providers shall make contributions to the TDAP in proportion to each Provider's share of the total intra-state gross receipts of all Providers for the most recent calendar year.~~
- (2)(1) Contributions collected by the state emergency communications board from the telecommunication providers for the TDAP will fund the purchase of assistive communication devices for Tennesseans with disabilities, and other equipment that may be necessary to implement the Act, and in addition, cover the necessary administrative costs (including outreach activities) of the Commission to administer the Program.
- (3)(2) The Commission shall ~~may~~ create a reserve fund for the Program that will not exceed one million dollars (\$1,000,000) within any given fiscal year, including the contributions for that fiscal year.
- (4) ~~For the purposes of this Chapter, the intra-state gross receipts of the Providers shall be those reported on Form UD 16 "Statement of Gross Earnings and Computation of Inspection Fee" filed with the Commission on or before April 1 of each year.~~
- (5) ~~On or before May 1 of each year, the Commission shall calculate a contribution factor to apply to the intra-state gross receipts of each Provider to generate total contributions of no more than seven hundred and fifty thousand dollars (\$750,000) per fiscal year from all Providers.~~
- (6) ~~Pursuant to the provisions of the Act, the Providers are prohibited from line itemizing on its end-users telephone bills any prorata contribution of the Provider's contributions to the TDAP.~~
- (7) ~~Contributions by Providers to the TDAP are not recoverable from the Commission's Universal Service Fund.~~

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Amendment filed February 24, 2000; effective May 9, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.03 COLLECTION OF CONTRIBUTIONS

- (1) ~~Forms designed by the Commission for the remittance of contributions to the Program shall be mailed to each Provider by May 15 of each year. Each Provider shall submit its contribution to the Commission by June 15 of each year.~~
- (2) ~~Providers failing to submit contributions, or submitting late, may be subject to penalties under Tenn. Code Ann. §§ 65-4-116 and 65-4-120.~~
- (3) ~~Contributions when collected shall be deposited in the state treasury in the special fund created for the Program.~~

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of

2017: "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.0403 MINIMUM ELIGIBILITY REQUIREMENTS.

- (1) All applicants must be residents of the State of Tennessee.
- (2) A qualified applicant shall have a disability, as verified by a care giver licensed to practice in the state of Tennessee, such that the person cannot use the basic telephone network effectively without the use of an assistive communication device.
- (3) Only one assistive communication device per household will be awarded through the Program unless there are persons in the same household with different adaptive needs. The TDAP Coordinator may then determine the need for more than one assistive communication device.
- (4) Because the demand for assistive communication devices may exceed the supply, the Commission will award the assistive communication devices on a first come basis. Priority, however, will be given to those applicants with the greatest physical and financial and/or social need. Such factors as described below shall be used to evaluate an applicant's physical, financial and social need for the assistive communication devices:
 - (a) The receiving of federal or state public assistance (i.e., Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Housing/Section 8 or Low Income Heating, etc.);
 - (b) Applicants whose total gross family income is less than 125 percent of the Federal Poverty Guidelines;
 - (c) The presence of any serious physical, medical, and/or cognitive condition, as verified by a care giver licensed to practice in Tennessee, that may present a life threatening situation (i.e., heart condition, stroke, severe depression, epilepsy, etc.);
 - (d) A qualified applicant living alone;
 - (e) Applicants who are under the age of 18 years who are able to use assistive communication devices for at least emergency purposes and who are frequently left in charge of the household or alone;
 - (f) A living situation where there is more than one person requiring an assistive communication device;
 - (g) Other unique circumstances deserving of special consideration that do not meet the above factors; and
 - (h) Applicants who meet the federal and/or state qualifications for the Lifeline or Link-up Telephone Assistance Programs.

(Rule 1220-04-10-.0403,

- (5) The Commission may request all necessary documentation needed to confirm information provided by applicants. This documentation may include, but not be limited to, medical statements, copies of the applicant's federal income tax returns, evidence of public assistance eligibility and any other documentation needed to ensure the applicant meets the requirements as specified in the Act and this Chapter.
- (6) Applicants must confirm in their application their ability to utilize an assistive communication device effectively. For those applicants that are not qualified in the use of such equipment, the TDAP Coordinator will provide applicants with information about qualified training.
- (7) The Commission shall furnish application forms to be completed by the applicant or his/her authorized representative.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.0504 PURCHASE AND DISTRIBUTION OF ASSISTIVE DEVICES.

- (1) The Commission will purchase assistive communication devices under a state contract.
- (2) The TDAP Coordinator shall evaluate applications for assistive communication devices and shall award such equipment only to those applicants who meet the requisite requirements listed in this Chapter. Applicants who fail to qualify shall be notified by U.S. Registered Mail of the reasons for denial. Upon such notification, an applicant may request, in writing, directed to the Director of Consumer Services, an informal conference to reconsider the denial. If the proposed solution is not satisfactory to the applicant, the applicant may file a petition for review with the Commission in accordance with Chapter 1220-01-01.
- (3) Assistive communication devices awarded to qualified applicants are available for their exclusive use as long as they meet the Minimum Eligibility Requirements listed in 1220-04-10-.0403.
- (4) The recipient must return the assistive communication devices if any of the following conditions occur:
 - (a) The recipient moves from the state;
 - (b) The recipient loses telephone service permanently;
 - (c) The recipient abuses the assistive communication device;
 - (d) The recipient is found to be using the device for illegal purposes;
 - (e) The recipient no longer requires the device.
- (5) Equipment may be exchanged if a different device becomes necessary because of a change in access needs.

(Rule 1220-04-10-.0504, continued)

- (6) Stolen or damaged equipment may be replaced. The applicant must provide copies of the appropriate documentation, such as fire department and/or police department reports.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.0605 MAINTENANCE AND REPAIR.

- (1) If the assistive communication device is in need of repair, the recipient shall notify the Commission to determine if loaner equipment is available and whether he/she qualifies for such equipment.
 - (a) Recipients will not qualify for loaner equipment if it is determined that the original device was damaged as the result of negligence or abuse.
 - (b) In order to qualify for loaner equipment, recipients must contact the TDAP Coordinator and provide some evidence that they will pay for the repair cost of their assistive communication devices.
- (2) The Commission shall maintain a list of locations where assistive communication devices can be repaired. The Commission shall make the final determination as to where the assistive communication devices are repaired.
- (3) It is the responsibility of the recipient to return the assistive communication devices to the repair center, as designated by the Commission, for repair. The cost of the repair, and/or coordination with the TDAP Coordinator, shall be the responsibility of the recipient. Special consideration will be given for repair cost by the Commission for recipients who have special financial needs as listed in 1220-04-10-.04(4)(a)-(h)-.03(4)(a)-(eh).
- (4) It is the responsibility of the recipient to purchase miscellaneous items, such as paper rolls, for the operation of the assistive communication devices.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.0706 MONTHLY TELEPHONE CHARGES.

- (1) The recipient is responsible for all charges for local and long distance telephone service and any other service charges from the telephone company.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility

(Rule 1220-04-10-.07, continued)

Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-04-10-.0807 CONFIDENTIALITY OF INFORMATION AND NONDISCRIMINATORY STATEMENT.

- (1) All information obtained by the Commission from applicants shall be kept confidential and will not be released to any person or entity without the express approval of the applicant unless such information is necessary for the preparation of reports or audits required under state law.
- (2) Services for the TDAP are provided on a nondiscriminatory basis in compliance with Title VI of the Civil Rights Act of 1964, as amended, Section 602 of the Individuals with Disabilities Education Act of 1997, Title II of the Americans with Disabilities Act of 1990 and Title V of the Vocational Rehabilitation Act of 1973 and its amendments.

Authority: T.C.A. §§ 65-2-102 and 65-21-115. **Administrative History:** Original rule filed November 22, 1999; effective February 5, 2000. Repeal and new rule filed December 5, 2006; effective February 18, 2007. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

Rule 1220-04-10-.06, Maintenance and Repair, renumbered 1220-04-10-.05, is further amended by correcting the corresponding rule cross-reference in paragraph (3) to read as follows:

- (3) It is the responsibility of the recipient to return the assistive communication devices to the repair center, as designated by the Commission, for repair. The cost of the repair, and/or coordination with the TDAP Coordinator, shall be the responsibility of the recipient. Special consideration will be given for repair cost by the Commission for recipients who have special financial needs as listed in 1220-04-10-.03(4)(a)-(h).

Authority: T.C.A. §§ 65-2-102 and 65-21-115.

* 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)
Chair Robin L. Morrison	X				n/a
Vice Chair Kenneth C. Hill	X				n/a
Commissioner Herbert H. Hilliard	X				n/a
Commissioner David F. Jones	X				n/a
Commissioner John A. Hie	X				n/a

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission on August 12, 2019, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/24/19

Rulemaking Hearing(s) Conducted on: (add more dates). 07/15/19

Date: 10/15/19

Signature: Kelly Cashman-Grams

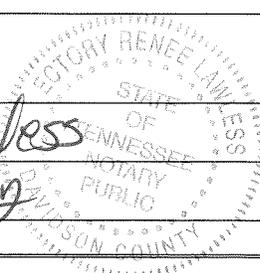
Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

Subscribed and sworn to before me on: 10/15/2019

Notary Public Signature: [Signature]

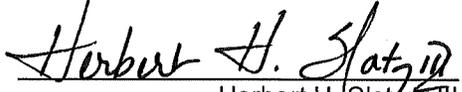
My commission expires on: 3/8/2022



Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-10

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


Herbert H. Slatery III
Attorney General and Reporter

10/24/2019
Date

Department of State Use Only

Filed with the Department of State on: 11/01/19

Effective on: 01/30/20


Tre Hargett
Secretary of State

NOV 13 2019
SECRETARY OF STATE
PARTICIPATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

SUBJECT: Inspection and Copies of Public Records, Fees

STATUTORY AUTHORITY: Tennessee law requires state governmental entities to promulgate rules rather than adopt policies to establish a process for making requests to inspect or receive copies of public records.

EFFECTIVE DATES: January 30, 2020 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These new rules convert from policy to rule and per statute the public records request process of the Tennessee Department of Labor and Workforce Development.

Public Hearing Comments

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

PUBLIC COMMENTS AND RESPONSES

No citizens or groups of any kind appeared at the hearing for these rules.

Regulatory Flexibility Addendum

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules should not affect small employers. 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: This rule does not adversely affect small businesses, making exemption unnecessary.

Impact on Local Governments

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

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 new rules convert from policy to rule and per statute the public records request process of the Tennessee Department of Labor & Workforce Development..

- (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;

Tennessee Law requires state governmental entities to promulgate rules rather than adopt policies to establish a process for making requests to inspect or receive copies of public records,

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All citizens of Tennessee. It is unknown if this statutorily required rulemaking edict will affect any other entities.

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

None

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

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

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

Chance Deason, General Counsel of the Tennessee Department of Labor & Workforce Development

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

Chance Deason, General Counsel of the Tennessee Department of Labor & Workforce Development.

- (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:

None

Tennessee Department of Labor &
Workforce Development
220 French Landing Drive, Floor 4-B
Nashville, TN 37243
(615) 532-6699

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

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Sequence Number: 11-02-19
 Rule ID(s): 9269
 File Date: 11/11/19
 Effective Date: 1/30/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Department of Labor and Workforce Development
Division:
Contact Person: Chance Deason
Address: 220 French Landing Drive 4-B, Nashville, TN
Zip: 37243
Phone: 615-532-6699
Email: Chance.deason@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
0800-08-01	Inspection and Copies of Public Records
Rule Number	Rule Title
0800-08-01-.01	Purpose and Scope
0800-08-01-.02	Definitions
0800-08-01-.03	Requesting Access to Public Records
0800-08-01-.04	Responding to Public Records Request
0800-08-01-.05	Inspection of Records
0800-08-01-.06	Copies of Records
0800-08-01-.07	Fees and Charges and Procedures for Billing and Payment

Rules of
the
Tennessee Department of Labor and Workforce Development

Chapter 0800-08-01
Charges for Copies of Public Records

Inspection and Copies of Public Records

Table of Contents

0800-08-01-.01	Purpose and Scope	0800-08-01-.05	Inspection of Records
0800-08-01-.02	Definitions	0800-08-01-.06	Copies of Records
0800-08-01-.03	Charges for Copies Requesting Access to Public Records	0800-08-01-.07	Fees and Charges and Procedures for Billing and Payment
0800-08-01-.04	Responding to Public Records Requests		

0800-08-01-.01 Purpose and Scope.

- (1) ~~The purpose of this chapter is to implement provisions contained in the amendments to Tennessee Code Annotated § 10-7-503 establishing a schedule which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to the Tennessee Public Records Act, Tennessee Code Annotated §§ 10-7-501 et seq.~~

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following rules regarding public records for the Tennessee Department of Labor & Workforce Development are adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.

- (2) ~~This chapter applies to charges for public records released by all agencies within the Department of Labor and Workforce Development except for records of the Division of Employment Security as described in Tennessee Code Annotated § 50-7-701(d).~~

The TPRA provides that all state, county and municipal records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Tennessee Department of Labor & Workforce Development are presumed to be open for inspection unless otherwise provided by law.

- (3) Designated personnel of the Tennessee Department of Labor & Workforce Development shall promptly provide access and assistance to persons properly requesting to inspect or receive copies of public records. No provisions of these rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Department of Labor & Workforce Development shall be protected as provided by current law. Questions regarding public record requests should be addressed to the Records Custodian for the Tennessee Department of Labor & Workforce Development.

Authority: 2008 Tennessee Public Acts Chapter 1179, T.C.A. § 4-3-1411, T.C.A. § 10-7-506 and T.C.A. § 50-7-701. Administrative History: Public necessity rule filed November 12, 2008; effective through April 26, 2009. Public necessity rule filed November 12, 2008 and effective through April 26, 2009 expired effective April 27, 2009. Original rule filed December 11, 2008; effective April 30, 2009.

Authority: T.C.A. §§ 10-7-501, 10-7-503.

0800-08-01-.02 Definitions. As used in this chapter unless the context clearly otherwise requires:

- (1) ~~"Commissioner" means the Commissioner of Labor and Workforce Development.~~

"TDLWD" means the State of Tennessee, Tennessee Department of Labor & Workforce Development.

- (2) ~~"OORC" means the Office of Open Records Counsel.~~

- (3) ~~"Public Record" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by this agency.~~

"Public Records" or "Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

- (4) ~~"Records Custodian" means the individual(s) responsible for the production and release of public records within each operating section of the Department.~~

"Public Records Request Coordinator" means the person designated by the TDLWD to facilitate timely responses to public records requests.

- (5) ~~"Requestor" means the citizen seeking access to a public record, whether it is for inspection or duplication.~~

- (6) ~~"Tennessee Public Records Act" or "TPRA" means the State law codified in T.C.A. § 10-7-501, et seq., regarding access to public records.~~

~~Authority: 2008 Tennessee Public Acts chapter 1179, T.C.A. § 10-7-506 and T.C.A. § 4-3-1411. Administrative History: Public necessity rule filed November 12, 2008; effective through April 26, 2009. Public necessity rule filed November 12, 2008 and effective through April 26, 2009 expired effective April 27, 2009. Original rule filed December 11, 2008; effective April 30, 2009.~~

Authority: T.C.A. §§ 10-7-501, 10-7-503.

0800-08-01-.03 Charging for Copies of Public Records.
Requesting Access to Public Records

- (1) ~~Charges for copies of public records released by the Department of Labor and Workforce Development under the authority of the Commissioner will be assessed in accordance with the current OORC Schedule of Reasonable Charges for Public Records or in accordance with the provisions contained in Title 20 Code of Federal Regulations, part 603.8(d) for copies of public records released by the Division of Employment Security.~~

Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

(Rule 0800-08-01-.03, continued)

- (2) ~~Any charges incurred in the production of copies not specifically listed or in excess of the amounts specified in the Schedule of Reasonable Charges must be documented by the Records Custodian to justify the extra charge(s).~~

Requests for inspection only may be made orally or in writing. The PRRC should request an email or mailing address from the requestor for providing any written communication required under the TPRA.

- (3) ~~Charges may be reduced or waived at the discretion of the Commissioner. Appropriate documentation must be submitted by the Records Custodian when a reduction or waiver of the charges is requested.~~

Requests for inspection or duplication of public records may be made orally or in writing at 220 French Landing Drive, 4-A, Nashville TN, 37243j, by telephone at (615) 741-2257 or by email to: TDLWD.PublicRecords@tn.gov.

- (4) ~~Delivery and/or shipping costs incurred may be included in the total amount charged for the records release if appropriate.~~

Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternative form of identification may be required as a condition to inspect as a condition to inspect or receive copies of public records.

- (5) ~~Payment must be made in advance in the form of a check or money order made payable to the "Treasurer, State of Tennessee".~~

Authority: 2008 Tennessee Public Acts chapter 1179, T.C.A. § 4-3-1411, T.C.A. § 10-7-506 and T.C.A. § 50-7-701. Administrative History: Public necessity rule filed November 12, 2008; effective through April 26, 2009. Public necessity rule filed November 12, 2008 and effective through April 26, 2009 expired effective April 27, 2009. Original rule filed December 11, 2008; effective April 30, 2009.

Authority: T.C.A. § 10-7-503

0800-08-01-.04 Responding to Public Records Requests

- (1) The "PRRC" and Records Custodian shall review public record requests and make an initial determination of the following:

- (a) If the requestor provided evidence of Tennessee citizenship;
- (a) If the records requested are described with sufficient specificity to identify them; and
- (b) If the Tennessee Department of Labor & Workforce Development is the custodian of the records.

- (2) The "PRRC" and/or Records Custodian shall acknowledge receipt of the request and take any of the following appropriate action(s):

- (a) Advise the requestor of these Rules and the elections made regarding:

- 1. Proof of Tennessee citizenship;

(Rule 0800-08-01-.04, continued)

2. Form(s) required for copies;
3. Fees; and
4. Aggregation of multiple or frequent requests.

(b) If appropriate, deny the request, providing the appropriate ground such as one of the following:

1. The requestor is not, or has not presented evidence of being, a Tennessee citizen;
2. The request lacks specificity;
3. An exemption makes the record not subject to disclosure under the TPRA by law (absent any required signed authorization, subpoena or court order issued by a state or federal court);
4. The Tennessee Department of Labor & Workforce Development is not the custodian of the requested records;
5. The records do not exist.

(c) If appropriate, contact the requestor to see if the request can be narrowed.

(d) Forward the records request to the appropriate records custodian in the TDLWD.

(e) If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity for that entity if known.

- (3) Upon receiving a valid public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the TDLWD's Attorneys or the OORC.
- (4) If not practicable to timely provide requested records then a records custodian shall notify the requestor that additional time will be necessary.
- (5) If a records custodian denies a public record request, he or she shall deny the request in writing as provided herein.
- (6) If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.
- (7) Redaction: If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with

(Rule 0800-08-01-.04, continued)

counsel or other appropriate parties regarding review and redaction of records. The records custodian may also consult with the OORC or with the Office of Attorney General and Reporter.

Authority: T.C.A. §10-7-503.

0800-08-01-.05 Inspection of Records

- (1) There shall be no charge for inspection of open public records.
- (2) The location for inspection of records within the offices of the Tennessee Department of Labor & Workforce Development should be determined by the records custodian.
- (3) A records custodian may require an appointment for inspection and shall be present during the inspection process.

Authority: T.C.A. § 10-7-503.

0800-08-01-.06 Copies of Records

- (1) A records custodian shall respond to a public record request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the PRRC or records custodian, or may be delivered to the mailing address specified by the requestor.
- (3) If a Requestor desires to use personal equipment to make copies, or images, of records that need redaction by TDLWD staff, applicable fees and charges will may be collected by TDLWD prior to the copies or images being made by Requestor.

Authority: T.C.A. § 10-7-503.

0800-08-01-.07 Fees and Charges and Procedures for Billing and Payment

- (1) Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- (2) Fees and charges for copies are as follows:
 - (a) Fees and charges for copies will be in accordance with the *OORC Schedule of Reasonable Charges*:
 1. \$0.15 per page for 8 x 11- and 8 ½ x 14 black and white copies.
 2. \$0.50 per page for 8 x 11- and 8 ½ x 14 color copies.
 3. Labor at the hourly wage of the employee(s) reasonably necessary to produce the requested information when time exceeds 1 hour.

(Rule 0800-08-01-.07, continued)

4. If an outside vendor is used, the actual costs assessed by the vendor.
 5. For storage devices, such as flash drives, and other office items, the cost incurred by the TDLWD.
- (b) If the fees and charges noted herein shall conflict with the OORC Schedule of Reasonable Charges, the OORC Schedule of Reasonable Charges shall control.
- (c) Fees may be waived if waiver is in the best interest of the TDLWD and for the public good.
- (3) Payments of fees for records shall be made by check or money order payable to the State of Tennessee, Tennessee Department of Labor & Workforce Development. Payment in cash will not be accepted. Payment is due upon production of the requested material. Requestors will not be entitled to receive additional records until all payments for records provided within the previous sixty (60) days have been received.
- (4) Payment in advance may be required when costs are estimated to exceed \$50.00 or an outstanding balance exceeds \$100.00.
- (5) If the copies of the requested records are delivered by mail, the costs of standard delivery, including postage, may be included in the copy charge. Any charges for non-standard delivery shall be borne by the requesting party.
- (6) Unless otherwise agreed, TDLWD will not aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).

Authority: T.C.A. § 10-7-503 & T.C.A. § 10-7-506(a).

* 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 Tennessee Department of Labor and Workforce Development on 10/01/2018, 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: March 8, 2019

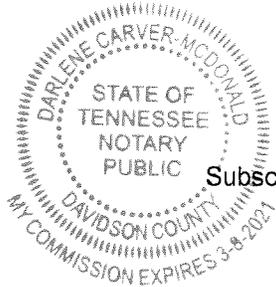
Rulemaking Hearing(s) Conducted on: (add more dates). April 30, 2019

Date: October 2, 2019

Signature: [Handwritten Signature]

Name of Officer: Chance Deason

Title of Officer: General Counsel



Subscribed and sworn to before me on: October 2, 2019

Notary Public Signature: [Handwritten Signature]

My commission expires on: March 8, 2021

Agency/Board/Commission: Tennessee Department of Labor & Workforce Development

Rule Chapter Number(s): 0800-08-01

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

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

10/16/2019
Date

Department of State Use Only

Filed with the Department of State on: 11/1/19

Effective on: 1/30/20

[Handwritten Signature]

Tre Hargett
Secretary of State

SECRETARY OF STATE
NOV 15 11:11 AM '19

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Forestry

SUBJECT: Use of Lookout Towers for Communications Systems

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

EFFECTIVE DATES: February 2, 2020 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rulemaking hearing rule amendments are for the purpose of allowing the Division of Forestry to lease fire/radio tower sites on Division of Forestry lands compatible for wireless communications and broadband internet use to corporations or private individuals that could help expand the wireless communication coverage in rural areas; increase fire reporting capacity; and in fire suppression; help increase internet availability; and, facilitate computer aided dispatch and information collection.

The rule amends the Division of Forestry rule which prohibits use of Division communication site by private individuals, companies, or amateur radio organizations; and allows the Division to evaluate and authorize use by any entity on the basis of whether the entity will reasonably be able to provide benefits or assistance to the Division in the event of an emergency response or wildfire prevention and suppression.

Authorized use is subject to deed restrictions; Division needs; and, users are responsible for removal of equipment within 45 days of use agreement termination.

Public Hearing Comments

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

A public rulemaking hearing was held at Ellington Agricultural Center at 10:04 am CDT, May 22, 2019, with Theresa Denton as the hearing officer. There were no public comments.

Regulatory Flexibility Addendum

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

This rule will not have an adverse impact on small businesses. Implementation of the rule may encourage cellular service providers to locate cell towers in rural areas of Tennessee; thus improving cellular coverage and connectivity for individuals and businesses.

Impact on Local Governments

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

This rule will not have any adverse impact on local governments. Implementation of the rule should help extend voice, data, and emergency communications for state and local firefighters, law enforcement, and emergency management entities operating in rural areas.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments are for the purpose of allowing the Division of Forestry to lease fire/radio tower sites on Division of Forestry lands compatible for wireless communications and broadband internet use to corporations or private individuals that could help expand the wireless communication coverage in rural areas; increase fire reporting capacity; and in fire suppression; help increase internet availability; and, facilitate computer aided dispatch and information collection.
The rule amends the Division of Forestry rule which prohibits use of Division communication site by private individuals, companies, or amateur radio organizations; and allows the Division to evaluate and authorize use by any entity on the basis of whether the entity will reasonably be able to provide benefits or assistance to the Division in the event of an emergency response or wildfire prevention and suppression. Authorized use is subject to deed restrictions; Division needs; and, users are responsible for removal of equipment within 45 days of use agreement termination.

- (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;

No federal state or federal law mandates promulgation.

- (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;

Individuals, businesses, and local governments in rural areas will benefit from the increased cellular connectivity. These rule amendments are being promulgated following requests for greater rural coverage by businesses and local government. No persons or entities have contacted the department in opposition.

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

There are no opinions that relate to this rule.

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

There is no fiscal impact.

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

David Todd, Assistant State Forester

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

David Waddell, Director of Law and Policy

- (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

David Waddell, Director of Law and Policy
Department of Agriculture
Ellington Agricultural Center
442 Hogan Road, Nashville TN 37220
615-837-5331
david.waddell@tn.gov

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

**Department of State
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Sequence Number: 11-03-19
Rule ID(s): 9270
File Date: 11/4/19
Effective Date: 2/2/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Forestry
Contact Person:	David Waddell
Address:	Post Office Box 40627, Nashville, TN
Zip:	37204
Phone:	(615) 837-05331
Email:	david.waddell@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
0080-07-02	Use of Lookout Towers For Communication Systems
Rule Number	Rule Title
0080-07-02-.03	Criteria for Evaluating Requests
0080-07-02-.04	Use of Division of Forestry Sites

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF FORESTRY**

**CHAPTER 0080-7-2
USE OF LOOKOUT TOWERS FOR COMMUNICATION SYSTEMS**

TABLE OF CONTENTS

0080-7-2-.01	Definitions	0080-7-2-.05	Installation Categories
0080-7-2-.02	Purpose	0080-7-2-.06	User Categories
0080-7-2-.03	Criteria for Evaluating Requests	0080-7-2-.07	Fees
0080-7-2-.04	Restrictions on the Use of Division of Forestry Sites		

0080-7-2-.01 DEFINITIONS.

Division - Refers to the Department of Agriculture, Division of Forestry.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). *Administrative History:* Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.01 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.01 filed December 6, 2000; effective April 30, 2001.

0080-7-2-.02 PURPOSE.

The purpose of these rules is to create criteria to govern the use of lookout tower sites and other Department of Agriculture, Division of Forestry land for communication systems and to establish a system of fees for this use.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). *Administrative History:* Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.02 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.02 filed December 6, 2000; effective April 30, 2001.

0080-7-2-.03 CRITERIA FOR EVALUATING REQUESTS.

The Department of Agriculture, Division of Forestry will evaluate all requests for antenna space based upon the following criteria:

- (1) Security - An analysis of the measures necessary to protect the antennas and systems from theft, vandalism, etc. and of the increase in danger to systems already on a site.
- (2) Number of Existing Systems - An increase in the number of systems at a site causes an increase in security costs, interference possibilities, administrative cost, and a lessening of the aesthetic appearance of a site.
- (3) Interference - A review of the possible interference created by the installation of the requested antennas with other communications systems in the requested area. The Division may require the requesting agency party to run radio tests prior to installation to determine frequency compatibility.
- (4) Environmental Impact - A review of the extent the requested antenna installation will adversely affect the natural surroundings and aesthetics in the requested area.

- (5) Impact on the Division of Forestry - A review of the extent the requested antenna installation will interfere with or enhance indirectly or directly benefit Division of Forestry activities. No installation should require maintenance or development of improvements at the expense of the Division, in excess of the needs of the Division.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). **Administrative History:** Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.03 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.03 filed December 6, 2000; effective April 30, 2001.

~~0080-7-2-.04 RESTRICTIONS ON THE USE OF DIVISION OF FORESTRY SITES.~~

- (1) ~~The Division will not authorize use of sites by private individuals, private companies, or amateur radio organizations. In addition, authorization will not be extended to government agencies or rural fire departments who, in the opinion of the Division, do not provide assistance to the Division in fire prevention and suppression.~~
- (2) ~~All users not authorized by a license or agreement must remove their equipment from the Division of Forestry sites.~~
- (3) ~~The Division may retain all structures or a building remaining on its lands 45 days after a site has been abandoned by the user or 45 days after the termination of the user's agreement. Unless retained by the Division, the structures or buildings will be removed at the expense of the owner.~~
- (4) ~~All users presently authorized by a license or agreement, but who fail to qualify under the rules, will be permitted to continue use of the site for the life of their present improvements unless cancelled under the terms of the agreement. No additions, improvements, or expansions are permitted without authorization of the Division.~~
- (5) ~~The Division cannot authorize use on sites if the use would conflict with existing deed restrictions.~~
- (6) ~~The Division will not authorize additional installations at Division headquarter sites or 24 hour stations with one (1) acre or less.~~
- (7) ~~The Division will not allow permanent installation of radio equipment by other organizations in any Division of Forestry structures not built specifically to house communication equipment.~~
- (8) ~~The user of sites cannot assign the user's rights to another without prior written approval of the Division of Forestry.~~
- (9) ~~The department will not authorize use of a site until all applicable provisions of law relating to contracts, property management, and leasing, including, but not limited to, T.C.A. §12-2-112 and such regulations as may be promulgated by appropriate state officials have been complied with.~~

0080-7-2-.04 Use of Division of Forestry Sites.

The Division, upon request, may authorize the use of lookout tower sites and other Division land for communication systems upon the following conditions:

- (1) Requests may be made by any entity, including an individual, corporation, limited liability company, partnership, sole proprietorship, amateur radio organization, or government agency.
- (2) The Division will evaluate requests on the basis of whether the use proposed by the entity will directly or indirectly benefit or assist the Division in the event of an emergency response or wildfire prevention and suppression.

- (3) Authorized use is subject to applicable deed restrictions.
- (4) No additional uses will be authorized at Division headquarter sites or 24 hour stations of one (1) acre or less.
- (5) Permanent installation of radio equipment will only be authorized on Division structures built specifically to house communication equipment.
- (6) The Division may dispose of any equipment owned by or place at site by an authorized user remaining at the site 45 days following the termination or expiration of a use agreement.
- (7) In the event an authorized user fails to remove structures on Division land within 45 days of termination or expiration of use agreement, the Division may remove the structure with costs of removal to be borne by the user.
- (8) An authorized user may only assign use rights to another entity upon written approval of the Division.
- (9) Authorized users shall comply with all applicable federal, state, and local laws and regulations.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). **Administrative History:** Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.04 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.04 filed December 6, 2000; effective April 30, 2001.

0080-7-2-.05 INSTALLATION CATEGORIES.

- (1) Class A installation includes attaching antennas to lookout towers, or other existing towers with various radio equipment attached to cross arms, platforms, or other parts of existing towers.

(Rule 0080-7-2-.05, continued)

- (2) Class B installation includes attaching antennas to lookout tower or other existing tower with separate building for radio equipment.
- (3) Class C installation includes installing a separate pole or steel tower 100 feet or less, with or without guy wires, with building to house radio equipment.
- (4) Class D installation includes installing a separate pole or steel tower over 100 feet, with or without guy wires, with a building to house radio equipment.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). **Administrative History:** Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.05 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.05 filed December 6, 2000; effective April 30, 2001.

0080-7-2-.06 USER CATEGORIES.

- (1) Federal, local, county governments, or other state agencies.
- (2) Semi-governmental Agencies.
- (3) Private Groups other than Radio or Television.
- (4) Radio or Television Stations.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). **Administrative History:** Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.06 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.06 filed December 6, 2000; effective April 30, 2001.

0080-7-2-.07 FEES.

- (1) The user of a Division of Forestry site for the installation of a communication system must pay an annual fee in advance.
- (2) Fees will be based on the category of user and category of installation.
- (3) If more than one user uses the same improvements, the owner must pay the full fee and the additional users may pay a Class A fee to the Division of Forestry.
- (4) The fees will be charged in accordance with the standardized rate structure which may be obtained from the Department of Agriculture, Division of Forestry.
- (5) Use of a site without charge may be authorized for government agencies and rural fire departments when in the opinion of the Division that use provides a direct benefit to wildland fire prevention and suppression.

Authority: T.C.A. §§4-3-201 et seq., 4-3-504, 11-1-101 et seq., 11-4-101 et seq., 11-4-102, 11-4-301(d)(18), 11-4-405, and Executive Order No. 41 (February 4, 1991). **Administrative History:** Original rule filed August 25, 1989; effective October 9, 1989. Rule 0080-7-2-.07 has been assigned a new control number, removed, and renumbered from the amended rule 0400-8-1-.07 filed December 6, 2000; effective April 30, 2001.

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

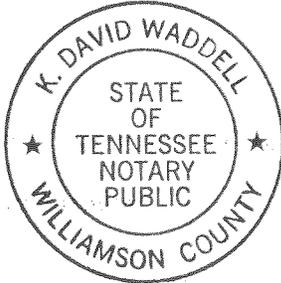
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the commissioner on 05/22/19, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/15/19

Rulemaking Hearing(s) Conducted on: (add more dates). 05/22/19



Date: 9/27/19

Signature: [Handwritten Signature]

Name of Officer: Charlie Hatcher, DVM

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9/27/19

My Commission Expires October 11, 2021

Notary Public Signature: [Handwritten Signature]

My commission expires on: _____

Agency/Board/Commission: Department of Agriculture

Rule Chapter Number(s): 0800-07-02

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

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

10/30/2019
Date

Department of State Use Only

2019 NOV -6 AM 10:07
SECRETARY OF STATE
PDA 10/30/19

Filed with the Department of State on: 11/4/19

Effective on: 2/2/20

[Handwritten Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Distilled Spirits – License Application and Fees/Production Standards/Violations

STATUTORY AUTHORITY: The Food, Drug, and Cosmetic Act §53-1-101 et seq. mandates that all food manufacturers in the state be inspected and follow basic food manufacturing practices to protect the public from food borne disease outbreaks.

EFFECTIVE DATES: February 12, 2020 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule effectively repeals approximately eleven pages of manufactured food regulations currently applicable to producers of distilled spirits.

The department has determined that production of distilled spirits poses a lower risk for adulterated product, and therefore, a portion of general regulations for manufactured food are unduly burdensome to the distilled spirits industry.

Accordingly, the rule creates separate licensing and inspection requirements for producers of distilled spirits.

Public Hearing Comments

No public comments were made at the hearing.

Regulatory Flexibility Addendum

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

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

All manufacturers of distilled spirits are affected by this rule.

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

50 distilleries are doing business in this state.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed rule change is not expected to increase administrative costs of affected firms.

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

Eleven pages of inspection criteria are repealed by this rule that formerly applied to distilleries. Their inspection process and expectations are significantly reduced.

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

No less burdensome methods for inspecting distilleries are available than those adopted by these rules.

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

The federal counterpart in the Food, Drug, and Cosmetic Act applies to the entire distilled spirit manufacturing process. Only the inspection of the manufacturing process following distillation is provided in this rule.

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

Exception of small businesses from this rule may expose the state to greater risks associated food borne illnesses from distilleries.

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)

No impact on local government is created by this rule.

Additional Information Required by Joint Government Operations Committee

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

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

This rule effectively repeals approximately 11 pages of manufactured food regulations currently applicable to producers of distilled spirits. The department has determined that production of distilled spirits poses a lower risk for adulterated product, and therefore, a portion of general regulations for manufactured food are unduly burdensome to the distilled spirits industry. Accordingly, the rule creates separate licensing and inspection requirements for producers of distilled spirits.

- (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;

The Food, Drug, and Cosmetic Act §53-1-101 et seq. mandates all food manufacturers in the state be inspected and follow basic good manufacturing practices to protect the public from food borne disease outbreaks.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All manufacturers of distilled spirits are affected by this rule and urge its 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;

No relevant rulings or opinions apply to this rule.

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

Implementation of this rule will have minimal fiscal impact.

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

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

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

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

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

442 Hogan Road, Nashville, TN 37220; 615 837-5331; david.waddell@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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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 11-09-19
Rule ID(s): 9271
File Date: 11/14/19
Effective Date: 2/2/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Consumer and Industry Services
Contact Person:	David Waddell
Address:	442 Hogan Road Nashville, TN
Zip:	37220
Phone:	615 837 5331
Email:	David.Waddell@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
0080-04-03	Distilled Spirits
Rule Number	Rule Title
0080-04-03-.01	Scope
0080-04-03-.02	Definitions
0080-04-03-.03	License Application and Fees
0080-04-03-.04	Production Standards
0080-04-03-.05	Sampling and Inspections
0080-04-03-.06	Violations

New

Chapter 0080-04-03
Distilled Spirits

0080-04-03-.01 Scope.

- (1) This chapter applies to any person who produces distilled spirits in commerce.

- (2) Persons licensed under this chapter shall be responsible for operations under their license until it expires or until the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license issued under this chapter.
- (3) Licenses issued under this chapter are not transferable from person to person or location to location.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Food, Drug and Cosmetic Act, T.C.A. §53-1-101, et seq.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) "Act" means the Tennessee Food, Drug and Cosmetic Act, compiled at T.C.A. §53-1-101, et seq.;
 - (b) "Aging" means the holding of distilled spirits undisturbed and within a closed container, immediately following distillation typically to acquire some desirable quality to the spirits;
 - (c) "Commerce" or words of similar import mean involving payment for an item or payment for services incident to production of the item;
 - (d) "Distillation" means the separation of a component substance from a liquid mixture by successive evaporation and condensation;
 - (e) "Distilled spirits" means a beverage with an alcohol content of at least eight percent by weight;
 - (f) "Food" means those articles defined under the Act and includes distilled spirits;
 - (g) "Food contact surface" means the surface of equipment or utensils that typically touch food or that may convey a substance onto food or another food contact surface; and,
 - (h) "Post-maturation" means related to any production process (e.g. blending, filtration, bottling, etc.) that follows removal of distilled spirits from distillation or aging, whichever occurs later.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.03 License Application and Fees.

- (1) A distilled spirits license is required for each location where distilled spirits are produced in commerce.
- (2) Application for a license shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name of the applicant;
 - (b) Date of birth of any applicant who is an individual or a partner in a general partnership;
 - (c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:
 1. Applicant's registration in its state of incorporation; or,
 2. Applicant's business license issued by a local governmental authority;

- (d) Contact information for applicant to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of the location to be licensed for production of distilled spirits in commerce; and,
 - (f) Other information as required by the department.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
 - (4) The fee for a distilled spirits license is a Tier 2 annual fee under T.C.A. §43-1-703(f) for production facilities up to 10,000 square feet, and a Tier 3 annual fee under T.C.A. §43-1-703(f) for production facilities larger than 10,000 square feet.
 - (5) License applicants shall submit an application and license fee to the department on or before July 1 of each year. Licenses expire on June 30 following their issuance. If an applicant for renewal fails to submit payment of the license fee on or before the following July 16, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the license.
 - (6) It is the intent of the department that licensees not be unduly required to pay multiple license fees under departmental rules regarding food production. In order to minimize payment of multiple license fees, the department may determine in its discretion the primary business of a licensee (e.g. commercial food manufacturer, retail food store, distilled spirits producer, etc.) and waive those license fees associated with other food licenses issued by the department for ancillary operations of the business. Waiver of license fees for ancillary operations shall not exempt licensees from regulatory requirements otherwise applicable to those ancillary operations.
 - (7) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.04 Production Standards.

- (1) Personnel. The following requirements apply to any person working in direct contact with food, food contact surfaces, or food packaging during a post maturation process.
 - (a) Personnel shall not exhibit obvious symptoms of disease, e.g. open lesions, boils, sores, or infected wounds, etc.
 - (b) Personnel shall exhibit adequate hygienic practices and personal cleanliness reasonably necessary to prevent food contamination.
 - (c) Personnel shall ensure that gloves worn are impermeable and maintained in a clean and sanitary condition.
 - (d) Personnel shall not store personal belongings or consume food or tobacco in areas where food is exposed or where equipment and utensils are washed.
- (2) Plants and grounds. The following requirements apply to all production facility areas in the immediate vicinity of food, food contact surfaces, or food packaging used in a post maturation process.
 - (a) Plants and grounds shall be free of live animal activity, including domestic animals.
 - (b) Plants and grounds shall be free of decomposed pests and equipment, waste, and vegetation that may reasonably attract pests, e.g. birds, rodents, insects, etc. The use of pesticides is permitted only under precautions that adequately protect against contamination of food, food contact surfaces, and food packaging.

- (c) Plants and grounds shall be constructed of materials that can be adequately cleaned and maintained in good repair reasonably necessary to prevent food contamination.
 - (d) Plants and grounds shall include adequate screening for protection against pests.
 - (e) Plants and grounds shall not allow drip or condensate to contaminate food, food contact surfaces, or food packaging, e.g. from fixtures, ducts, or pipes.
- (3) Facility controls. The following requirements apply to all production facilities licensed for the production of distilled spirits.
- (a) Facilities shall be supplied with sufficient water from a safe and adequate source reasonably necessary to prevent food contamination. Facilities shall provide water of suitable temperature and adequate pressure in all areas where necessary for employee sanitary practices, food processing, and cleaning of food contact surfaces.
 - (b) Facilities shall maintain plumbing of adequate size, design, and construction necessary to convey sewage and liquid waste from the production facility and to prevent backflow or cross connection between potable and non-potable water systems.
 - (c) Facilities shall include hand washing stations supplied with water of a suitable temperature and properly located and stocked (e.g. soap, sanitizers, drying devices, etc.) necessary to facilitate employee handwashing reasonably necessary to prevent food contamination.
- (4) Operations. The following requirements apply to all production facility areas in the immediate vicinity of food, food contact surfaces, or food packaging used in a post maturation process.
- (a) Licensees shall maintain all physical facilities (e.g. buildings, fixtures, storage areas, etc.) in a sanitary condition and maintained in good repair reasonably necessary to prevent food contamination.
 - (b) Licensees shall use only cleaning compounds and sanitizing agents that are free from undesirable microorganisms and that are safe and adequate to clean or sanitize under the conditions of use.
 - (c) Licensees shall clean all food contact surfaces in a manner and frequency reasonably necessary to prevent food contamination.
 - (d) Licensees shall use only equipment and utensils that are designed and constructed of materials that can be adequately cleaned and maintained in good repair reasonably necessary to prevent food contamination.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.05 Sampling and Inspections.

- (1) Scope. The department may enter during normal business hours any location, licensed by the department, for purposes of examining and copying of records and inspecting any food, food contact surface, or food packaging used in a post-maturation process as necessary to determine compliance with the Act and this chapter.
- (2) Sampling. The department may conduct sampling of any distilled spirit or other material used in post-maturation process at a location licensed by the department. A sample collected according to uniform protocols approved by the commissioner shall be deemed representative of the location, production run, or lesser lot from which the sample was obtained.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.06 Violations.

- (1) Requirements of licensees.
 - (a) In addition to other requirements of the Act and this chapter, licensees shall:
 1. Conduct post-maturation processes only within a permanent structure or building at a location licensed by the department; and,
 2. Maintain post-maturation production areas and records so as to be readily accessible for inspection.
 - (b) In addition to other requirements of the Act and this chapter, licensees shall not:
 1. Produce adulterated food in commerce or allow conditions or practices that may reasonably contaminate food in commerce;
 2. Provide false or misleading information or records to the department; or,
 3. Interfere with an authorized representative of the department in the performance of his duties.
- (2) A person is responsible for violation of the Act or this chapter when committed by either the person or his agent.
- (3) Each violation of the Act or this chapter is grounds for denial or revocation of any license issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator under T.C.A. § 53-1-203.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

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

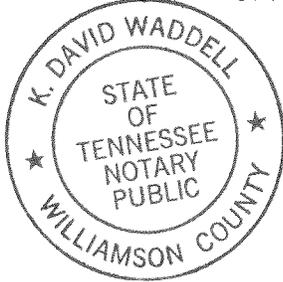
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on 08/07/2019, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/10/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 07/31/2019



Date: 10/24/19

Signature: [Handwritten Signature]

Name of Officer: Charlie Hatcher, D.V.M.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 10/24/19

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10/11/21

Agency/Board/Commission: Tennessee Department of Agriculture

Rule Chapter Number(s): 0080-04-03

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.

[Handwritten Signature]
 Herbert H. Slattery III
 Attorney General and Reporter
11/4/2019 Date

Department of State Use Only

Filed with the Department of State on: 11/14/19

Effective on: 2/12/20

[Handwritten Signature]
 Tre Hargett
 Secretary of State

SECRETARY OF STATE
 REGISTRATIONS
 NOV 14 AM 9:50

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Produce Safety

STATUTORY AUTHORITY: This rule adopts the substantive portions of 21 C.F.R. 112. The Food and Drug Administration will not provide funding or allow state inspections unless the state rule is essentially the same as the federal rule.

EFFECTIVE DATES: February 12, 2020 through June 30, 2020

FISCAL IMPACT: The produce inspection program is 100% federally funded.

STAFF RULE ABSTRACT: The federal Produce Safety Rule was adopted by the Food and Drug Administration under the Food Safety and Modernization Act and is applicable in all states.

This rulemaking hearing rule adopts the Produce Safety Rule in its entirety by reference so that the department of agriculture will enforce the rule in the state instead of the FDA.

Public Hearing Comments

The department of Agriculture held a public rulemaking hearing on September 12, 2019. David Waddell served as the hearing officer for the rulemaking hearing on 0080-04-15 Produce. No questions or comments from the public were presented at the hearing.

Regulatory Flexibility Addendum

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

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

Produce farms are subject to the rules with the exception of small growers who grow less than \$25,000 worth of produce in a year. *

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

Approximately 1,500 produce farms exist, but many will be exempt under this rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Some additional reporting requirements will be imposed by this rule. However, they are not burdensome and reflect normal records kept by a farming operation.

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

The rule reflects a change in the philosophy at the federal level by shifting from reacting to disease outbreaks to being proactive and prevent food borne disease outbreaks from happening in the first place. This rule bolsters a safer supply of produce from larger scale producers with minimal impact on small growers.

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

With the exemptions provided, no less burdensome * program could be implemented without jeopardizing the intent of the rule.

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

All the substantive portions of the federal rule are adopted by reference by this rule.

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

Small businesses are exempt under this rule. Greater levels of exemption would undermine the effectiveness of this food safety rule.

*

Impact on Local Governments

*

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

These rules have no effect on local government.

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*

Additional Information Required by Joint Government Operations Committee

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

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

The federal Produce Safety Rule was adopted by FDA under the Food Safety and Modernization Act and is applicable in all states. This rule adopts the Produce Safety Rule in its entirety by reference so that the department of agriculture will enforce the rule in the state instead of FDA.

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

This rule adopts the substantive portions of 21 C.F.R. 112. FDA will not provide funding or allow state inspections unless the state rule is essentially the same as the federal rule.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All but the smallest produce farms are the most directly affected by the rule. The produce industry prefers state inspection rather than federal and urges adoption of this rule.

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

There are no relevant opinions or rulings to this rule.

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

The produce inspection program is 100% federally funded.

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

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

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

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

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

442 Hogan Road, Nashville, TN 37220
615-837-5331
david.waddell@tn.gov

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

**Department of State
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For Department of State Use Only

Sequence Number: 11-10-19
Rule ID(s): 9272
File Date: 11/14/19
Effective Date: 2/12/20

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Agriculture
Division:	Consumer and Industry Services
Contact Person:	David Waddell
Address:	P.O. Box 40627, Nashville, TN
Zip:	37204
Phone:	615.837.5331
Email:	david.Waddell@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
0080-04-15	Produce
Rule Number	Rule Title
0080-04-15-.01	Produce Safety

New

Chapter 0080-04-15
Produce

0080-04-15-.01 Produce Safety.

The department adopts by reference, as if fully stated herein, the substantive provisions of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, compiled at 21 C.F.R. part 112, as may be amended from time to time.

Authority: T.C.A. §§ 4-3-203 and 53-1-302.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
			*		

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 09/12/19, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/22/19

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



Date: 10/8/19

Signature: [Handwritten Signature]

Name of Officer: Charlie Hatcher, D.V.M.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 10/8/19

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10/11/21

Agency/Board/Commission: Agriculture

Rule Chapter Number(s): 0080-04-15

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

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

11/4/2019
Date

Department of State Use Only

2019 NOV 14 AM 9:49
 SECRETARY OF STATE
 PHOTOCOPIED

Filed with the Department of State on: 11/14/19

Effective on: 12/12/20

[Handwritten Signature]

Tre Hargett
Secretary of State