G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Trustees of the College Savings Trust Fund Program
SUBJECT:	Educational Investment Plan
STATUTORY AUTHORITY:	There are no known federal laws or regulations mandating promulgation of these rule amendments. Tennessee Code Annotated, Section 49-7-805(16) authorizes the Board to adopt rules to implement the purpose of the Tennessee College Savings Trust Act. Recent federal law changes that were made in the Tax Cuts and Jobs Act of 2017 expanded the rollover provisions under Section 529 of the Internal Revenue Code to include rollovers to 529 ABLE accounts.
EFFECTIVE DATES:	December 24, 2018, through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The Tennessee College Savings Trust Act was enacted by the General Assembly for the purpose of offering a 529 college savings plan. A 529 plan is a tax-advantaged savings plan designed to encourage saving for future educational costs. 529 plans, legally known as "qualified tuition plans," are sponsored by states or educational institutions and are authorized by Section 529 of the Internal Revenue Code. Under a 529 plan, parents, grandparents and other interested parties may save for the future educational costs of a child by contributing to a savings account. The Act authorizes the Board of Trustees of the College Savings Trust Fund Program to promulgate reasonable substantive and procedural rules to carry out the purpose and intent of the Act and to ensure that the Program complies with Section 529 of the Internal Revenue Code and other applicable provisions of federal and state law. Pursuant to that ruling authority, the Board promulgated rules and regulations to govern the operation of the Program. The proposed amendments to Rule 1700-05-04-.02 relate to the operations of the Board. They clarify that each member of the Board may designate a member of his/her

staff to attend meetings of the Board and to exercise the member's right to vote in the member's absence. They further clarify that the chair's designee serves as Board chair during the chair's absence at a Board meeting.

The proposed amendment to Rule 1700-05-04-.03 relates to enrollment in the 529 plan. First, it would remove the requirement that the initial contribution must be $25 for each investment option chosen by the account owner and replace the amount with a flat initial contribution of $25. Second, the amendment would allow contributions to be made in the form of cashiers' checks. Finally, the amendment would clarify that contributions may be "made through automatic bank account deductions.

The proposed amendment to Rule 1700-05-04-.04 deletes the requirement that the annual limit on contributions be based on actuarial estimates. The Board has never had an actuary perform the estimates and believes it unnecessary since the limit is based on a factual determination of what the qualified higher education expenses would be for 7 years of undergraduate enrollment at the highest cost eligible educational institution.

The proposed amendments to Rule 1700-05-04-.05 relate to the maintenance of a 529 plan account. The first amendment would delete the requirement that after an account owner reallocates funds among investment options that $25 must remain in each final investment option chosen. The second amendment deletes the requirement that a dollar amount be specified for a reallocation of funds. This revision would allow a percentage to be specified instead. The next amendment would delete the requirement that the account owner certify in writing that no payment other than the fees required in the rules have been paid to the Board or to anyone else in order to change a beneficiary or transfer funds. The reason for the deletion is that the certification is not required by state or federal law, and would require the Program's third party administrator to make system changes. The final amendment to the rule would allow an account owner to reallocate funds among investment options twice a year as opposed to once a year. This proposed change would make the rule consistent with a recent federal law change.

The proposed amendments to Rule 1700-05-04-.06 relate to distributions from 529 savings accounts. The first amendment deletes the language that the account owner may begin using funds for the payment of qualified higher

education expenses of the beneficiary once the beneficiary is enrolled. This language could be construed to require the beneficiary to be enrolled as a condition to using the funds, which is not the case. The next four amendments to the Rule are merely wording changes to make the rules consistent with the language used in other rules of the Program. The final amendment would allow rollovers from a 529 account into a 529 ABLE account. Similar to a 529 college savings plan, 529 ABLE accounts are savings accounts administered by states that allow money to be withdrawn tax-free when the funds are used to pay for qualified disability expenses. Recently, the federal law was revised to allow families who have saved money in 529 savings accounts to roll over their 529 accounts to an ABLE account for the same beneficiary. The reason for the law change is that many families save for a child's college education by opening a 529 account, sometimes before their child is even born, only to learn later that their child has a severe disability. The law change helps these families by allowing them to transfer funds from their 529 accounts without penalty into ABLE accounts to help cover their children's life long disability related expenses.

Regulatory Flexibility Addendum

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

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

These rules do not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

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The proposed amendments to Rule 1700-05-04-.02 relate to the operations of the Board. They clarify that each member of the Board may designate a member of his/her staff to attend meetings of the Board and to exercise the member's right to vote in the member's absence. They further clarify that the chair's designee serves as Board chair during the chair's absence at a Board meeting.

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families by allowing them to transfer funds from their 529 accounts without penalty into ABLE accounts to help cover their children's life long disability related expenses.

(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;

There are no known federal laws or regulations mandating promulgation of these rule amendments. T.C.A. § 49-7-805(16) authorizes the Board to adopt rules to implement the purpose of the Tennessee College Savings Trust Act. Recent federal law changes that were made in the Tax Cuts and Jobs Act of 2017 expanded the rollover provisions under Section 529 to include rollovers to 529 ABLE accounts.

(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 persons most directly affected by these rule amendments are those who currently have 529 college savings accounts with the Board. Since the rule amendments provide more flexibility to those having college savings plan accounts, it is unlikely they would not urge rejection or otherwise be opposed to the amendments.

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

The Board is unaware of any Attorney General opinions or any judicial rulings that directly relate to these proposed rules.

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

The proposed rule amendments will not result in an increase or decrease in state and local government revenues and expenditures.

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

LaKesha Page, Board Administrator
Mary Roberts-Krause, General Counsel

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

LaKesha Page, Board Administrator
Mary Roberts-Krause, General Counsel

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

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

Any additional information requested by the Committee relevant to the proposed rules will be provided promptly upon request.

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Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-20-18
Rule ID(s): 7245
File Date: 9/25/18
Effective Date: 12/24/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Trustees of the College Savings Trust Fund Program
Division:	
Contact Person:	LaKesha Page
Address:	15th Floor, Andrew Jackson Building; 502 Deaderick Street; Nashville, Tennessee
Zip:	37234
Phone:	(615) 532-5888
Email:	Lakesha.page@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1700-05-04	Educational Investment Plan
Rule Number	**Rule Title**
1700-05-04-.02	Board Operations
1700-05-04-.03	Enrollment
1700-05-04-.04	Contributions
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals

REDLINE VERSION

RULES
OF
THE TREASURY DEPARTMENT
BOARD OF TRUSTEES OF THE COLLEGE SAVINGS TRUST FUND PROGRAM
CHAPTER 1700-05-04
EDUCATIONAL INVESTMENT PLAN

TABLE OF CONTENTS

1700-05-04-.01	In General
1700-05-04-.02	Board Operations
1700-05-04-.03	Enrollment
1700-05-04-.04	Contributions
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals
1700-05-04-.07	Reporting and Notice
1700-05-04-.08	Contract Designations May Not be Defeated by Will
1700-05-04-.09	Plan Termination

1700-05-04-.01 IN GENERAL.

(1) Purpose. T.C.A. Title 49, Chapter 7, Part 8 created the Tennessee College Savings Trust Act. The Act creates a trust program, as an agency and instrumentality of the State of Tennessee, under which families and other interested persons may save and invest for the qualified higher education expenses of attending an eligible educational institution. The Program may be comprised of two (2) types of qualified tuition plans as defined in the Code, including one (1) or more educational investment plan or plans, which may consist of several different investment offerings or one (1) or more educational services plan or plans. The purpose of these rules is to establish requirements for participation, and administration of the educational investment plan as required by and consistent with the Act. The requirements for participation and administration of the educational services plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(2) Definitions. For purposes of these rules:

(a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.

(b) "Account" has the same meaning as set forth in T.C.A. § 49-7-802(7).

(c) "Account Owner" has the same meaning as set forth in T.C.A. § 49-7-802(1).

(d) "Account Owner's Appointee" means the person named in the Contract by the Account Owner to exercise the rights of the Account Owner under the Contract if the Account Owner dies or becomes Legally Incompetent. The Account Owner's Appointee may be the Beneficiary. The Account Owner may change the designation at any time in writing to the Board. If the Account Owner dies or becomes Legally Incompetent, the Account Owner's Appointee shall automatically become the Account Owner for purposes of these Rules and the Contract, including, but not limited to constituting the Refund Recipient.

(e) "Beneficiary" means an individual designated by the Account Owner and who meets the requirements of the Code.

(f) "Board" has the same meaning as given in T.C.A. § 49-7-802(3), which is comprised of the members described in T.C.A. § 49-7-804(a).

(g) "Code" has the same meaning as set forth in T.C.A. § 49-7-802(4).

(h) "Contract" means an Educational Investment Plan entered into under T.C.A. § 49-7-808 by the Board and an Account Owner to provide for the payment of Qualified Higher Education Expenses.

(i) "Contributor" has the same meaning as set forth in T.C.A. § 49-7-802(5).

(j) "Educational Investment Plan" has the same meaning as set forth in T.C.A. § 49-7-802(6).

(k) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a Account Owner and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(l) "Eligible Educational Institution" has the same meaning as set forth in T.C.A. § 49-7-802(9).

(m) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.

(n) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.

(o) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.

(p) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.

(q) "Person" shall mean an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, estate, trust or any other legal or commercial entity.

(r) "Program" has the same meaning as set forth in T.C.A. § 49-7-802(11).

(s) "Qualified Higher Education Expenses" shall have the same meaning as set forth in T.C.A. § 49-7-802(13).

(t) "Redemption Value" has the same meaning as set forth in T.C.A. § 49-7-802(14).

(u) "Refund Recipient" has the same meaning as set forth in T.C.A. § 49-7-802(15). The Refund Recipient may only be the Account Owner.

(v) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.

(w) "Withdrawal" means a disbursement of funds from the Account that is directed by the Account Owner to be paid to the Account Owner, an Eligible Educational Institution, or the Beneficiary.

Authority: *T.C.A. §§ 49-7-801, 49-7-802, 49-7-802(3), 49-7-803, 49-7-805, 49-7-805(16), 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.02 BOARD OPERATIONS.

(1) Meetings.

(a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.

(b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.

(c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(d) Each member of the Board may designate a member of his or her staff to attend meetings of the Board and to exercise the member's right to vote in the member's absence. The designations must be made in writing to the Chair of the Board. A member participating in a meeting through a designee shall be deemed present at the meeting for purposes of quorum and voting requirements.

(2) Board Officers.

(a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair's designee shall ~~designate another member of the Board to~~ preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.

(b) Secretary. The Director of the College Savings Trust Fund Program shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the

Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify the Board members and the public of meetings and distribute appropriate materials to the Board members.

(3) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Investment Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: *T.C.A. §§ 49-7-804, 49-7-805, and 49-7-805(16).* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.03 ENROLLMENT.

(1) Requirements. The Account Owner must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Investment Plan. A Contract shall not become binding upon the Board and the Account Owner unless it is complete and until all of the following occur:

(a) Investment Selection. The Account Owner must select at least one investment option. If more than one investment option is chosen, the Account Owner must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that an Account Owner may choose under any one single Contract;

(b) Initial Contribution. Receipt by the Board of an initial contribution of at least twenty-five dollars ($25.00) ~~for each investment option chosen by the Account Owner~~. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, ~~cashiers checks,~~ starter checks and credit card convenience checks), and payments made through payroll deductions, automatic bank account deductions or other similar methods acceptable to the Board;

(c) Board Acceptance. Acceptance of the signed Contract by the Board; and

(d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.

(2) Confirmation. Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Account Owner and will credit the Account of the named Beneficiary with the amount of the initial contribution made.

(3) Rejection. If an Account Owner fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Account Owner all amounts paid thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Account Owner from enrolling in the Program in the future.

(4) Fraud. The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Account Owner, or the Account Owner's Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Account Owner is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.

(5) Inactivity. If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Account Owner or the Account Owner's Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Account Owner, Beneficiary, and the Account Owner's Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.

(6) Fees. The Board may charge fees to the Account Owner and/or collect fees from each Account for administration of the Program or for transactions under the Educational Investment Plan.

(7) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), 49-7-806, 49-7-808, 49-7-809, and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.04 CONTRIBUTIONS.

(1) Who May Make Contributions. Contributions may be made for an existing Account by an Account Owner or a Contributor; however, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.

(2) How Contributions May be Made. Contributions may be made only in cash and not property. For purposes of these rules "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made in accordance with the Code as defined in T.C.A. § 49-7-802(4).

(3) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Investment Plan as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Investment Plan, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined ~~by actuarial estimates~~ to be reasonably necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Eligible Educational Institution.

(4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Eligible Educational Institution, that the Beneficiary will graduate from an Eligible Educational Institution, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Eligible Educational Institution.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), 49-7-806, 49-7-808, 49-7-809, and 49-7-810.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.05 ACCOUNT MAINTENANCE.

(1) Update Account Information. The Account Owner or any person authorized by the Account Owner may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses; legal name; phone numbers; email addresses; and changes to the designation of the Account Owner's Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.

(2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Account Owner shall have the right to change the Beneficiary of the Account at any timeprovided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2). If the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.

(3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Account Owner shall have the right at any time to reallocate funds among investment options under a Contract held for a single Beneficiary ~~provided there is at least twenty-five dollars ($25.00) in each surviving investment option at the conclusion of the reallocation~~.

(4) Transfer of Account Funds. Subject to the conditions set forth in Paragraph (5) below, the Account Owner shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2). If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty-five dollars ($25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Account Owner shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.

(5) Conditions. Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:

(a) The request must be made in writing, signed by the Account Owner and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the request is for the reallocation of funds among investment options, the written request must specify the ~~dollar~~ amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;

(b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6); and

~~(c) The Account Owner certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and~~

(c~~d~~) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).

(6) Eligibility for Use. Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the twenty-one (21) day period prescribed in Rule 1700-05-04-.06(1) below.

(7) Limit on Reallocation of Funds Among Investment Options. The Account Owner may reallocate funds among investment options twice ~~once~~ per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), 49-7-808, and 49-7-809.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendment filed April 11, 2014; effective September 28, 2014. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.06 WITHDRAWALS.

(1) Eligibility. ~~Once a Beneficiary has been accepted for enrollment in an Eligible Educational Institution, the Account Owner may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary.~~ The Account Owner may request a Withdrawal from the Account as long as the contributions that will be withdrawn have been on deposit in the Account for at least twenty-one (21) calendar days. ~~For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the twenty-first (21st) day following receipt of the respective funds by the Board.~~ If the Account Owner desires the Board to send payment directly to the Eligible Educational Institution where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.

(2) Written Request. Any Withdrawal requests must be made in writing by the Account Owner or via other means acceptable to the Board, including electronic means.

(3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of a complete, accurate and legible ~~the~~ request~~required in Subparagraph (2) of this Rule above~~.

(4) Types of Withdrawals.

(a) Withdrawals for Qualified Higher Education Expenses. The Account Owner may direct a Withdrawal from the Account ~~payment~~ to the Account Owner, the Beneficiary, or an Eligible Educational Institution as an advance payment or as reimbursement for Qualified Higher Education Expenses. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.

(b) Withdrawals for Non-Qualified Higher Education Expenses. The Account Owner may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses

~~provided the funds have been on deposit in the Account for at least twenty-one (21) calendar days and provided there is at least one hundred dollars ($100.00) in the Account once the Withdrawal is made~~. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.

(c) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Account Owner may request a Withdrawal of all or a portion of the funds in the Account. The Account Owner must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Account Owner may request a refund in advance of the scholarship payment. The amount of the refund payable to the Account Owner will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.

(d) Contract Termination and Refund. Except as provided in Paragraph (4)(c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Eligible Educational Institution; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Eligible Educational Institution and the Beneficiary does not plan to pursue further education; or (iv) the Beneficiary has completed the bachelor's degree requirements at an Eligible Educational Institution~~; or (v) the Redemption Value of the Account equals one hundred dollars ($100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least twenty-one (21) consecutive days~~. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Account Owner shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (~~v~~iv) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.

(e) Rollovers out of the Program. The Account Owner may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 or Section 529(A) of the Internal Revenue Code and the regulations promulgated thereunder by making a rollover request to the Board in such manner~~on such forms~~ as may be prescribed by the Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2). Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), 49-7-809, 49-7-811, and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed April 11, 2014; effective September 28, 2014. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.07 REPORTING AND NOTICE.

(1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Account Owner periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Account Owner, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Treasurer and made available to the Account Owner prior to the Account Owner opening an Account.

(2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not limited to, notice and reporting by electronic means.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), and 49-7-809.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.08 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.

(1) The right of a Beneficiary or Account Owner to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: *T.C.A. §§ 49-7-802 and 49-7-805(16).* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 29, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

1700-05-04-.09 PLAN TERMINATION.

(1) If the Board determines that the Educational Investment Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Account Owner is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.

(2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Investment Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.

(3) Should the Educational Investment Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Investment Plan within the amount of the remaining funds.

Authority: *T.C.A. §§ 49-7-802, 49-7-805, 49-7-805(16), 49-7-823, and 49-7-824.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012. Amendments filed March 5, 2018; effective June 3, 2018.*

language "Section 529 or Section 529(A) of the Internal Revenue Code and the regulations promulgated thereunder by making a rollover request to the Board in such manner".

Authority: T.C.A. §§ 49-7-802, 49-7-805, 49-7-809, 49-7-811, 49-7-812, and 49-7-805(16).

* 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)
Joe DiPietro	X				
Tre Hargett	X				
Mike Krause	X				
David H. Lillard, Jr.	X				
Larry Martin	X				
Claude Pressnell	X				
Flora Tydings	X				
Alisa White	X				
Justin Wilson	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Trustees of the College Savings Trust Fund Program on July 17, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 23, 2018

Signature: David H. Lillard

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer and Chair of the Board

HEATHER SCZEPCZENSKI
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON
MY COMM. EXP. MARCH 10, 2019

Subscribed and sworn to before me on: July 23, 2018

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

Agency/Board/Commission: Board of Trustees of the College Savings Trust Fund Program

Rule Chapter Number(s): 1700-05-04 Educational Investment Plan

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/25/18

Effective on: 12/24/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Department of Financial Institutions
DIVISION:	Administrative Division
SUBJECT:	Public Records Requests / Fees and Procedures for Billing and Payout
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)
EFFECTIVE DATES:	December 9, 2018 through June 30, 2019
FISCAL IMPACT:	No probable increase or decrease in state and local government revenues or expenditures resulting from this new rule.
STAFF RULE ABSTRACT:	Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state government entities to promulgate rules regarding public records requests by January 1, 2019. Specifically, Public Chapter No. 712 amended T.C.A § 10-7-503(9) to require state governmental entities to promulgate rules that shall include: (A) The process for making requests to inspect public records or receive copies of public records and a copy of any required form; (B) The process for responding to requests, including redaction practices; (C) A statement of any fees charged for copies of public records and the procedures for billing and payment; and (D) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator. On June 30, 2017, the Department established a written public records policy, which these rules will replace. The rules include the provisions required by § 10-7-503(9) and provide in pertinent part as follows: • State that the purpose of the rules is to establish procedures, in accordance with T.C.A. § 10-7- 503(g), to

accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Financial Institutions (Department) while at the same time preserving the confidentiality of confidential records or information as provided in state and federal law.

• Provide that public records requests shall be made to the Public Records Request Coordinator (PRRC) and that the Department's PRRC is the General Counsel.

• State that requests for copies shall be made in writing to the PRRC, and that requests for inspection only may be made orally or in writing • Require proof of Tennessee citizenship in order to inspect or receive copies of public records.

• With respect to responding to public records requests, the rules require that requested public records be made available promptly or that the PRRC respond, within seven (7) business days, that more time is needed to respond; that the production of the records shall be in installments; or that the public records request is being denied, in whole or in part, because of an applicable exemption.

• Allow for redaction of records that contain confidential or privileged information and state that the basis for redaction should be provided.

• For inspection of records only, there is no charge and, a requestor is not allowed to make copies with personal equipment during inspection.

• Provide that inspection of records shall take place at the Department's offices and that an appointment for inspection is required .

• On fees for copies, the requester is to be provided an itemized estimate of fee, to the extent possible, and fees for copies are based on the "'Schedule of Reasonable Charges" issued by the Office of Open Records Council. Payment for copies is required in advance.

• State that, in addition to copy fees, labor charges shall be imposed, if labor exceeds one hour, and that, if records are delivered by mail, the costs of delivery shall be included. Also, permits the Department to assess actual costs for an outside copying vendor if used.

• State that the Department will not aggregate records requests when more than four (4) requests are received within a calendar month.

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 any 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)

This rule will not have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state government entities to promulgate rules regarding public records requests by January 1, 2019. Specifically, Public Chapter No. 712 amended T.C.A § 10-7-503(g) to require state governmental entities to promulgate rules that shall include:

(A) The process for making requests to inspect public records or receive copies of public records and a copy of any required form;
(B) The process for responding to requests, including redaction practices;
(C) A statement of any fees charged for copies of public records and the procedures for billing and payment; and
(D) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

On June 30, 2017, the Department established a written public records policy, which these rules will replace. The rules include the provisions required by § 10-7-503(g) and provide in pertinent part as follows:

- State that the purpose of the rules is to establish procedures, in accordance with T.C.A. § 10-7- 503(g), to accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Financial Institutions (Department) while at the same time preserving the confidentiality of confidential records or information as provided in state and federal law.
- Provide that public records requests shall be made to the Public Records Request Coordinator (PRRC) and that the Department's PRRC is the General Counsel.
- State that requests for copies shall be made in writing to the PRRC, and that requests for inspection only may be made orally or in writing.
- Require proof of Tennessee citizenship in order to inspect or receive copies of public records.
- With respect to responding to public records requests, the rules require that requested public records be made available promptly or that the PRRC respond, within seven (7) business days, that more time is needed to respond; that the production of the records shall be in installments; or that the public records request is being denied, in whole or in part, because of an applicable exemption.
- Allow for redaction of records that contain confidential or privileged information and state that the basis for redaction should be provided.
- For inspection of records only, there is no charge and, a requestor is not allowed to make copies with personal equipment during inspection.
- Provide that inspection of records shall take place at the Department's offices and that an appointment for inspection is required.
- On fees for copies, the requestor is to be provided an itemized estimate of fee, to the extent possible, and fees for copies are based on the "'Schedule of Reasonable Charges" issued by the Office of Open Records Council. Payment for copies is required in advance.
- State that, in addition to copy fees, labor charges shall be imposed, if labor exceeds one hour, and that, if records are delivered by mail, the costs of delivery shall be included. Also, permits the Department to assess actual costs for an outside copying vendor if used.
- State that the Department will not aggregate records requests when more than four (4) requests are received within a calendar month.

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

Public Chapter No. 712 amended the TPRA, specifically T.C.A. § 10-7-503(g), requiring state government

Public Chapter No. 712 amended the TPRA, specifically T.C.A. § 10-7-503(g), requiring state government entities to promulgate rules setting forth processes, procedures and fees for public records requests by January 1, 2019.

T.C.A. § 45-1-107(h) grants the commissioner of the Department the power to enact reasonable substantive and procedural rules to carry out the purpose of any and all chapters within the commissioner's regulatory authority as conferred by law.

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

Although this new rule will affect any person, firm, or corporation who makes a public records request to the Department pursuant to T.C.A. § 10-7-503, the promulgation of this rule will not significantly change how the Department responds to public records requests.

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

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

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

There will be no probable increase or decrease in state and local government revenues and expenditures resulting from this new rule.

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

Troy McPeak, Assistant General Counsel
Marsha Anderson, General Counsel

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

Troy McPeak, Assistant General Counsel
Marsha Anderson, General Counsel

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

Troy McPeak, Assistant General Counsel
Tennessee Tower, 26th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243
615-854-0318
Troy.McPeak@tn.gov

Marsha Anderson, General Counsel
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(l) 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: 09-12-18
Rule ID(s): 7242
File Date: 9/10/18
Effective Date: 12/9/18

Proposed Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
0180-34	Public Records Requests
Rule Number	**Rule Title**
0180-34-.01	Purpose
0180-34-.02	Definitions
0180-34-.03	Requesting Access to Public Records
0180-34-.04	Responding to Public Records Requests
0180-34-.05	Inspection of Records
0180-34-.06	Copies of Records
0180-34-.07	Fees and Procedures for Billing and Payment

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 http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

0180-34-.01 Purpose.

(1) The Tennessee Public Records Act, in T.C.A. § 10-7-503(a)(2), provides that public 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.

(2) The purpose of these rules is to establish procedures to accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Financial Institutions to the extent that such public records are open to inspection by citizens of this state under the Tennessee Public Records Act, while at the same time preserving the confidentiality of confidential records or confidential information as provided in state or federal law.

(3) Pursuant to T.C.A. § 10-7-503(g), these rules provide for:

(a) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;

(b) The process for responding to requests, including redaction practices;

(c) A statement of any fees charged for copies of public records and the procedures for billing and payment; and

(d) The name or title and the contact information of the individual or individuals within the Tennessee Department of Financial Institutions designated as the public records request coordinator.

(4) Consistent with the Tennessee Public Records Act and these rules, personnel of the Tennessee Department of Financial Institutions shall timely and efficiently provide access and assistance to Tennessee citizens requesting to view or receive copies of public records. No provisions in 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 Financial Institutions, shall be protected as provided by state or federal law.

(5) Concerns about the implementation of these rules should be addressed to the Public Records Request Coordinator for the Tennessee Department of Financial Institutions or to the Office of Open Records Counsel.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.02 Definitions.

(1) "Department" means the Tennessee Department of Financial Institutions.

(2) "Office of Open Records Counsel" or "OORC" means the office established under T.C.A. § 8-4-601, et seq., within the Tennessee Comptroller of the Treasury.

(3) "Public 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 entity.

(4) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, designated in Rule 0180-34-.03, who has, or have, the responsibility to ensure that public record requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with the Tennessee Public Records Act. The PRRC may also be a records custodian.

(5) "Records Custodian" means any office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(6) "Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.

(7) "Tennessee Public Records Act" or "TPRA" means the state law codified in T.C.A. § 10-7-503, et seq., regarding access to public records.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.03 Requesting Access to Public Records.

(1) Public record requests shall be made to the PRRC or designee in order to ensure public records requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.

(2) The designated PRRC for the Department is the General Counsel; provided, however, that the responsibilities of the PRRC under this rule may be delegated to one or more employees under the supervision of the PRRC. The PRRC may be contacted at:

Public Records Request Coordinator
Tennessee Department of Financial Institutions
Administrative Division/Legal Section
312 Rosa L. Parks Avenue
26th Floor, Tennessee Tower
Nashville, Tennessee 37243
Telephone: (615) 741-2236 or 800-231-7831
Email: TDFI.contact@tn.gov

(3) Requests only for inspection of public records may be made orally or in writing to the PRRC at the PRRC's mailing address, email address or phone number. The PRRC shall, however, request a U.S. mail address or email address from the Requestor in order to provide any written communication required under the TPRA.

(4) Requests for copies, or requests for inspection and copies, shall be made in writing and may be made to the PRRC at the mailing address or email address provided.

(5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or a Tennessee photo ID card is required as a condition to inspect or receive copies of public records.

(6) The Department makes certain information, records, and forms available to the public on the Department's website at www.tn.gov/tdfi. Examples of the types of information regularly posted online by the Department include, but are not limited to, the announcement of the maximum effective formula rates of interests, the maximum effective rates of interest on home loans, the Department's annual report, a listing of chartered and licensed entities regulated by the Department, bank

application information and application reports, the biennial report on the title pledge lending industry, formal actions pertaining to non-depository financial institutions regulated by the Department's Compliance Division that have been subject to a hearing, Department bulletins and the Department's consumer complaint form.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.04 Responding to Public Records Requests.

(1) Public Records Request Coordinator

(a) The PRRC, or an employee under the supervision of the PRRC, shall review public records requests and make an initial determination of the following:

1. If the Requestor provided evidence of Tennessee citizenship;

2. If the records requested are described with sufficient specificity to identify them; and

3. If the Department is the custodian of the requested records.

(b) The PRRC, or an employee under the supervision of the PRRC, shall acknowledge receipt of the request and take the following actions, if appropriate:

1. Advise the Requestor of any determinations regarding proof of Tennessee citizenship;

2. If appropriate, deny the request in writing, in whole or in part, providing the appropriate ground(s), such as one or more of the following:

(i) The Requestor is not, or has not presented evidence of being a Tennessee citizen;

(ii) The request lacks specificity or needs clarification;

(iii) The Department is not the custodian of the requested records;

(iv) The records requested are not subject to inspection under state or federal law; or

(v) The requested records do not exist.

3. If appropriate, contact the Requestor to see if the request can be narrowed or clarified;

4. Forward the public records request to the appropriate Records Custodian(s) in the Department with notice of the date the request was received and the deadline for when a response to the request is due; or

5. 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, and PRRC for that entity, if known.

(2) Records Custodian

(a) Upon receiving a public records request from the PRRC, if the requested records are practicably available and not exempt from disclosure, a Records Custodian shall promptly make the requested public records available pursuant to T.C.A. § 10-7-503(a)(2)(B)(i). If the Records Custodian is uncertain that an applicable exemption applies, the Records Custodian may consult with the PRRC or the Office of the Tennessee Attorney General and Reporter.

(b) If a Records Custodian determines that it is not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open or confidential; to redact the records; or for other similar reasons, the Records Custodian shall inform the PRRC. The PRRC shall then, within seven (7) business days from the PRRC's receipt of the request, send the Requestor a completed public records request response, pursuant to T.C.A. § 10-7-503(a)(2)(B)(iii).

(c) If a Records Custodian reasonably determines that production of records should be in installments, the Records Custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, send the Requestor a public records request response informing the Requestor that the production of records will be in installments and that a records production schedule will be provided as expeditiously as practicable.

(d) If a Records Custodian determines that a public records request should be denied because of an applicable exemption, the Records Custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, deny the request in writing, as provided in subparagraph (1)(b) above, pursuant to T.C.A. § 10-7-503 (a)(2)(B)(iii).

(e) If a Records Custodian discovers public records responsive to a public records request were omitted in a production, the Records Custodian shall notify the PRRC, who shall contact the Requestor concerning the omitted documents and produce those public records as quickly as practicable.

(3) Redaction

(a) If a record contains confidential or privileged 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 the PRRC or other appropriate parties regarding review and redaction of records. The Records Custodian and the PRRC may also consult with the Office of the Tennessee Attorney General and Reporter.

(b) Whenever a redacted record is provided, a Records Custodian or PRRC should provide the Requestor with the basis for the redaction. The basis shall be general in nature and not disclose confidential or privileged information. A Records Custodian is otherwise not required to provide any sort of privilege log.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.05 Inspection of Records.

(1) There shall be no charge for inspection of public records that are subject to inspection under the TPRA.

(2) Inspection of records shall take place at the offices of the Tennessee Department of Financial Institutions, 312 Rosa L. Parks Avenue, 26th Floor, Tennessee Tower, Nashville, TN 37243. The location for inspection of records within the offices of the Tennessee Department of Financial Institutions shall be determined either by the PRRC or the appropriate Records Custodian.

(3) Appointments for inspection of public records are required and may be scheduled by contacting the PRRC at TDFI.Contact@tn.gov or 615-741-2236 or 800-231-7831.

(4) The TPRA grants Tennessee citizens the right to access open public records that exist at the time of the request. Nothing in the TPRA or these rules shall be construed as requiring a Records Custodian or the PRRC to sort through files to compile information or to create or recreate a record that does not exist.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.06 Copies of Records.

(1) A Records Custodian shall promptly respond to a public records request for copies.

(2) Copies will be available for pickup at the Tennessee Department of Financial Institutions, 312 Rosa L. Parks Avenue, 26th Floor, Tennessee Tower, Nashville, TN 37243.

(3) Upon payment for postage, copies will be mailed to the Requestor's home address by the United States Postal Service.

(4) A Requestor will not be allowed to make copies of records with personal equipment, including, but not limited to, cell phones, portable scanners, or portable copy machines.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.07 Fees and Procedures for Billing and Payment.

(1) Fees for copies of public records shall not be used to hinder access to public records.

(2) Prior to producing copies of records, a Records Custodian or the PRRC shall provide a Requestor with an itemized estimate of the fees and charges, to the extent possible.

(3) Payment in advance is required for all requests for copies of records.

(4) Fees for copies are as follows:

(a) 15 cents ($0.15) per page for 8 ½" x 11" (letter) or 8 ½" x 14" (legal) black and white copies.

(b) 50 cents ($0.50) per page for 8 ½" x 11" (letter) or 8 ½" x 14" (legal) color copies.

(5) In addition to the copy fees described in paragraph (4) above, labor charges for the time, in hours, to produce copies of records shall be imposed whenever the time exceeds one (1) hour. Labor charges shall be calculated by multiplying the base hourly wage rate of each employee by the time each employee spends in identifying, locating, and copying the records, minus the first hour of the most highly paid employee.

(6) At the Department's discretion, an outside copying vendor may be used to make copies of the requested records. If so, an employee of the Department shall transport the records to and from the vendor and maintain custody of the records at all times. The Requestor shall pay the actual costs assessed by the vendor and any applicable labor charges as provided in paragraph (5) above.

(7) Payment is to be made by cashier's check or money order made payable to the Tennessee Department of Financial Institutions.

(8) The Department will not aggregate records requests when more than four (4) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert and adopts the "Frequent and Multiple Request Policy" and any successor policy developed by the Office of Open Records Counsel.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not Applicable					

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

Date: 8-22-18

Signature: Greg Gonzales

Name of Officer: Greg Gonzales

Title of Officer: Commissioner

PAULA J. CAGLE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 07-09-2022

Subscribed and sworn to before me on: 8/22/18

Notary Public Signature: Paula J. Cagle

My commission expires on: 7/09/2022

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III
Attorney General and Reporter

8/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/10/18

Effective on: 12/9/18

Tre Hargett
Secretary of State

2018 SEP 10 PM 2:45
SECRETARY OF STATE
PUBLIC ACTIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Vocational Recovery Assistance Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-208(j) authorizes the administrator of the bureau of workers' compensation to promulgate rules to carry out the purposes, goals and intent of the vocational recovery assistance program.
EFFECTIVE DATES:	December 3, 2018, through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rulemaking hearing rules establish procedures for the workers' compensation vocational recovery assistance program in Tennessee.

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:

There were no public comments made at the June 21, 2018 rulemaking hearing. The public comment period was open until July 6, 2018, for written comments. There were no written comments received.

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: 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 any impact on consumers or small businesses.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://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 rules establish procedures for the workers' compensation vocational recovery assistance program in Tennessee.

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

T.C.A. § 50-6-208(j) authorizes the administrator of the bureau of workers' compensation to promulgate rules to carry out the purposes, goals and intent of the vocational recovery assistance 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;

Injured workers who are unable to make a return to work at their former rate of pay will be affected by the adoption or rejection of these rules.

(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;

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

(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:

Tennessee Bureau of Workers' Compensation 220 French Landing Drive, Floor 1-B Nashville, TN 37243 (615) 532-0179 troy.haley@tn.gov

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

None

Department of State
Division of Publications
312 Rosa L. Parks, 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: 09-02-18
Rule ID(s): 7238
File Date: 9/4/18
Effective Date: 12/3/18

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:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Chapter Number	**Chapter Title**
0800-02-28	Vocational Recovery Assistance Program
Rule Number	
0800-02-28-.01	Purpose and Scope
0800-02-28-.02	Definitions
0800-02-28-.03	Severability
0800-02-28-.04	Eligibility
0800-02-28-.05	Application Process
0800-02-28-.06	Program Assistance
0800-02-28-.07	Renewal Process
0800-02-28-.08	Award Amounts
0800-02-28-.09	Fund Allocation Committee
0800-02-28-.10	Distribution of Funds
0800-02-28-.11	Terminating Events
0800-02-28-.12	Personal or Medical Leave of Absence
0800-02-28-.13	Awards Made in Error
0800-02-28-.14	Refund Policy

0800-02-28-.15	Time Limits
0800-02-28-.16	Appeals

Rules of the
Bureau of Workers' Compensation

Chapter 0800-02-28
Vocational Recovery Assistance Program
New Rules

0800-02-28-.01 Purpose and Scope

The vocational recovery assistance program connects permanently disabled injured workers with public institutions and monetary resources to acquire the knowledge, skills, and abilities they need to return to meaningful employment.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.02 Definitions

The following definitions are for the purpose of this chapter only:

(1) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation, with full authority over the Vocational Recovery Assistance Program, or the Administrator's designee.

(2) "Applicant" means an injured worker who has submitted a request for vocational recovery assistance on the form prescribed by the Administrator.

(3) "Award Letter" means the Administrator's written notification of the conditioned award of monies from the Fund.

(4) "Bureau" means the bureau of workers' compensation of the department of labor and workforce development.

(5) "Certificate" means a credential, other than a degree or diploma, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible educational institution.

(6) "Compensation Period" is the number of weeks after maximum medical improvement, calculated by multiplying the applicant's impairment rating by four hundred fifty (450) weeks.

(7) "Continuous Enrollment" means enrollment in consecutive fall and spring semesters from matriculation until certificate or degree completion.

(8) "Date of Final Payment" means the date of issuance of the payment of a resulting award as that term in defined in T.C.A. § 50-6-207(3)(B) and/or additional permanent partial disability benefits by the insurance carrier.

(9) "Degree" means a two-year associate's degree or four-year bachelor's degree conferred on students by an eligible educational institution.

(10) "Director of the Subsequent Injury and Vocational Recovery Fund" is a licensed Tennessee attorney appointed by the Administrator to oversee the defense of all workers' compensation claims made against the Fund and to provide administrative assistance to the Vocational Recovery Assistance Program.

(11) "Eligible Educational Institution" means any public postsecondary institution located in Tennessee and designated by T.C.A. § 50-6-208(j) or any business eligible to contract with the State of Tennessee to provide vocational training, vocational assessment, job analysis, employment training, or general educational development (GED) services.

(12) "Employment training" means any program, class, or course of study listed by the Tennessee Department of Labor and Workforce Development as an Eligible Training Provider and is a public institution located in Tennessee.

(13) "Financial Aid" means monetary assistance obtained through the Free Application for Federal Student Financial Aid (FAFSA) and may also include state and federal assistance obtained through Pell Grants, American Job Center Scholarships, Tennessee Promise Scholarships, the Tennessee Student Assistance Awards, Tennessee Connect Scholarships, and other assistance programs.

(14) "Fiscal Year" means the State of Tennessee fiscal year (July 1–June 30) or as otherwise noted by the Tennessee Department of Finance and Administration.

(15) "Form" or "Application" means the "Request for Vocational Recovery Assistance" form approved by the Administrator pursuant to T.C.A. § 50-6-208(j)(1)(B), which the applicant must submit to the Bureau to apply for monetary assistance from the Fund.

(16) "Free Application for Federal Student Aid" or "FAFSA" shall have the same meaning as set forth in T.C.A. § 49-4-902.

(17) "Fund" means the Subsequent Injury and Vocational Recovery Fund as defined in T.C.A. § 50-6-208 (c), (d).

(18) "Fund Allocation Committee" means a group of three (3) or more individuals with knowledge of job opportunities in Tennessee and available to advise the Vocational Rehabilitation Assistance Program regarding the allocation of funds.

(19) "Immediate Family Member" means a spouse, parent, grandparent, child, or sibling.

(20) "Maximum Medical Improvement" shall have the same meaning as set forth in T.C.A. § 50-6-207.

(21) "Program" means the staff within the Bureau responsible for administering T.C.A 50-6-208(j), otherwise known as the "Vocational Rehabilitation Assistance Program."

(22) "Recipient" means an applicant selected by the Administrator to receive vocational recovery assistance and on whose behalf the Program has submitted payment of vocational recovery assistance funds to an eligible educational institution.

(23) "Satisfactory Academic Progress" means progress in a course of study in accordance with the standards and practices used by the eligible educational institution at which the applicant is currently enrolled.

(24) "Semester" means the period as defined in T.C.A. § 49-4-902.

(25) "Tuition and Mandatory Fees" means fees required for the enrollment or attendance of all students at eligible educational institutions and shall include, but not be limited to, fees charged for classroom courses, TN eCampus courses, books, other online courses, tools, laboratory classes, or other supplies.

(26) "Vocational Recovery Assistance" shall have the same meaning as set forth in T.C.A. § 50-6-208(j)(2).

(27) "Vocational Testing" and "Vocational Assessment" means any standardized procedure(s) approved by the Administrator intended to establish the range, quality, or reliability of the applicant's occupational or employment abilities.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-2-28-.03: Severability

(1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason, held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever.

0800-02-28-.04 Eligibility

To be eligible to receive Vocational Recovery Assistance, the applicant shall:

(1) Have a permanent impairment rating, as that term is used is T.C.A. § 50-6-204, greater than zero attributable to a compensable work-related injury under the Tennessee Workers' Compensation Law; and

(2) Pursuant to T.C.A. § 50-6-208(j):

(a) Suffer a compensable work-related injury under the Tennessee Workers' Compensation Law;

(b) Not have returned to any employment because of the work-related injury, or have returned to work but earning less than 100% of the salary or wage the applicant received from the applicant's pre-injury employer on the date of injury;

(c) Have received all permanent partial disability benefits permitted under T.C.A. § 50-6-207(3), including the original award, the resulting award, and any additional permanent disability benefits that may be owed because of education, age, or unemployment rate; and

(d) Submit the Form to the Program within ninety (90) days of the date of final payment for all permanent partial disability benefits under T.C.A. § 50-6-207(3).

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.05 Application Process

To apply for Vocational Recovery Assistance, the applicant must meet the above eligibility requirements and shall:

(1) Complete the Form and submit it to the Program.

(2) At the Administrator's discretion, register with the Division of Workforce Services of the Tennessee Department of Labor and Workforce Development and complete a Free Application for Federal Student Aid. The Program may also require additional vocational assessments upon the request of the Fund Allocation Committee and approval of the Administrator.

(3) Complete an eligibility interview, either in person or over the phone with a representative of the Program.

(4) Upon receipt of an Award Letter from the Program, successfully register for coursework or training required for a degree, diploma or certificate at an eligible educational institution.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.06 Program Assistance

To promote vocational recovery, the program shall:

(1) Educate interested parties about the Program, including how to navigate the application process;

(2) Assist applicants with accessing resources to define the applicant's knowledge, skills, abilities, and interests;

(3) Inform interested parties about educational opportunities;

(4) Assist with enrollment in eligible educational institutions;

(5) Identify potential problems or obstacles with obtaining or maintaining eligibility;

(6) Assist with discovering and implementing solutions to overcome common obstacles faced by applicants;

(7) Assess individual outcomes related to educational attainment and employment; and

(8) Develop performance measures for the purposes of program evaluation.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.07 Renewal Process

(1) To receive vocational recovery assistance in subsequent fiscal years, any recipient of vocational recovery assistance funds must reapply by submitting to the Program a "Request for Vocational Recovery Assistance Renewal" at least two (2) months prior to the end of the fiscal year in which benefits were last administered.

(2) Renewal of vocational recovery assistance may not be granted if the Fund lacks adequate excess reserves pursuant to T.C.A. § 50-6-208(j)(4); the applicant no longer meets eligibility requirements pursuant to Rule 0800-02-28-.04; a terminating event occurs pursuant to Rule 0800-02-28-.11; or the Administrator, in consultation with the Fund Allocation Committee, denies the assistance request.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.08 Award Amounts

(1) The award amount shall be limited to expenses provided by T.C.A. § 50-6-208(j)(2), including tuition and mandatory fees.

(2) Amounts paid to an eligible educational institution shall be applied to the recipient's student account balance after registration for coursework and after all other sources of financial aid, not including loans or other forms of student debt, are applied.

(3) The total amount paid on behalf of any recipient shall not exceed more than $5,000 per fiscal year, nor shall it exceed more than $20,000 per recipient for all years.

(4) The total aggregate amount to be paid from the Fund to all recipients shall not exceed $500,000 in any calendar year.

(5) The Program may award amounts less than the maximum allowed by this section.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.09 Fund Allocation Committee

(1) The Administrator shall appoint a Fund Allocation Committee comprised of representatives of employees, employers, and the medical and/or vocational rehabilitation communities with knowledge of job opportunities, ability or vocational assessment, or employment training, to assist and advise the Administrator regarding the selection of recipients and the allocation of funds.

(2) In advising the Administrator, the committee members shall consider the applicant's eligibility and likelihood of successful matriculation. In the event the committee requests more information after review of an application, it may hold the application in abeyance and request that the applicant submit for vocational testing, at the cost of the Program, upon approval of the Administrator.

(3) The Director of the Subsequent Injury and Vocational Recovery Fund shall serve as a non-voting ex-officio member of the committee.

(4) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(5) The Administrator may conduct quarterly committee meetings and shall conduct each meeting in any manner practical for the effective consideration of the applicants, including allowing for telephonic, electronic, or in-person interactions.

(6) Each member appointed shall serve a term of four (4) years and may be reappointed by the Administrator. If a member leaves the position prior to the expiration of the term, the Administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term.

(7) In making the initial appointments, the Administrator shall have the authority to shorten and stagger the terms of the committee members to ensure that the terms of no more than one-half of the committee members shall terminate at the same time.

(8) The Administrator shall have authority to remove a committee member during an unexpired term for the nonperformance of duties or for cause.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.10 Distribution of Funds

(1) The Program shall notify the applicant and the eligible educational institution of the applicant's selection as an award recipient. Notice shall be in writing, in a manner prescribed by the Administrator.

(2) The Program shall submit payment for covered expenses directly to the eligible educational institution on the behalf of recipients who are eligible.

(3) No Funds shall be distributed prior to the Program confirming the recipient's registration for coursework in an eligible educational institution or employment training program.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.11 Terminating Events

(1) The following events may cause the immediate discontinuance of payments from the Fund:

(a) Failure to meet any eligibility requirement;
(b) Failure to timely re-apply for benefits;
(c) Failure to maintain continuous enrollment absent an approved personal or medical leave of absence pursuant to Rule 0800-02-28-.12;
(d) Failure to maintain satisfactory academic progress; or
(e) Failure to communicate with the Program.

(2) The following events shall cause the immediate discontinuance of payments from the Fund:

(a) Payment to the recipient of $5,000 in a fiscal year or $20,000 for all years;
(b) Payment of $500,000 from the Fund to all recipients in a calendar year;
(c) Sunset of the Subsequent Injury and Vocational Recovery Fund statute, T.C.A. § 50-6-208; or
(d) Death of the recipient.

(3) Attainment of a degree or certificate shall cause discontinuance of payments from the Fund. The same recipient may be eligible to receive vocational recovery assistance for another degree or certificate. In such instances, the same recipient must submit a request for vocational recovery assistance renewal pursuant to Rule 0800-02-28-.07.

(4) A recipient shall provide the Program notice of any terminating event within fifteen (15) business days of the occurrence of the terminating event. Failure to provide the required notice may result in the denial of any future applications.

(5) The Program shall send notice of the termination of benefits via electronic communication, or via certified mail to the last known address, within thirty (30) days of knowledge of the terminating event pursuant to Rule 0800-02-28-.11. The notice shall cite the terminating event, specify the termination of benefits, and identify the process to appeal the termination of benefits.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.12 Personal or Medical Leave of Absence

(1) The Program may grant a recipient a medical or personal leave of absence from continuous enrollment at an eligible educational institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the recipient; illness or death of an immediate family member; extreme financial hardship of the recipient or an immediate family member; fulfillment of required military service; or other extraordinary circumstances beyond the recipient's control where attendance creates a substantial hardship.

(2) To be eligible for a personal or medical leave of absence, the recipient must submit a "Request for Leave of Absence" to the Program within fifteen (15) business days of the withdrawal from the eligible educational institution. The request shall include a copy of the withdrawal filed with the eligible educational institution.

(3) Any award to a recipient after a personal or medical leave of absence is subject to review by the Fund Allocation Committee and approval by the Administrator.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.13 Awards Made in Error

(1) Repayment from the recipient of an award made in error shall not be required if the Bureau determines that the error was through no fault of the recipient.

(2) Repayment from the recipient of an award made in error shall be required if the Bureau determines that the recipient committed fraud in obtaining the award or that the error was due to the fault of the recipient. When repayment from the recipient is required, the recipient shall not receive additional assistance from the Bureau until repayment is made in full.

(3) Repayment from the eligible educational institution will be required if the Bureau determines that the error was due to the fault of the institution.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.14 Refund Policy

(1) If a recipient fails to complete a semester for any reason, the eligible educational institution shall apply its refund policy to determine whether a refund may be required.

(2) A recipient shall cause any refunded amount to be returned to the Fund.

(3) Refunds should be returned to the Bureau by check or money order either in person or by U.S. mail and made payable to the Tennessee Bureau of Workers' Compensation.

(4) Awards returned through the refund policy may be used to make additional awards through the Program. If the refunded amount was originally awarded in a previous calendar year, it shall not be included in the total aggregate awards for the refund calendar year.

(5) Upon knowledge of the recipient's receipt of monies paid by the Program, whether by error, fraud, or refund, the Program shall contact the recipient telephonically and via written correspondence to arrange for reimbursement of all monies received by the recipient through error, fraud, or refund. In the event the monies are not refunded to the Program within ninety (90) days of the recipient's receipt, the Bureau shall assume the rights of a creditor against the recipient and may, at the discretion of the Administrator, take action to collect those monies paid by the Program.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.15 Time Limits

(1) All time limits referenced in these Rules may be extended by the Administrator unless specifically set by statute.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

0800-02-28-.16 Appeals

(1) In the event the Administrator denies an application for vocational recovery assistance that was submitted within the time limitation set forth by T.C.A. § 50-6-208(j)(1)(B), the applicant may re-file an application to be reconsidered for a future award. For purposes of the aforementioned time limitation, the initial application date will be considered the application date of any subsequent application filed for the same injury, provided, the subsequent application is received within two (2) years of the initial application date.

(2) Any person whose payments from the Fund are terminated under Rule 0800-02-28-.11 may appeal the Bureau's decision upon providing a written request to the Bureau within fifteen (15) business days of the date the Bureau issues a notice of termination. If a timely appeal is not filed with the Bureau, the Bureau's decision shall become final, not subject to further review. If a request for an appeal is timely filed with the Bureau, the request shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 *et seq.* All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 *et seq.*, are applicable under these Rules.

(3) Any person from whom the Bureau seeks repayment under Rule 0800-02-28-.13 or Rule 0800-02-28-.14 may appeal the Bureau's decision upon providing a written request to the Bureau within fifteen (15) business days of the date of the Bureau's initial request for repayment. If a timely appeal is not filed with the Bureau, the Bureau's decision shall become final, not subject to further review. If a request for an appeal is timely filed with the Bureau, the request shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 *et seq.* All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 *et seq.*, are applicable under these Rules.

Authority: T.C.A. §§ 50-6-208 and 50-6-233.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on 7/13/2018 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 April 27, 2018.

Rulemaking Hearing Conducted on June 21, 2018.

Date: 7/13/18

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

JANIE L. DORRIS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 3-8-2022

Subscribed and sworn to before me on 7/13/18

Notary Public Signature: Janie L Dorris

My commission expires on: March 8, 2022

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

RECEIVED
2018 SEP -4 PM 12:17
SECRETARY OF STATE
PUBLIC SERVICES

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

8/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/4/18

Effective on: 12/3/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Public Utility Commission
DIVISION:	Legal
SUBJECT:	Wastewater Regulation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 65-4-201(e) reads "The authority shall establish by rule the amount of such bond or other security for various sizes and types of facilities."
EFFECTIVE DATES:	December 4, 2018, through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule is a comprehensive rewrite of a rule originally adopted over a decade ago. The proposed rule changes the existing wastewater rules in five major ways.

First, the requirements concerning financial securities provided by wastewater utilities have been substantially changed. The change decreases the size of the security from 100% of annual revenues to 50% of annual revenues with a cap of $300,000.

Second, the process of revocation and modification of certificates of convenience and necessity (CCNs) issued by the TPUC have been modified to set initial time deadlines within which service must be established so as to prevent misuse/abuse of the CCN process to "lock up" particular areas to gain leverage over development for extended periods of time.

Third, the proposed rule establishes guidelines for documentation and the accounting treatment of affiliate transactions. It is the experience of the TPUC that transactions with affiliates are common in the wastewater industry and that affiliate transactions must be accurately documented for the TPUC to set just and reasonable rates as required by statute. The proposed rule codifies a standard utility regulatory treatment of affiliate transactions.

Fourth, the information requested by Staff in its review of requests for initial and amendments to CCNs are codified in the proposed rule. The information is normally requested in

data requests to the company after the filing of an application for a CCN. The rule will help speed the issuance of operating certificates since the applicant will provide all necessary information at the time it files its application instead of waiting for the Commission to request information after its initial filing.

Finally, the existing rule was revised to provide better organization and clarity.

Public Hearing Comments

The public hearing on this matter was held on November 21, 2016. Prior to the hearing, the Tennessee Public Utility Commission (Commission) issued a Notice requesting comments on the proposed rule, and received comments from four parties. Two of those parties participated in the rulemaking hearing and their remarks are summarized below. The substance of the comments received and the response of the Commission are as follows:

One commenter suggested that any restrictions on the market entry or operations of a utility should be imposed by incorporating a specific provision into the order granting the certificate of public convenience and necessity to such utility, instead of by promulgation of a general rule. The Commission asserts that this suggestion is not in the public interest when, as here, it is preferable to treat similar utilities uniformly.

One commenter suggested that utilities that request authority to provide service should provide a letter from the county planning commission that affirms that the establishment of a stand-alone wastewater treatment system in the proposed service area is consistent with county planning. The Commission does not find this approach in the public interest because the current requirement that a letter from the local government(s) stating that it does not currently provide service is determined to be sufficient.

One commenter suggested that a reserve fund should be used in lieu of the financial security. The Commission asserts that this is not in the public interest because the relevant statute requires a bond or other security.

One commenter suggested that the requirement that a utility company must secure approval from the Commission before it accesses ratepayer-funded escrow account funds may unreasonably delay wastewater facility maintenance and repairs. The Commission asserts that allowing utility companies to access ratepayer-funded escrow funds without prior approval of the Commission is not in the public interest.

One commenter suggested that basing the size of the statutorily required financial security on a percentage of revenue is undesirable. The Commission asserts that using a percentage of revenue to base the size of the required security is the method that has been in place since the initial wastewater rules were established. Further, the size of the bond as a percentage of revenue was reduced in the rule adopted by the Commission relative to the rule contained in the rulemaking notice and the existing rule.

A commenter suggested that the proposed rule requires the company to submit documents that are produced by other state agencies, like TDEC. The comment asks that the Commission reconsider the duplication of documents produced by other state agencies. The Commission does not find the suggestion to be in the public interest. The documents are needed to maintain a complete evidentiary record.

A commenter suggested that they would like the TPUC to require all people/customers within the territory of the wastewater utility to purchase service from the utility authorized to service that service area. The Commission responds that it does not have the authority to require all people to purchase utility service.

Regulatory Flexibility Addendum

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

The proposed rule impacts 13 investor-owned wastewater utilities under the jurisdiction of the Commission. The rule will impact companies that choose to become certificated wastewater utilities. The Commission believes that all of wastewater utilities that will be potentially impacted by this rule are small businesses.

The proposed rule is not anticipated to significantly increase reporting, recordkeeping, or other administrative costs relative to existing rules. Rather, the rule streamlines the treatment of existing rules related to statutorily-mandated financial securities, financial security forms, and proceedings related to the modification of operating certificates.

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules. Exemption of small businesses from the rule is not in the public interest because the financial security portion of the rule is required by statute.

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 is not anticipated to 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;

The proposed rule is a comprehensive rewrite of a rule originally adopted over a decade ago. The proposed rule changes the existing wastewater rules in five major ways. First, the requirements concerning financial securities provided by wastewater utilities have been substantially changed. The change decreases the size of the security from 100% of annual revenues to 50% of annual revenues with a cap of $300,000. Second, the process of revocation and modification of certificates of convenience and necessity (CCNs) issued by the TPUC have been modified to set initial time deadlines within which service must be established so as to prevent misuse/abuse of the CCN process to "lock up" particular areas to gain leverage over development for extended periods of time. Third, the proposed rule establishes guidelines for documentation and the accounting treatment of affiliate transactions. It is the experience of the TPUC that transactions with affiliates are common in the wastewater industry and that affiliate transactions must be accurately documented for the TPUC to set just and reasonable rates as required by statute. The proposed rule codifies a standard utility regulatory treatment of affiliate transactions. Fourth, the information requested by Staff in its review of requests for initial and amendments to CCNs are codified in the proposed rule. The information is normally requested in data requests to the company after the filing of an application for a CCN. The rule will help speed the issuance of operating certificates since the applicant will provide all necessary information at the time it files its application instead of waiting for the Commission to request information after its initial filing. Finally, the existing rule was revised to provide better organization and clarity.

(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 Annotated § 65-4-201(e) reads "The authority shall establish by rule the amount of such bond or other security for various sizes and types of facilities."

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

This rule impacts the investor-owned utility industry and their customers. Certain industry members have expressed support for elements of the rule. Some industry members have expressed opposition to portions of 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;

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 expected changes to state or local government revenues.

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

Kelly Cashman-Grams, General Counsel; Jerry Kettles, Director, Director Economic Analysis; and David Foster, Director, Utilities Division.

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

Kelly Cashman-Grams, General Counsel; Jerry Kettles, Director, Director Economic Analysis; and David Foster, Director, Utilities Division.

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

Kelly Cashman-Grams, General Counsel, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6856 kelly.grams@tn.gov; Jerry Kettles, Director, Director Economic Analysis, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6894,jerry.kettles@tn.gov; and David Foster, Director, Utilities Division, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6884, david.foster@tn.gov

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

N/A

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For Department of State Use Only

Sequence Number: 09-03-18
Rule ID(s): 7239
File Date: 9/5/18
Effective Date: 12/4/18

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:	Legal Division
Contact Person:	Kelly Cashman-Grams
Address:	502 Deaderick Street, 4th Floor, Nashville, Tennessee
Zip:	37243
Phone:	(615) 770-6856
Email:	kellygrams@tn.gov

Revision Type (check all that apply):

x Amendment
x 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**
1220-04-13	Wastewater Regulation
Rule Number	**Rule Title**
1220-04-13-.02	Definitions
1220-04-13-.04	Documents to be Filed with the Commission
1220-04-13-.05	Maps and Records
1220-04-13-.06	Adequacy of Facilities
1220-04-13-.07	Financial Security
1220-04-13-.08	Standard Forms for Filing Financial Security
1220-04-13-.09	Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security, Expired and Terminated CCNs
1220-04-13-.10	Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition or Abandonment
1220-04-13-.11	Receiverships or Other Transfers of Operation of Ownership
1220-04-13-.14	Denying or Discontinuing Service
1220-04-13-.16	Transactions with Affiliates
1220-04-13-.17	Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity

RULES
OF
TENNESSEE REGULATORY AUTHORITY

CHAPTER 1220-4-13
WASTEWATER REGULATIONS

TABLE OF CONTENTS

1220-4-13-.01 Application and Purpose
1220-4-13-.02 Definitions
1220-4-13-.03 Retention of Records
1220-4-13-.04 Documents to be Filed with the Authority
1220-4-13-.05 Maps and Records
1220-4-13-.06 Adequacy of Facilities
1220-4-13-.07 Financial Security
1220-4-13-.08 Standard Forms for Filing Financial Security
1220-4-13-.09 Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims Against Financial Security Expired and Terminated CCNs
1220-4-13-.10 Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment
1220-4-13-.11 Receiverships or Other Transfers of Operation or Ownership
1220-4-13-.12 Customer Relations
1220-4-13-.13 Customer Billing
1220-4-13-.14 Denying or Discontinuing Service
1220-4-13-.15 Reconnection
1220-4-13-.16 Transactions with Affiliates
1220-04-13-.16 Transactions with Affiliates
1220-04-13-17 Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity

1220-4-13-.01 APPLICATION AND PURPOSE.

(1) These rules shall apply to public wastewater utilities as defined in these rules and in Tenn. Code Ann. §65-4-101.

(2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority: *T.C.A. § 65-2-102.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-4-13-.02 DEFINITIONS.

(1) ~~Authority - Tennessee Regulatory Authority~~. Commission- Tennessee Public Utility Commission or TPUC

(2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn. Code Ann. § 65-4-201 et seq.

(3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater utility.

(4) Local government – any political subdivision of the State of Tennessee, including, but not limited to a county or incorporated municipality.

(5) Public ~~utility or public~~ wastewater utility includes but is not limited to, any person, partnership, corporation, company, association, receiver or two or more persons having a joint or common interest that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the ~~Authority~~ Commission.

(6) TDEC – Tennessee Department of Environment and Conservation.

(7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.

(8) Reporting Period – the twelve (12) month period from May 1 through April 30, during which actual financial security costs are netted against financial security costs that have been recovered (collected) from the

(Rule 1220-4-13-.02, continued)

customers of the public wastewater utility by means of a rate adjustment established in a tariff that is filed with the Authority each July 1.

Authority: *T.C.A. § 65-2-102.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.03 RETENTION OF RECORDS.

(1) Unless otherwise specified by the Authority, all records required by these rules shall be preserved for a minimum period of three (3) years. All records shall be kept at the main office of the public wastewater utility in Tennessee and shall be made available to the Authority or its authorized representatives upon request.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.04 DOCUMENTS TO BE FILED WITH THE COMMISSION~~AUTHORITY~~.

(1) The public wastewater utility shall file with the ~~Authority~~ Commission the following documents and information, and shall refile such documents to keep such information ~~up to date~~ up-to-date. ~~Rates, schedules, special contracts, other charges, and the utility's operating rules and regulations governing wastewater service shall not become effective until filed with and declared effective by the Authority~~.

(a) A copy of the public wastewater utility's tariff as specified in Rule 1220-4-1-.02 that includes the rates, rules, terms and conditions, and that describes the policies and practices in rendering service that conform to all applicable provisions ~~rules and regulations~~, shall be filed with the Commission ~~Authority~~. Such tariff may also include cost recovery associated with financial securities as described in these rules and recovery of the costs of bonding for operation of the utility imposed by local governments.

(b) Before initiation of service, the public wastewater utility shall file with the Commission the TDEC approval of the design and permit for the wastewater system and proof that the utility owns the land and/or has easements for the proposed wastewater system.~~Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.~~

(c) Each public wastewater utility shall file a completed annual report with the Commission on or before April 1 of each year. The report shall be in the form specified by the Commission and in compliance with these rules and all other requirements established by the Commission. The annual report shall include a report on the construction status of each service territory covered by the utility's CCN. The report shall also include an affirmation and supporting documentation that the financial security required by Rules 1220-04-13.07 remains in effect. ~~Before initiation of service, the public wastewater utility shall file with the Authority the TDEC approval of the design and permit for the wastewater system.~~

(d) ~~Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year.The report shall be in compliance with these rules and all other requirements established by the Authority.~~ The name, title, address, telephone number, and email address of the person(s) who should be contacted in connection with:

(Rule 1220-4-13-.04continued)

1. General Management.
2. Customer relations and consumer complaints.
3. Engineering and operations.
4. Emergencies during non-office hours.
5. The certified operator for each wastewater system include in the CCN.

(e) Any correspondence related to a notice of violation or administrative action from a state or federal regulatory agency or the initiation of litigation. Such correspondence shall be filed within seven (7) days of the utility's notice or receipt.

(f) Any correspondence to and from TDEC related to the wastewater utility's State Operating Permit. Such correspondence shall be filed within the seven (7) days of the utility's notice or receipt.

(g) The wastewater utility shall notify the Commission within thirty (30) days when any entity with which it has a contractual relationship in the development, construction, or operation, of a wastewater system upon which its CCN is based, in whole or in part, files for bankruptcy protection or otherwise becomes unable or unwilling to carry out its contractual obligations with respect to the wastewater system.

Authority: *T.C.A. §§ 65-2-102, 65-4-104, and 65-4-201.****Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.05 MAPS AND RECORDS.

(1) Each public wastewater utility shall keep on file in its main office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.

(2) Each public wastewater utility shall keep a record of all interruptions of service of its wastewater system, including a statement of time, duration, and cause of such interruptions.

(3) Records of inspections conducted as part of operating and maintenance procedures shall be maintained by the public wastewater utility for a minimum of three (3) years.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.****Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.06 ADEQUACY OF FACILITIES.

(1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local government agencies to ~~assure~~, ensure safe, adequate, and reliable service, and, as much as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.

(2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to ~~assure~~ ensure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis and in accordance with the requirements stated in the TDEC issued permit for the wastewater treatment facility. ~~These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.~~

(Rule 1220-4-13-.06 continued)

~~(3) If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that public wastewater utility.~~

~~(4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN.~~

~~(5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.~~

~~(6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn. Code Ann. § 65-2-106 and after notice and an opportunity to be heard.~~

Authority: *T.C.A. §§ 65-2-102, ~~65-2-106,~~ 65-4-104, ~~65-4-203,~~ ~~and~~ 65-4-114, 65-4-115.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.07 FINANCIAL SECURITY.

(1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the ~~Authority~~ Commission, ~~prior to providing service to a customer~~, an acceptable financial security ~~using a format prescribed by the Authority~~. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity ~~to~~ with these rules.

(2) Proof of financial security shall be furnished to the ~~Authority~~ Commission ~~for review and approval~~ as follows:

(a) A public wastewater utility submitting an initial application for a CCN shall present to the Commission, prior to approval of the application, proof of financial security in the amount of $20,000. Prior to providing service the public utility shall file proof of financial security in the amount required by 1220-04-13-.07(2)(b) based on the annual revenue forecast in the CCN application submitted to the Commission. ~~On or before July 1 of each year, public wastewater utilities holding a CCN and providing service shall file proof with the Authority of a security in the amount of one hundred percent (100%) of the gross annual revenue in the most recent Authority Form UD20 or $20,000, whichever is greater. If no UD20 has been filed, the public utility shall file proof of security in the amount of one hundred percent (100%) of the estimated gross annual revenue forecasted in the CCN application submitted to the Authority or $20,000, whichever is greater. Utilities holding a CCN and not providing a service shall provide a security in the amount of $20,000.~~

(b) On or before July 1 of each year, any public wastewater utility holding a CCN and providing service shall file proof with the Commission of a security in the amount of fifty percent (50%) of annual wastewater revenues in the most recent annual or $20,000, whichever is greater. The minimum financial security amount is $20,000. The maximum required security is $300,000. When calculating wastewater revenues, no monies received from customers for bonding under this rule or for meeting bonding requirements of a local government shall be included in the calculation of wastewater revenues. ~~Public wastewater utilities submitting an initial application for a CCN shall be required to present to the Authority, prior to approval of this application,~~

~~proof of financial security in the amount of $20,000. Prior to providing service the public utility shall file proof of financial security in the amount of one hundred percent (100%) of the annual revenue forecasted in the CCN application submitted to the Authority or $20,000, whichever is greater.~~

(c) Initial compliance revenue is defined as the amount of revenue upon which a public wastewater utility submits proof of financial security for the first time after the effective date of this rule. Notwithstanding 2(b), a public wastewater utility is not required to submit a new financial security until the initial compliance revenue increases by 10% as reported on its annual report. Once the public wastewater utility submits a new financial security, the revenues upon which the financial security is based shall become the new initial compliance revenue. The public wastewater utility must provide proof that its financial security is still in effect by July 1 or each year. ~~The Authority shall review each subsequent UD20, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.~~

(3) ~~Sufficient~~ Financial **security shall be provided in one of the following manners:**

(a) **A bond issued by any** surety company that has been authorized to issue such security by the Tennessee Department of Commerce and Insurance, ~~duly licensed commercial bonding or insurance company authorized to do business in Tennessee~~; **or**

(b) **An irrevocable letter of credit issued by a financial institution** ~~acceptable to the Authority~~ **that is** a designated state depository under Tenn. Code. Ann. § 9-4-107.

(4) The public wastewater utility shall ensure that the Commission is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or the expiration date for a bond of non-perpetual duration that is not to be renewed. ~~The public wastewater utility shall ensure that the Authority is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or sixty (60) days prior to the expiration date for a bond of non-perpetual duration that is not to be renewed. Written notification by means of both certified mail (return receipt requested) and regular mail to the Authority shall be required.~~

(5) The recurring cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that adjusts a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Commission for a public wastewater utility on a case-by-case basis.

(a) For the initial security, each public wastewater utility shall submit for the Commission's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security, and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of existing or projected customers at the time of the tariff filing. The resulting cost per customer (total security cost divided by the number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).

1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission within thirty (30) days of the effective date of the financial security.

(Rule 1220-4-13-.07, continued)

2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission with the CCN application.

~~If the public wastewater utility proposes to post financial security other than the type or amount permitted above, it must file with the Authority by May 1 of each year a petition requesting acceptance of the security. A hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-.07(2) until the alternative financial security is approved by the Authority~~.

(b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Commission the following information to update its financial security and true-up the recovery of its security costs:

1. Proof of financial security compliant with this rule.

2. A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.

3. Documentation supporting the calculation of the updated monthly rate adjustment. The documentation shall include but not be limited to:

   (i) the annual cost of the new security;

   (ii) the current number of customers;

   (iii) the total actual security costs paid in the previous reporting period or part thereof in the public wastewater utility's first year of operations or the first year this rule is in effect; and

   (iv) the security cost recovered from customers in the previous reporting period or part thereof.

4. A true-up calculation of the new monthly rate adjustment, calculated as follows:

$$RA = \frac{\frac{(CP - CR + SC)}{C}}{12}$$

Where:

RA = New monthly rate adjustment to be effective August 1.

CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.

CR = Total security costs actually recovered from customers in the prior reporting period.

(Rule 1220-4-13-.07, continued)

SC = Annual security costs associated with the new security filed on July 1.

C = Number of customers at July 1.

(6) Upon the filing of an initial CCN application, a determination shall be made regarding the establishment of a reserve/escrow account. The Commission may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established. The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Commission on a case-by-case basis. ~~Financial securities required by any local government may be counted by the Authority in fulfilling this financial security obligation. The public wastewater utility shall file with the Authority by May 1 of each year evidence of any financial security required by any local government and a written request that the Authority count the security toward fulfilling the requirements of this Chapter.~~

(7) Reserve/escrow accounts established by a public wastewater utility shall be limited to paying for or reimbursing the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Commission. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utilities' routine service or business activities. The utility must first receive authorization from the Commission via approved petition or, in emergency situations, authorization in writing from the Chairman of the Commission upon written request by a representative of the utility to use such funds. The Commission may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
~~The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on a case by case basis.~~

~~(a) For the initial security, each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of customers existing or projected at the time of the tariff filing. The resulting cost per customer (total security cost divided by number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).~~

~~1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.~~

~~2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority with the CCN application.~~

~~(b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Authority the following information to update its financial security and true-up the recovery of its security costs:~~

~~1. Proof of financial security~~

(Rule 1220-4-13-.07, continued)

~~(i) in the amount of one hundred percent (100%) of the gross annual revenue reported in the most recent UD20 filed on April 1; or~~

~~(ii) as determined by the Authority pursuant to 1220-4-13-.07(5) or (6).~~

~~2. A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.~~

~~3. Documentation supporting the calculation of the updated monthly rate adjustment. Documentation shall include but not be limited to:~~

~~(i) annual cost of the new security,~~

~~(ii) current number of customers,~~

~~(iii) total actual security costs paid in the previous reporting period or part thereof in the case of the public wastewater utility's first year of operations or the first year this rule is in effect,~~

~~(iv) security costs recovered from customers in the previous reporting period or part thereof.~~

~~4. A true-up calculation of the new monthly rate adjustment, calculated as follows:~~

$$RA = \frac{\frac{(CP - CR + SC)}{C}}{12}$$

~~Where:~~

~~RA = New monthly rate adjustment to be effective August 1.~~

~~CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.~~

~~CR = Total security costs actually recovered from customers in the prior reporting period.~~

~~SC = Annual security costs associated with the new security filed on July 1.~~

~~C = Number of customers at July 1.~~

(8) The TPUC may waive or modify requirements of this rule for good cause shown, including but not limited to affordability of rates, minimization of rate shock or other operating characteristics of the utility.
~~The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case-by-case basis. Within eighteen (18) months from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of the effective date of these rules to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in this Chapter. Upon the filing of an initial CCN application, a determination shall be made~~

(Rule 1220-4-13-.07, continued)

~~regarding the establishment of a reserve/escrow account. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.~~

(9) ~~Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. The Authority may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.~~

Authority: *T.C.A. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.08 STANDARD FORMS FOR FILING FINANCIAL SECURITY.

(1) ~~The following is a form to be used by public wastewater utilities under the jurisdiction of the Tennessee Regulatory Authority when filing a corporate surety bond pursuant to this Chapter.~~ Corporate surety bonds or letter of credit filed to comply with TPUC Rule 1220-04-13-.07 shall include the following terms:

(a) The name and identification number assigned to the utility by TPUC;

(b) The name and contact information for the providers of the corporate surety bond or letter of credit;

(c) A statement identifying the TPUC as the beneficiary;

(d) A statement of the amount of the surety bond or letter of credit;

(e) A statement indicating that the financial security is required by Tenn. Code. Ann. §65-4-201 and TPUC Rule 1220-04-13.07;

(f) A statement indicating that after action under TPUC 1220-04-13.09 the Commission may assess a sum sufficient of this bond, up to its maximum sum;

(g) A statement that the provider of the corporate surety bond or letter of credit will promptly pay the Tennessee Public Utility Commission via wire transfer upon notice that the TPUC has taken action pursuant to TPUC Rule 1220-04-13.09; and

(h) A statement that the provider of the corporate surety bond or letter of credit shall provide the TPUC at least a ninety (90) day notice in the event of a non-renewal or termination of the corporate surety bond or letter of credit.

(2) The Commission may require additional terms in a letter of credit to ensure access to funds in the event of action per TPUC Rule 1220-04-13.09.

(3) Providers of the corporate surety bond or letter of credit shall be authorized to do business in the state of Tennessee.

~~**CORPORATE SURETY BOND**~~

(Rule 1220-4-13-.08, continued)

~~Tennessee Regulatory Authority~~
~~460 James Robertson Parkway~~
~~Nashville, Tennessee 37243-0505~~

~~REFERENCE: Name of Company authorized by TRA:~~

~~Company ID # as assigned by the TRA:~~
~~Corporate Surety Bond #:~~
~~Effective Date:~~
~~Expiration Date:~~

~~(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of Tennessee in the sum of _____ Dollars ($ _____), and Principal and Surety hereby bind themselves, their successors and assigns, to pay in accordance with the following terms:~~

~~THE CONDITION OF THIS BOND IS:~~

~~The Principal is or intends to become a public wastewater utility subject to the laws of the State of Tennessee and the rules and regulations of the Tennessee Regulatory Authority ("Authority"), relating to the operation of a public wastewater utility: (describe utility and location _____).~~

~~Tennessee Code Annotated § 65-4-201 requires the holder of a franchise for wastewater service to furnish a bond with sufficient surety, as approved by the Authority, conditioned as prescribed in Tenn. Comp. R. & Regs. Chapter 1220-4-13.~~

~~The Principal and Surety have delivered to the Authority a Surety Bond with an endorsement as required by the Authority.~~

~~After notice to the Principal and Surety and a contested case hearing that results in the suspension or revocation of the Principal's Certificate of Public Convenience and Necessity (CCN), the replacement of an operator by the Authority, or the appointment of a receiver by a court, the Authority may assess a sum sufficient of this bond, up to its maximum sum, to enable the continued operation of the public wastewater utility.~~

~~The Principal and the Surety are held and firmly bound to the State of Tennessee, in accordance with the provisions of Tenn. Comp. R. & Regs. Chapter 1220-4-13, in the amount of _____ Dollars ($_____) lawful money of the United States of America to be used for the full and prompt payment of any monetary obligation imposed against the Principal, its representatives, successors or assigns, in any contested case proceeding brought under Chapter 1220-4-13, by or on behalf of the Authority, for which obligation the Principal and the Surety bind themselves, their representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.~~

~~Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, and delivery to the Surety of a Bond Notice, substantially in the form set forth below ("Notice"), the Surety promises to pay, by wire transfer of immediately available funds, the amount of the monetary obligation as stated in the Order and Notice.~~

~~If for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least sixty (60) days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Tennessee Regulatory Authority, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period. Before the date of expiration, the public wastewater utility shall provide the Tennessee Regulatory Authority with a replacement Surety Bond or petition consistent with Rule 1220-4-13-.07(5). Failure to have approved financial security in effect will subject the public wastewater utility to daily penalties~~

(Rule 1220-4-13-.08, continued)

~~pursuant to Tenn. Code Ann. § 65-4-120.~~

~~The bond shall become effective after execution by the Principal and Surety and upon filing with the Authority, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Authority in writing.~~

~~The Principal and Surety consent to the conditions of this Bond and agree to be bound by them.~~

~~This ____ day of _____ 20__.~~

_____
~~(Principal)~~

_____
~~(Surety)~~

~~By:~~ _____

~~FORM OF BOND NOTICE~~

~~(Name of Surety)~~
~~(Address)~~

~~Re: Bond No. (___)~~

~~Dear Sir or Madam:~~

~~You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars ($_____) (the "Draw Amount") has been imposed against (name of the Principal) its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.~~

~~Pursuant to the bond referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:~~

~~Name of Bank Account:~~
~~Account Number:~~
~~ABA Routing Number:~~
~~Reference:~~
~~Name of Contact:~~
~~Telephone Number:~~
~~Facsimile Number:~~

~~Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.~~

~~Sincerely,~~

(Rule 1220-4-13-.08, continued)

~~TENNESSEE REGULATORY AUTHORITY~~

~~Name:~~
~~Title:~~

~~(2) The following is a form to be used by public wastewater utilities under the jurisdiction of the Tennessee Regulatory Authority when filing an irrevocable letter of credit pursuant to this Chapter.~~

~~LETTER OF CREDIT~~

~~Tennessee Regulatory Authority~~
~~460 James Robertson Parkway~~
~~Nashville, Tennessee 37243-0505~~

~~REFERENCE: Name of Company authorized by TRA:~~

~~Company ID # as assigned by the TRA:~~
~~Irrevocable Letter of Credit #:~~
~~Effective Date:~~

~~Sir/Madam:~~

~~You have requested of (name of Financial Institution, hereinafter called the "Lender") that we establish an irrevocable letter of credit which will remain available on behalf of (name of the Principal, hereinafter the "Company") who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the State of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp. R. & Regs. Chapter 1220-4-13 by or on behalf of the Authority.~~

~~We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of _____ Dollars ($ _____) lawful money of the United States of America. Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.~~

~~This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be canceled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.~~

~~Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.~~

~~The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state~~

(Rule 1220-4-13-.08, continued)

~~funds.~~

~~Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.~~

~~Very Truly Yours,~~
~~**(Name of Lending Institution)**~~
~~**Name:**~~
~~**Title:**~~
~~**Address of Lender:**~~

~~**APPROVAL AND ENDORSEMENT**~~

~~This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this ___ day of _____, 20___.~~

~~Name:~~
~~Title:~~

~~FORM OF~~
~~LETTER OF CREDIT NOTICE~~

~~(Name of Lender)~~
~~(Address)~~

~~Re: Irrevocable Letter of Credit No. (___)~~

~~Dear Sir or Madam:~~

~~You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars ($_____) (the "Draw Amount") has been imposed against (name of the Principal), its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.~~

~~Pursuant to the Irrevocable Letter of Credit referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:~~

~~Name of Bank Account:~~
~~Account Number:~~
~~ABA Routing Number:~~
~~Reference:~~
~~Name of Contact:~~
~~Telephone Number:~~
~~Facsimile Number:~~

~~Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.~~

~~Sincerely,~~

~~**TENNESSEE REGULATORY AUTHORITY**~~

(Rule 1220-4-13-.08, continued)

~~Name:~~
~~Title:~~

Authority: *T.C.A. §§ 65-2-102, 65-2-106, and 65-4-104, 65-4-114, 65-4-203.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.09 PROCEDURE FOR SUSPENSION OR REVOCATION OF CCN, FORFEITURE OF WASTEWATER UTILITY FUNDS, AND CLAIMS AGAINST FINANCIAL SECURITY EXPIRED AND TERMINATED CCNS.

(1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, inability, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the ~~Authority~~ Commission ~~shall take appropriate action based on good cause~~ has authority to take appropriate action based on good cause that may include suspension or revocation of all or a portion of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.

(2) Good cause ~~shall~~ includes, but is not limited, to the following:

(a) A finding by the ~~Authority~~ Commission of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code Annotated dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same, or

(b) A finding by the ~~Authority~~ Commission of:

1. Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, gross mismanagement on the part of the public wastewater utility, or conviction of the utility or a principal of the utility of a crime related to management or operation of the utility or any crime that may interfere with the effective management or operation of the utility;

2. Actual, threatened or impending insolvency of the public wastewater utility ~~Criminal conduct on the part of the public wastewater utility;~~

3. Actual or threatened abandonment of the public wastewater utility by its owners, or operators ~~Actual, threatened or impending insolvency of the public wastewater utility~~;

4. Persistent, serious, or substantial violations of statutes or regulations governing the public wastewater utility ~~Actual or threatened abandonment of the public wastewater utility by its owners or its operators;~~

5. Failure or inability on the part of the public wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; ~~Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility;~~ or

6. Failure to provide service to any customer reasonably entitled thereto. ~~Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.~~

(Rule 1220-4-13-.09, continued)

(3) In addition to the above, the ~~Authority~~ Commission may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:

(a) Whether, to the extent practicable, service to customers will remain uninterrupted ~~under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court~~;

(b) Whether ~~there are certain~~ methods are available to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; ~~and~~

(c) Whether the utility had opportunity to correct the conditions that are alleged to constitute the grounds for action; ~~and~~
~~Such other factors as the Authority deems relevant to the determination.~~

(d) Such other factors as the Commission deems relevant to the determination.

(4) Proceedings before the ~~Authority~~ Commission for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with the contested case provisions of the Tennessee Uniform Administrative Procedures Act Tenn. Code Ann. § 4-5-101, et seq. which includes notice and an opportunity to be heard, which may, but is not required to include a proceeding commenced -under Tenn. Code. Ann. § 65-2-106 Notice of opportunity to be heard may be excused when the circumstances or the conduct of a public wastewater utility poses an imminent threat to the health, safety, or welfare of the public~~-and after notice to the public wastewater utility and its surety, and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public.~~ In such exigent circumstances, the Authority may order the summary suspension of the utility's CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320.

(5) In the event the Commission revokes or suspends all or a portion of a public wastewater utility's CCN, orders the forfeiture of wastewater utility funds, and/or makes a claim against the public wastewater utility's financial security, the Commission may order all necessary actions to ensure continuous utility service and operation of the wastewater plant consistent with statutory requirements and TPUC rules and orders. The Commission may take, but is not limited to, the following actions:

(a) Ordering the divestiture of public wastewater utility assets.

(b) Ordering the hiring of a replacement operator.

(c) Ordering specific repairs or upgrades to wastewater plant to comply with applicable regulations.

(d) Petitioning a court of competent jurisdiction for the appointment of a receiver.

(e) Other actions necessary to provide for continuous public wastewater utility operations.

(Rule 1220-4-13-.09, continued)

~~The Authority will not seek to suspend or revoke a public wastewater utility's CCN, to forfeit the wastewater utility funds, or make a claim against the public wastewater utility's financial security for good cause without first affording the public wastewater utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for such action unless:~~

~~(a) the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public; or~~

~~(c) a public wastewater utility is unable to provide safe, adequate, and reliable wastewater service.~~

(6) An order under paragraph (5) may provide cost recovery mechanisms for costs associated with improvements to the wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:

(a) A mechanism for expediting any adjustments to the rates of the public wastewater utility.

(b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.

(c) Incentives to facilitate acquisition or long-term operation of the public wastewater utility.

(7) A wastewater CCN holder shall file a written notice of completion that the wastewater system is fully constructed, operational, and providing service not less than three (3) years from the date of the written order granting a CCN. If the written notice of completion is not filed within three (3) years, the CCN shall automatically expire and be terminated without the institution of proceedings under Rule 1220-04-13.09 (4).

(a) Not less than thirty (30) days before the expiration of the three (3) year period, a CCN holder may file a written request for an extension of time, not to exceed one year from the original deadline, to file the required notice of completion of the wastewater system. The filing of an extension request does not entitle the CCN holder to a contested case proceeding or constitute grounds for a proceeding under 1220-04-13.09(4); however, the commission may initiate such a proceeding upon such request or its own motion. Subject to the conditions herein, an extension request shall not be the basis for a proceeding under Rule 1220-04013.09(4).

(b) A request for an extension of time under this section shall include the following:

1. Documentation of all phases of the project that have been constructed or completed;

2. Documentation reflecting the timeline for completion of any unconstructed or incomplete portions of the system;

3. Documentation that the property developer, at the time the CCN was awarded, intends to proceed with the project; and

4. Such other documentation as the Commission may request.

(c) In the event that a CCN expires, then the holder shall file a new application pursuant to Rule 1220-04-13.17 to obtain authority to serve the service area previously covered by the expired or terminated CCN.

(8) Upon a complaint or the TPUC's own motion wherein it is alleged that a wastewater system has not been completed or is not operational and providing service to the designated service area after three (3) years from the date of the CCN Order, as noted in (7) above, there shall a rebuttal presumption that the CCN granted to public wastewater utility is no longer valid or in effect.

(Rule 1220-4-13-.09, continued)

Authority: *T.C.A. §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.10 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT.

(1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.

(2) Any person, ~~lessee, trustee, or receiver~~ owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer or merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. ~~This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.~~

(3) ~~The~~ Any ~~P~~ petition filed with the Commission under this part ~~Authority~~ Commission shall include a description of the proposed transaction and the following:

(a) The names, addresses, and telephone numbers of the public wastewater utility and other partners to the transaction.

(b) The identity and contact information of the person(s) to contact regarding the ~~P~~ petition. ~~with their address, telephone number, and fax number.~~

(c) ~~The location of the public wastewater utility's books and records~~. The proposed effective date of the transaction;

(d) ~~The purpose and filing date of the Petition.~~ A list of outstanding citations issued by TDEC and a discussion concerning how the acquiring party will correct any outstanding citations or violations;

(e) ~~The proposed effective date of the transaction.~~ A statement detailing the effect of the transaction upon customers; and

(f) ~~The name, address, and telephone number of any potential buyer.~~ A copy of the customer notification letter, to be approved by the Commission, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Commission, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, any portion of this Rule 1220-04-13-.10(3)(f) may be waived or notice may be given using alternate means.

~~(g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.~~

~~(h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.~~

(Rule 1220-4-13-.10, continued)

~~(i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.~~

~~(j) A statement detailing the effect of the transaction upon customers.~~

~~(k) A copy of the customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope.~~

Authority: *T.C.A. §§ 65-2-102, 65-4-104, 65-4-112, and 65-4-113.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

~~**1220-4-13-.11 RECEIVERSHIPS OR OTHER TRANSFERS OF OPERATION OR OWNERSHIP.**~~

~~(1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-.09 above, the funds of that public wastewater utility, including escrow accounts and any other financial security posted under this rule, shall be available to the receiver, after notice and hearing, in the event that the public wastewater utility goes into receivership or is transferred, for any reason, to another owner or operator. In addition, after notice and hearing, the Authority may take the following actions:~~

~~(a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:~~

~~1. Operate the wastewater system(s) in compliance with law and the Authority's orders; and,~~

~~2. Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.~~

~~(b) Petition the appropriate court for the appointment of a receiver that has demonstrated the ability to:~~

~~1. Operate the wastewater system(s) in compliance with law and the Authority's orders; and,~~

~~2. Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.~~

~~(2) Before taking such action as provided in subparagraphs (1)(a) or (b), the Authority shall give notice of the hearing to the following:~~

~~(a) The subject public wastewater utility.~~

~~(b) Other public wastewater utilities in Tennessee.~~

~~(c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.~~

~~(d) Holder of the financial security.~~

~~(3) An order under subparagraph (1)(a) shall provide:~~

(Rule 1220-4-13-.11, continued)

~~(a) that the entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition; and~~

~~(b) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.~~

~~(4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:~~

~~(a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.~~

~~(b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.~~

~~(c) Other incentives to the entity acquiring the subject public wastewater utility.~~

~~(5) If a receiver is appointed by the court as provided in subparagraph (1)(b), the Authority authorizes the receiver to:~~

~~(a) Have the same rights and duties under Tennessee law as a public wastewater utility.~~

~~(b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility~~

~~1. has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and~~

~~2. has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.~~

~~(6) Upon appointment of a receiver or transfer to another owner or operator, the receiver or new owner or operator shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer.~~

~~(7) If a receiver is appointed by the court:~~

~~(a) The receiver shall, within thirty (30) days of appointment, file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver;~~

~~(b) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board;~~

~~(c) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority; and~~

~~(d) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).~~

~~(8) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.~~

(Rule 1220-4-13-.11, continued)

Authority: *T.C.A. §§ 65-2-102, 65-4-104, 65-2-106, and 65-4-114.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.12 CUSTOMER RELATIONS.

(1) Each public wastewater utility shall comply with applicable provisions of Rule 1220-4-3-.14 including, but not limited to, the following:

(a) Each public wastewater utility shall maintain a customer service telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. ~~Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.~~

(b) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints that are received. ~~by the public wastewater utility.~~ If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue, the time, the date, and the action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request.

(c) Each public wastewater utility, within ten (10) business days after being notified of a customer complaint filed with the Consumer Services Division of the Authority, shall file a written response to that complaint with the Authority's Consumer Services Division.

(d) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.

(e) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.13 CUSTOMER BILLING.

(1) The Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility before customers are charged for wastewater services. All bills for wastewater service shall state how the charge is calculated. The bill/statement shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule 1220-04-03-.16.

(2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall not send a customer two successive estimated bills, except due to extenuating circumstances.

(3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at the time of service. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable

(Rule 1220-4-13-.13, continued)

justification is shown for the use of a different rate (e.g., high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.

(4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which the service was not provided. The public wastewater utility may refund the amount owed as a credit toward the customer's subsequent bill for service. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate.

(5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule 1220-4-3-.18.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.14 DENYING OR DISCONTINUING SERVICE.

(1) No public wastewater utility shall ~~deny or~~ discontinue service to any customer without first providing adequate notice to the customer; provided, however, where an emergency exists, ~~or where~~ fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. ~~When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority. A customer who has had service denied or discontinued has the right to a contested case hearing.~~

(2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either:

(a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the ~~Authority~~, Commission and this rule, or

(b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service ~~shall be~~ is discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the ~~Authority~~ Commission prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.

(3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

(a) Non-payment for service by a previous occupant of the premises to be served.

(b) Failure to pay for merchandise or special services purchased from the public wastewater utility.

(c) Failure to pay the bill of another customer as guarantor thereof.

(d) Failure to pay for a different type or class of public wastewater utility service.

(Rule 1220-4-13-.14, continued)

(4) The public wastewater utility's tariff on file with the ~~Authority~~ Commission shall define all terms and conditions ~~as they~~ that relate to denying or discontinuing wastewater service.

(5) When a prospective customer is refused service, or an existing customer has service disconnected under the specific provisions included in the public wastewater utility's tariff approved by the Commission, the public wastewater utility shall notify the customer or prospective customer promptly of the reason for refusal. The notification shall include an explanation of the Commission's dispute resolution process found in Rule 1220-01-03. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Commission. If service is disconnected using a water shut-off valve, the utility is not required to notify the county health department.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.15 RECONNECTION.

(1) The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: *T.C.A. §§ 65-2-102 and 65-4-104.* ***Administrative History:*** *Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.*

1220-04-13-.16 TRANSACTIONS WITH AFFILIATES IS CREATED.

(1) This rule shall apply to all affiliate transactions between a public wastewater utility and any affiliate thereof. The primary purpose of this rule is to protect the ratepayers of a public wastewater utility from unauthorized or unwarranted cross-subsidies.

(2) For purposes of this rule, the following definitions shall apply:

(a) Affiliate – any person who, directly or indirectly, is in control of, is controlled by, or is under common control with a public wastewater utility.

(b) Affiliate Transaction – any sale, lease trade, purchase, or transfer of goods, or services between a public wastewater utility and any affiliate thereof. The term also means any sale, lease, trade, purchase, or transfer of assets, goods, or services between the accounts for the regulated and nonregulated activities of a single public wastewater utility.

(Rule 1220-4-13-.16 continued)

(c) Asset – any tangible or intangible property, or other right, entitlement, item, or thing of value that is recorded or should be recorded in the public wastewater utility's Balance Sheet Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).

(d) Control – the ownership of twenty percent (20%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or twenty percent (20%) or more of the equity interests in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of another person.

(e) Cross-subsidy – the unauthorized over-allocation of cost to a public wastewater utility resulting in an under-allocation of cost to an affiliate.

(f) Direct cost – with regard to a particular good or service, the cost solely attributable, on a cost-causative basis, to the production or provision of such individual good or service, where the attribution does not require the use of allocations to separate the common costs incurred in the production or provision of other goods or services.

(g) Fair market Value – the sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entry in an open market.

(h) Fully Allocated Cost – with regard to a particular good or service, the sum of the direct cost and indirect cost of such individual good or service.

(i) Good – any tangible or intangible property, item, or other thing of value that is recorded or should be recorded in the public wastewater utility's Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).

(j) Indirect Cost – with regard to a particular good or service, the cost, other than direct cost, properly attributable to the production or provision of such individual good or service; including the allocation of all common and overhead costs.

(k) Market Rate – the lowest price that is available for comparable goods or services from nonaffiliated entities in an open market.

(l) Net Book Value – the original cost of an asset less accumulated depreciation.

(m) Person – a corporation, limited liability company, partnership, sole proprietor, enterprise, association, trust, cooperative, concern, individual, or any other entity.

(n) Service – any labor-related activity including but not confined to, auditing, accounting, consulting, engineering, managing, operating, financing, and legal, that is recorded or should be recorded in the public wastewater utility's Balance Sheet and Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).

(3) A public wastewater utility shall record all affiliate transactions in its accounts as prescribed by the Uniform System of Accounts required under Rule 1220-04-01-.11(1)(h).

(4) When a public wastewater utility is a party to an affiliate transaction, as defined in this rule, the following methods must be used to record the transaction in the public wastewater utility's accounts:

(Rule 1220-4-13-.16 continued)

(a) When an affiliated sells, leases, trades, or transfers an asset to a public wastewater utility, such transactions shall be recorded in the public wastewater utility's accounts at the lower of the affiliate's net book value or the fair market value of the asset.

(b) When a public wastewater utility sells, leases, trades, or transfers an asset to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the higher of the public wastewater utility's net book value or the fair market value of the asset.

(c) When an affiliate sells, leases, trades, or transfers goods or services to a public wastewater utility, such transaction shall be recorded in the public wastewater utility's accounts at the affiliate's fully allocated cost or the market rate, whichever is lower.

(d) When a public wastewater utility sells, leases, trades, or transfers goods or services to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the public wastewater utility's fully allocated cost or the market rate, whichever is higher.

(5) A public wastewater utility shall record the following minimum information regarding each affiliate transaction:

(a) The name of the affiliate involved in the transaction.

(b) A description of the transaction, including:
1. The date of execution;
2. The business purpose underlying the transaction;
3. The starting date and termination date if the transaction is to be performed over a period of time; and
4. Identification of the assets), good(s), or service(s) related to the transaction.

(c) If the transaction involves an asset, the net book value and the fair market value of the asset. Fair market value may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.

(d) If the transaction involves a good or service, the fully allocated cost incurred to produce or provision the good or service and the market rate of the good or service. The market rate may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.

(6) A public wastewater utility shall preserve and maintain all records and information related to affiliate transactions required under subsection (4) of this rule for a minimum period of three (3) years as specified in Rule 1220-04-13.03.

(7) In the Annual Report required to be filed with the Commission pursuant to Rule 1220-04-13.04(1)(c), the public wastewater utility shall state for the reporting period whether or not it was a party to any affiliate transactions, as defined in this rule. If the public wastewater utility engaged in such affiliate transactions during the reporting period, it shall in its Annual Report:

(a) Identify each affiliate by name and business address:

(Rule 1220-4-13-.16 continued)

(b) Describe the affiliate relationship between each affiliate and the public wastewater utility; and

(c) For each affiliate, report the total dollar amount of affiliate transactions recorded in the public wastewater utility's accounts as follows:

1. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to each affiliate by the public wastewater utility during the reporting period; and

2 The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to the public wastewater utility by each affiliate during the reporting period.

(8) A public wastewater utility and each affiliate thereof shall provide the Commission, its staff, and its agents with full access to all relevant books and records of such entities in connection with the Commission's regulatory responsibilities to examine any costs sought to be recovered by the public wastewater utility in rate proceedings or to determine a public wastewater utility's compliance with this rule.

(9) For good cause the Commission may waive any of the requirements or provisions of this rule on the written application of any interested party or on its own motion. The Commission shall, after hearing, state the basis of any such waiver and may impose conditions or limitations on any such waiver consistent with the purpose of this rule.

1220-04-13-.17 MINIMUM REQUIREMENTS FOR NEW AMENDMENTS TO CERTIFICATE OF CONVENIENCE AND NECCESSITY IS CREATED.

(1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. § 65-4-201, *et seq.* , shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann § 65-4-201, and these rules.

(2) Applications for a new or expanded CCN shall include the following information:

(a) General information about the applicant and the proposed system:

1. The legal corporate name, physical address and mailing address of the applicant.

2. An organizational chart showing each officer and any other key personnel by name and tittle.

3. A list of owners, members and officers of the wastewater utility. Provide the address, telephone number, and percentage ownership of each individual. If different, list the names of owners, members and officers located in Tennessee.

4. If the applicant has affiliated companies, provide a corporate organization chart showing all affiliate relationships. Describe in detail any transactions, direct or indirect, that occur or are expected to occur between affiliated entities.

5. A copy of the applicant's articles of incorporation, partnership agreement, and/or by-laws.

(Rule 1220-4-13.17 continued)

6. A copy of the applicant's license to engage in business within the State of Tennessee registered with the Secretary of State, inclusive of any assumed names of the company.

7. A complete description of the geographic territory to be served by the applicant, including the name and location of development (subdivision) and the number of acres. Include the name of the subdivision or development and the name of the wastewater system as stated in the TDEC permit. In addition, provide a legible map of the area with the proposed service territory clearly and accurately plotted. The map should include:

   (i) The location of the wastewater system, i.e., treatment plant, pre-application treatment facilities, collection infrastructure, building(s) for equipment, drip fields, disposal fields and/or wetland cells. Include the physical address of the wastewater system and the associated latitude and longitude coordinates.

   (ii) The names of surrounding streets and roads.

   (iii) A map to show access roads and names of access roads (if available) and other utilities necessary to provide wastewater service.

   (iv) All residences and habitable structures served by the wastewater system.

   (v) Any portion of the areas that will not be served when the wastewater system becomes operational. If the wastewater system will be operational in phases, show the phases on the map.

8. A description of the type of proposed wastewater system to be constructed including the design capacity and the maximum potential number of customers the public wastewater utility will service in the proposed service area. Indicate the technology used for the wastewater system (e.g., membrane, sand filter, wetland cell and/or lagoon). The type of system and design capacity should match the type and design capacity of the associated TDEC permit and permit application.

9. The estimated dates for the commencement and completion of the construction of the system and the estimated date the wastewater system will be placed into service. If the wastewater system will be constructed or placed into service in phases, provide the anticipated dates for each phase.

10. If portions of the wastewater system will be built in phases, state how many phases and the number of houses or units to be connected in each phase.

11. Identify the builder or developer that has requested the utility to provide wastewater service. Include name of company, name of primary contact, title, mailing address, email address, and phone number.

12. Respond completely to all information requests by Commission staff.

(b) Evidence that the requisite property rights and public need exists for wastewater services in the proposed service area:

   1. A letter(s) from local government(s) and public wastewater utilities in or near the proposed service area stating that they do not provide wastewater service to the proposed service area and that they are unable or unwilling to provide wastewater service to the proposed service area within the ensuing twelve (12) months.

2. As applicable, a copy of any application for a franchise and the franchise agreement issued by a city of county.

3. All contracts or agreements between the builder(s) of the treatment and/or collection system, the utility, and the property and/or subdivision developer that show entitlement or ownership to the land, system specifications, costs for the wastewater system, timeline for the system to be built, and rights to the system once it is completed. Documents presented by the applicant should be signed by all parties and bear marks or stamps, such as those provided by notaries or public officials, as necessary.

(c) Evidence that the applicant possesses sufficient managerial ability:

1. Biographies of officers and/or key wastewater utility staff that demonstrate managerial ability. Include a list of certifications or professional licenses held by officers or wastewater utility staff with documentation.

2. Identify all states where the applicant is certified as a wastewater provider and/or the status of certification in states where an application is pending.

3. Copies of all contracts related to any pending merger or acquisition of the applicant, corporate parent or affiliate.

4. Proof that the party contracted to install the proposed system has a valid and current contractor's license by the applicable licensing board of the State of Tennessee.

(d) Evidence that the applicant possesses sufficient technical ability:

1. A copy of the application for the State Operating Permit ("SOP") filed with TDEC. Include the letter from TDEC indicating the receipt of a complete application. Include any engineering and/or design reports submitted to TDEC, such as the Design Development Report and the Detailed Soils Investigation Report. If an operating permit has been issued, provide a copy of the permit. The utility shall file a copy of the TDEC permit in the docket file prior to providing service.

2. A copy of the State Operator Certificate for the wastewater system operator of record. If the operator is a contract employee of the utility, provide a copy of the employment contract.

3. The name, address, and telephone number of the technical contact person responsible for and knowledgeable about the applicant's proposed operations in Tennessee.

4. A list of any complaint(s), notices of violation or administrative action filed with or issued by a regulatory agency. Identify the nature of the complaint notices of violation or administrative action, which agency is involved, and how the issue was or is being resolved.

5. A certification from a design engineer that the wastewater system was constructed in accordance with the TDEC-approved construction plans and specifications.
The certification shall be filed in the docket file prior to providing service.

(e) Evidence that the applicant possesses sufficient financial capability:

1. Financial statements for the applicant covering the most recent year ended. Include a balance sheet, income statement, and statement of cash flows.

(Rule 1220-4-13-.17, continued)

2. Pro forma income statements for the wastewater utility for the first three (3) years of operations or for an expanded amended CCN, the first three years after the latest year-end financials. In the calculations of utility revenues show the number of consumers and the rates used in the calculations. Show operation and maintenance expenses by account number and provide the basis and/or assumptions used to arrive at these amounts.

3. A chart of accounts for the wastewater utility, following the NARUC Uniform System of Accounts (USA) for wastewater utilities.

4. A list of all plant-in-service account numbers with account names and estimated account balances as of the state of operations.

5. The depreciation rates the applicant intends to use for each plant account that will be on the wastewater utility's books. Include the estimated useful life of each account. If no depreciation study has been performed, explain the basis for these rates.

6. The total estimated detailed cost of construction of the wastewater system to be constructed for the proposed service area. If the wastewater system will be constructed in phases, provide detailed construction cost estimates for each phase. Indicate whether the developer or the applicant will pay for the construction of the system.

7. Indicate the identity of the owner(s) of the wastewater system once construction is complete. If a party other than the utility pays the cost of construction and transfers ownership of the wastewater system to the applicant, provide a detailed breakdown of the estimated amount of contributed capital that will be recorded on the applicant's financial books.

8. A tariff showing products, services, terms, conditions and proposed rates to be charged for wastewater service. A tariff should include all pass-through fees, including but not limited to, customer deposits, disconnect or reconnect fees, late fees, tap fees, escrow fees, bond fees, franchise fees and taxes.

9. Provide estimates of costs and customers added by month for the first five (5) years based upon the construction build-out schedule for developers in the service area of the proposed wastewater system. For each year, by month, provided an estimated number of customers by customer class anticipated to be served by the wastewater system. Include the utility's basis and assumptions used for this projection. Provide this information in a spreadsheet in Microsoft Excel format with all assumptions clearly documented.

10. Documentation describing bonding requirements imposed by municipal governments for the proposed wastewater system.

11. Demonstrate that the applicant has acquired a performance bond from the developer or builder of the wastewater system made payable to the Utility to ensure construction of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility.

12. List all funding sources available to the applicant for the wastewater system proposed by the applicant.

13. Provide information demonstrating compliance with the financial security requirement of Rule 1220-04-13.07.

(Rule 1220-4-13-.17, continued)

(f) Sworn pre-filed written testimony by the applicant's owner, member, officer or other principal having knowledge of the applicant's operations and the proposed wastewater system. The testimony should, at a minimum, include the following information:

1. Evidence that a public need exists for wastewater services in the proposed service area.

2. A description of the wastewater system and the services to be provided.

3. A statement that the applicant is aware of and will abide by all applicable Tennessee statutes and TPUC Rules.

4. A discussion and demonstration of technical, managerial, and financial capability of the applicant to provide the proposed wastewater service.

5. A statement that the applicant is aware of the requirement of Rule 1220-04-13.09(7) concerning the completion of the construction of the wastewater system within three years of TPUC's written approval of the CCN.

6. A signed affidavit stating that all information submitted concerning the wastewater CCN application is true and correct to the best of the witness' knowledge and belief.

4. A discussion and demonstration of technical, managerial, and financial capability of the applicant to provide the proposed wastewater service.

5. A statement that the applicant is aware of the requirement of Rule 1220-04-13.09(7) concerning the completion of the construction of the wastewater system within three years of TPUC's written approval of the CCN.

6. A signed affidavit stating that all information submitted concerning the wastewater CCN application is true and correct to the best of the witness' knowledge and belief.

Authority: *T.C.A §§ 65-2-102, 65-4-104, 65-4-201, 65-4-204*

* 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)
Chairman David F. Jones	x				
Vice-Chairman Robin Morrison	x				
Commissioner Herbert H. Hilliard	x				
Commissioner Kenneth C. Hill	x				

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 April 10, 2017, 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: *9/23/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/21/2016*

Date: 7/6/18

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7/6/2018

Notary Public Signature: Ectory R Lawless

My commission expires on: 3/8/2020

ECTORY RENEE LAWLESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-13

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.

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-13

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

8/27/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/5/18

Effective on: 12/4/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Real Estate Appraiser Commission
BOARD:	Regulatory Boards
SUBJECT:	Application for Appraiser License or Certificate / Qualifications for Appraisers / Fees
STATUTORY AUTHORITY:	Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires that appraisers performing assignments in federally related transactions meet the qualifications set by the Appraisal Qualifications Board of the Appraisal Subcommittee. While these rules are not mandated by that requirement, they will streamline the implementation of changes to the federal structure in the future.
EFFECTIVE DATES:	December 6, 2018 through June 30, 2019
FISCAL IMPACT:	By eliminating two (2) fees and reducing the issuance and renewal fee, the total reduction in licensing revenue for the Tennessee Real Estate Appraiser Commission is expected to be approximately five percent (5%), or $31,000.
STAFF RULE ABSTRACT:	The proposed amendments eliminate and reduce certain fees. Specifically, the amendments eliminate the $125 application fee, which is due upon filing an initial application and the $25 duplicate license fee, which licensees currently have to pay in order to receive a duplicate copy of their license. The duplicate license fee is no longer necessary because licensees can now print their own license online. The amendments also reduce the license and certificate issuance and renewal fee by $25. As of May 1, 2018, the Appraisal Qualifications Board ("AQB") has adopted new standards, significantly reducing the education and experience requirements for applicants for licensure. Under

Tennessee Code Annotated, §§ 62-39-303, 62-39-312, and 62-39-313, applicants must meet the current requirements for licensure as set forth by the AQB. These amendments reflect those changes to the education and experience requirements.

Regulatory Flexibility Addendum

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

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

   The proposed amendments would benefit small businesses in the real estate appraiser industry by eliminating certain fees, such as the application fee ($125) and duplicate license fee ($25), and reducing the license and certificate issuance and renewal fee by $25. Additionally, the proposed amendments reflect the lowering of the education and experience requirements for licensure, as adopted by the Appraisal Qualifications Board ("AQB"), which became effective on May 1, 2018. Under T.C.A. §§ 62-39-303, 62-39-312 and 62-39-313, applicants must meet the current requirements for licensure as set forth by the AQB.

   It is difficult to determine the precise number of small businesses that would be affected by the proposed amendments because the Tennessee Real Estate Appraiser Commission does not directly regulate those businesses. Rather, the Commission governs the individual licensees who work for those businesses. There are currently 1,828 appraisers licensed with the Commission and 155 Appraisal Management Companies, most of which are believed to be small businesses.

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

   The proposed amendments would require minimal, if any, costs for compliance.

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

   The proposed amendments would benefit small businesses in the real estate appraiser industry. Namely, the proposed amendments eliminate or reduce various fees. The proposed amendments also lower the education and experience requirements for licensure.

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

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

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

   Many states have adopted or will adopt the new AQB standards. Thus, the proposed amendments would make Tennessee rules consistent with the new federal standards and the rules in other AQB states.

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

   An exemption for small businesses would not be beneficial.

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 Tennessee Real Estate Appraiser Commission does not foresee 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 proposed amendments eliminate and reduce certain fees. Specifically, the amendments eliminate the $125 application fee, which is due upon filing an initial application and the $25 duplicate license fee, which licensees currently have to pay in order to receive a duplicate copy of their license. The duplicate license fee is no longer necessary because licensees can now print their own license online. The amendments also reduce the license and certificate issuance and renewal fee by $25.

As of May 1, 2018, the Appraisal Qualifications Board ("AQB") has adopted new standards, significantly reducing the education and experience requirements for applicants for licensure. Under T.C.A. §§ 62-39-303, 62-39-312 and 62-39-313, applicants must meet the current requirements for licensure as set forth by the AQB. These amendments reflect those changes to the education and experience requirements.

(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;

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires that appraisers performing assignments in federally related transactions meet the qualifications set by the Appraisal Qualifications Board of the Appraisal Subcommittee. While these rules are not mandated by that requirement, they will streamline the implementation of changes to the federal structure in the future.

(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 proposed rule would affect applicants and current licensees. We believe that all affected parties would urge the adoption of these rules because the proposed rules are beneficial to all industry members.

(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 is no known Attorney General opinion or judicial ruling that directly relates 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;

By eliminating two (2) fees and reducing the issuance and renewal fee, the total reduction in licensing revenue for the Tennessee Real Estate Appraiser Commission is expected to be approximately five percent (5%) or $31,000.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission
Roxana Gumucio, Executive Director for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Real Estate Appraiser Commission
Roxana Gumucio, Executive Director for the Tennessee Real Estate Appraiser Commission

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

Sarah M. Mathews
500 James Robertson Parkway, Nashville, TN 37243
(615) 532-6303
Sarah.Mathews@tn.gov

Roxana Gumucio
500 James Robertson Parkway, Nashville, TN 37243
(615) 532-7081
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

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

For Department of State Use Only

Sequence Number: 09-09-18
Rule ID(s): 7241
File Date: 9/7/18
Effective Date: 12/6/18

Proposed Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1255-01	General Provisions
Rule Number	**Rule Title**
1255-01-.02	Definitions
1255-01-.04	Application for Appraiser License or Certificate
1255-01-.05	Qualifications for State Licensed Appraiser
1255-01-.07	Qualifications for State Certified Residential Appraiser
1255-01-.08	Qualifications for General Certification
1255-01-.11	License and Certificate Renewal
1255-01-.13	Replacement License or Certificate

Redline – 2018 Proposed Rules
Tennessee Real Estate Appraiser Commission

Chapter 1255-01
General Provisions
Amendments

Rule 1255-01-.02 is amended by adding a new paragraph (2) immediately following current paragraph (1) and renumbering the subsequent paragraphs accordingly so that, as amended, it shall read:

(2) "Appraisal Qualifications Board" or "AQB" means the Appraisal Qualifications Board of The Appraisal Foundation.

(~~2~~3) "Commission" means the Tennessee Real Estate Appraiser Commission.

(~~3~~4) "FIRREA" means Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Title 12, United States Code §§93, et seq.

(~~4~~5) "Rules" means the rules promulgated by the Commission.

(~~5~~6) "State Certified General Appraiser" means a person who has been issued a general real estate appraiser certificate by the Commission.

(~~6~~7) "State Certified Residential Appraiser" means a person who has been issued a residential real estate appraiser certificate by the Commission.

(~~7~~8) "State Licensed Appraiser" means a person who has been issued a real estate appraiser license by the Commission.

(~~8~~9) "Registered Trainee" means a person who has been issued a registration number as a registered real estate appraiser trainee in the State of Tennessee.

(~~9~~10) "Good Standing" means a person has not been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the appraiser's legal eligibility to engage in appraisal practice. An appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.

Authority: T.C.A. §§ 62-39-203 and 62-39-333.

Rule 1255-01-.04 is amended by replacing the language "$350.00" in subparagraph (6)(c) and substituting instead the language "$325.00" and then by deleting subparagraphs (6)(a) and (6)(b) and renumbering the remaining subparagraphs in Paragraph (6) appropriately so that, as amended, Paragraph (6) shall read:

(6) Filing and Fees. Properly completed applications must be accompanied by the appropriate fees. Once the application has been filed and processed, the application fee may not be refunded. The following fees shall be charged:

~~(a) Application for initial real estate appraiser license $125.00~~

~~(b) Application for initial real estate appraiser certificate $125.00~~

(~~c~~a) License or certificate issuance fee $~~350.00~~325.00

(~~d~~b) Application for upgrade $125.00

(~~e~~c) Letter of good standing $25.00

(~~f~~d) Application for temporary authorization $31.25 per six (6) month increment

(~~g~~e) Temporary authorization issuance fee $31.25 per six (6) month increment

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206,62-39-307, 62-39-312, 62-39-315 and 62-39-333.

Rule 1255-01-.05(1) is amended by deleting the paragraph in its entirety and substituting instead the following, so that, as amended, paragraph (1) shall read:

(1) An applicant for a state licensed real estate appraiser license who has satisfied the prerequisites for certification provided in rule 1255-01-.07 or rule 1255-01-.08 will also satisfy the requirements of this rule. All other applicants for a state licensed real estate appraiser license shall first register as a registered trainee with the Commission and complete the training requirements established in rule 1255-01-.12. An applicant shall then satisfy all of the following education, experience, and examination requirements:

(a) General Education. An applicant shall satisfy the Appraiser Qualifications Board ("AQB") general education requirements as a ~~following general education requirements as a~~ prerequisite for licensure as a state licensed real estate appraiser~~:~~.

~~1. Applicants for the licensed residential credential shall successfully complete thirty (30) semester hours of college-level education from an accredited college, junior college, community college, or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-level Examination Program® (CIEP) and examination(s) and issues a transcript for the exam showing its approval, it will be considered as credit for the college course.~~

~~2. Applicants holding an Associate degree, or higher, from an accredited college, junior college, community college, or university satisfy the thirty (30) hour college-level education requirement.~~

~~3. Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:~~

~~(i) An accredited, degree-granting domestic college or university;~~

~~(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);~~

~~(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or~~

~~(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.~~

(b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state licensed appraiser examination:

1. One hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal (hereinafter, "qualifying education requirement") which shall include:

(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;

(I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.

(ii) Successful completion of a thirty (30) hour course in Appraisal Principles;

(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;

(iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use;

(v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach;

(vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches; and

(vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies.

2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.

3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and the individual successfully completes an examination pertinent to that educational offering.

4. An applicant may obtain credit for the qualifying education requirement from any of the following educational providers:

(i) colleges or universities;

(ii) community or junior colleges;

(iii) real estate appraisal or real estate related organizations;

(iv) state or federal agencies or commissions;

(v) proprietary schools;

(vi) other providers approved by the Commission; and

(vii) The Appraisal Foundation or its Boards.

5. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of qualifying educational requirements.

6. In the event of a denial, an applicant for licensure may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for licensure is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A., Title 4, Chapter 5), and the applicant may then reapply for licensure.

(c) Experience.

1. An applicant shall satisfy the ~~following~~ AQB experience requirements as a prerequisite for licensure as a state licensed real estate appraiser.
~~1. An applicant shall complete a minimum of two thousand (2,000) hours of appraisal experience over a period of at least twenty-four (24) months preceding the date of the application to the Commission. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. An applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice.~~

2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:

(i) A minimum of six (6) ~~twenty-four (24)~~ months of experience as a licensed or certified real estate appraiser in another state, territory, or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules established by the Commission.

3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for ~~each twelve (12)-month~~ the six (6)-month period that the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:

(i) type of property;

(ii) date of report;

(iii) address of appraised property;

(iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;

(v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;

(vi) client name and address; and

(vii) signature and State certification number of the supervising appraiser, if applicable.

4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.

~~5. There is no minimum number of hours that must be obtained in any one (1) twelve (12)-month period.~~

(d) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Licensed Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.

(e) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for licensure. The Commission office shall not process an applicant's application if the required qualifying education and experience have not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-303, 62-39-329, 62-39-333, and 62-39-337

Rule 1255-01-.07(1) is amended by deleting the paragraph in its entirety and substituting instead the following, so that, as amended, paragraph (1) shall read:

(1) An applicant applying for a state certified residential real estate appraiser certification shall first register as a real estate appraiser trainee, or be a licensed or certified general real estate appraiser. The applicant shall then satisfy all of the following education, experience, and examination requirements:

(a) General Education. An applicant shall satisfy ~~the following~~ one (1) of the AQB general education requirements as a prerequisite for certification as a state certified residential real estate appraiser~~:~~.

~~1. Bachelor's degree or higher.~~

(b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified residential appraiser examination:

1. Two hundred (200) classroom hours of courses in subjects related to real estate appraisal (hereinafter "qualifying education requirement"). These modules shall include:

(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;

(I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.

(ii) Successful completion of a thirty (30) hour course in Appraisal Principles;

(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;

(iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use;

(v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach;

(vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches;

(vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies;

(viii) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;

(ix) Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and

(x) Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.

2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.

3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and an applicant successfully completes an examination pertinent to that educational offering.

4. An applicant may obtain credit for the qualifying education requirement from any of the following:

(i) colleges or universities;

(ii) community or junior colleges;

(iii) real estate appraisal or real estate related organizations;

(iv) state or federal agencies or commissions;

(v) proprietary schools;

(vi) other providers approved by the Commission; and

(vii) The Appraisal Foundation or its Boards.

5. The qualifying education requirement may include the one hundred fifty (150) hour qualifying education requirement for the state licensed real estate appraiser classification.

6. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of the qualifying education requirements.

7. In the event of a denial, an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case

proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A., Title 4, Chapter 5) and the applicant may then reapply for certification.

(c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified residential appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree- granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES), or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(d) Experience.

1. An applicant shall satisfy the ~~following~~ AQB experience requirements as a prerequisite for certification as a state certified residential real estate appraiser~~:~~.

~~1. An applicant shall complete a minimum of two thousand five hundred (2,500) hours of appraisal experience over a period of at least twenty-four (24) months. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. A registered trainee applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice.~~

2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:

(i) A minimum of ~~twenty-four (24)~~ twelve (12) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.

3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission which shall include the following information:

(i) type of property;

(ii) date of report;

(iii) address of appraised property;

(iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;

(v) number of actual work hours by the trainee/applicant on the assignment;

(vi) client name and address; and,

(vii) signature and State certification number of the supervising appraiser, if applicable.

4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.

~~5. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.~~

(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified Residential Real Property Appraiser Examination. An applicant must obtain certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.

(f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience have not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.

(g) An applicant applying for a State Certified Residential Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Real Estate Appraiser credential by completing the following additional educational hours:

1. Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;

2. Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and

3. Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over the minimum shown above in other modules.

(h) An applicant applying for a State Certified Residential Appraiser certification pursuant to subparagraph (g) must also satisfy the college-level educational requirements as specified in 1255-01-.07(1)(a).

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-311, 62-39-312, 62-39-313, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.08(1) is amended by deleting the paragraph in its entirety and substituting instead the following, so that, as amended, paragraph (1) shall read:

(1) An applicant applying for a state certified general real estate appraiser license shall first register as a real estate appraiser trainee, or be a licensed or certified residential real estate appraiser, and complete the experience requirements established in rule 1255-01-.12 and shall then satisfy the following education, experience, and examination requirements as a prerequisite for certification:

(a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for certification as a state certified general real estate appraiser:

1. Bachelor's degree or higher.

(b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified general appraiser examination:

1. Three hundred (300) classroom hours of courses in subjects related to real estate appraisal. These modules shall include (hereinafter "qualifying education requirement"):

(i) Fifteen (15) hours of the three hundred (300) hours must include the successful completion of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;

(I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.

(ii) Successful completion of a thirty (30) hour course in Appraisal Principles;

(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;

(iv) Successful completion of a thirty (30) hour course in General Appraiser Market Analysis and Highest and Best Use;

(v) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;

(vi) Successful completion of a thirty (30) hour course in General Appraiser Sales Comparison Approach;

(vii) Successful completion of a thirty (30) hour course in General Appraiser Site Valuation and Cost Approach;

(viii) Successful completion of a sixty (60) hour course in General Appraiser Income Approach;

(ix) Successful completion of a thirty (30) hour course in General Appraiser Report Writing and Case Studies; and

(x) Successful completion of thirty (30) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.

2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.

3. An applicant's qualifying education requirement may include the one hundred fifty (150) classroom hour requirement for the licensed real estate appraiser classification or the two hundred (200) hour requirement for the certified residential real estate appraiser classification.

4. The Commission may grant an applicant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and the applicant successfully completes an examination pertinent to that educational offering.

5. An applicant may obtain credit for the qualifying education requirement from the following:

(i) colleges or universities;

(ii) community or junior colleges;

(iii) real estate appraisal or real estate related organizations;

(iv) state or federal agencies or commissions;

(v) proprietary schools;

(vi) other providers approved by the Commission; and

(vii) The Appraisal Foundation or its Boards.

6. An applicant should refer to Chapter 1255-02 Evaluation of Education for further delineation of educational requirements.

7. In the event that an applicant is denied, then an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of his or her education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A., Title 4, Chapter 5) and the applicant may then reapply for certification.

(c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified general appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree-granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES) or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(d) Experience.

1. An applicant must satisfy the AQB experience requirements as a prerequisite for certification as a state certified general real estate appraiser~~:~~.

~~1. An applicant shall complete three thousand (3,000) hours of appraisal experience over a period of at least thirty (30) months preceding the date of the applicant's application to the Commission and the Commission shall treat the hours as cumulative. A registered trainee applicant shall complete the minimum of thirty (30) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice.~~

2. An applicant may obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:

(i) A minimum of ~~thirty (30)~~ eighteen (18) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.

3. An applicant shall complete at least one thousand five hundred (1,500) hours of the total three thousand (3,000) hours in non-residential appraisal work. Residential means one (1) to four (4) residential units. An applicant shall ensure that his or her experience shall satisfactorily demonstrate competence in the cost, income capitalization and direct sales comparison approaches to value.

4. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:

(i) type of property;

(ii) date of report;

(iii) address of appraised property;

(iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;

(v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;

(vi) client name and address; and

(vii) signature and State certification number of the supervising appraiser, if applicable.

5. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.

6. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.

(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified General Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of obtaining a passing score on the exam.

(f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience have not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.

(g) An applicant applying for a State Certified General Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:

1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;

2. Successful completion of a thirty (30) hour General Appraiser Site Valuation and Cost Approach course;

3. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;

4. Successful completion of a thirty (30) hour General Report Writing and Case Studies course;

5. Successful completion of a fifteen (15) hour Statistics, Modeling and Finance course; and

6. Successful completion of a sixty (60) hour General Appraiser Income Approach course.

(h) An applicant applying for a State Certified General Appraiser certification who holds a current State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:

1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;

2. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;

3. Successful completion of a thirty (30) hour Site Valuation and Cost Approach course;

4. Successful completion of a sixty (60) hour General Appraiser Income Approach course; and

5. Successful completion of a thirty (30) hour General Appraiser Report Writing and Case Studies course.

(i) An applicant applying for a State Certified General Appraiser certification pursuant to subparagraph (g) must also satisfy the college-level educational requirements as specified in 1255-01-.08(1)(a).

Authority: T.C.A. §§62-39-203, 62-39-204, 62-39-305 and 62-39-314.

Rule 1255-01-.11 is amended by replacing the language "$350.00" in paragraph (2) and substituting instead the language "$325.00" wherever it appears, so that, as amended, paragraph (2) shall read:

(2) An application for renewal must be accompanied by the following renewal fee, plus the applicable federal registry fee:

(a) Renewal of real estate appraiser license . . . . . .$~~350.00~~325.00

(b) Renewal of real estate appraiser certificate . . . . . .$~~350.00~~325.00

Authority: T.C.A. §§62-39-203, 62-39-204, 62-39-206 62-39-301, 62-39-307, 62-39-315 and 62-39-333.

Rule 1255-01-.13 is amended by deleting the phrase "and paying a fee of twenty-five ($25.00) to" and substituting instead the word "with" so that, as amended, the rule shall read:

A license or certificate holder may, by filing the prescribed form ~~and paying a fee of twenty-five ($25.00) to~~ with the Commission, obtain a duplicate license or certificate to replace an original license or certificate which has been lost, damaged or destroyed or if the name of the licensee or certificate holder has been lawfully changed.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206 and 62-39-333.

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-01 General Provisions
Rule 1255-01-.02, .04, .05, .07, .08, .11 & .13

* 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)
Jim Atwood	X				
Jason R. Bennett	X				
Rex Garrison	X				
Rosemarie Johnson				X	
Mark G. Johnstone	X				
Warren F. Mackara				X	
Randall Thomas	X				
Vacant					
Vacant					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Appraiser Commission on 04/16/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 17, 2018

Signature: Sarah M. Mathews

Name of Officer: SARAH M MATHENS

Title of Officer: ASST. GENERAL COUNSEL

Subscribed and sworn to before me on: July 17, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

CAROL L. McGLYNN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires NOV. 5, 2019

Rules of Tennessee Real Estate Appraiser Commission
Chapter 1255-01 General Provisions
Rule 1255-01-.02, .04, .05, .07, .08, .11 & .13

Agency/Board/Commission: Tennessee Real Estate Appraiser Commission

Rule Chapter Number(s):

1255-01-.02	Definitions
1255-01-.04	Application for Appraiser License or Certificate
1255-01-.05	Qualifications for State Licensed Appraiser
1255-01-.07	Qualifications for State Certified Residential Appraiser
1255-01-.08	Qualifications for General Certification
1255-01-.11	License and Certificate Renewal
1255-01-.13	Replacement License or Certificate

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

Herbert H. Slatery III
Attorney General and Reporter

8/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/7/18

Effective on: 12/6/18

Tre Hargett
Secretary of State

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PUBLIC INSTRUMENTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	Soil Scientists/Fee Decrease
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 62-18-208 and 62-18-211
EFFECTIVE DATES:	December 26, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal increase or decrease in state and local government revenues and expenditures.
STAFF RULE ABSTRACT:	The Department of Commerce and Insurance was informed that the Soil Scientist Society of America will no longer require the Professional Practice Exam for Certified Professional Soil Scientist (CPSS) certification. The current rules require the Professional Practice Exam for Licensure in Tennessee. Rule 0780-05-06-.07 is amended to reduce the initial license and renewal fee for an active license from $400 to $300. Rule 0780-05-06-.05 is amended to clarify continuing education requirements for initial licensure and license renewal. It does not add any new requirements.

Regulatory Flexibility Addendum

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

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

Tennessee currently regulates fifty-six (56) soil scientists. The rule amendments will likely benefit small businesses in Tennessee by creating conditions conducive for attracting more Soil Scientists to become licensed in Tennessee. Removing the requirement to pass an exam that is no longer required by the national organization, the Soil Scientist Society of America, will make licensure less burdensome for Soil Scientists attempting to obtain licensure and open a small business in Tennessee.

The rule amendments reducing the cost of licensure from $400 to $300 will make applying for licensure in Tennessee a more attractive choice for small businesses in deciding where they will practice their profession. This will affect all future soil scientist applicants and the renewal for all licensed soil scientists waiting to renew.

The amendments to renewal, as related to reporting continuing education, will help small business avoid confusion in complying with active license requirements and thus should help small businesses remain active in their field.

(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 projected reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules.

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

The proposed rule amendments have a probable positive effect on small businesses in Tennessee. Because the amendments allow Tennessee to become less restrictive in granting licensure for Soil Scientists in Tennessee by eliminating one examination requirement and by lowering fees, it is likely more Soil Scientists will come to our state to practice in their industry. Small businesses will have a decrease in overhead costs associated with obtaining and maintaining Soil Science licensure in Tennessee. The probable effect of the amendment is the alignment of Tennessee with national standards in Soil Scientist licensure schemes.

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

These amendments decrease the current requirements for Soil Scientists in Tennessee. Because these amendments decrease current regulations, they are not perceived as intrusive. Thus, no alternative means would be less burdensome to small businesses.

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

There are no known federal or state counterparts.

(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 amendments would decrease regulatory requirements and, as such, small businesses would not benefit from being exempted from this change.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The Department of Commerce and Insurance was informed that the Soil Scientist Society of America will no longer require the Professional Practice Exam for Certified Professional Soil Scientist (CPSS) certification. The current rules require the Professional Practice Exam for licensure in Tennessee. The amendment to Rule 0780-05-06-.04 will remove that exam requirement for licensure.

Rule 0780-05-06-.07 is amended to reduce the initial license and renewal fee for an active license from $400 to $300.

Rule 0780-05-06-.05 is amended to clarify continuing education requirements for initial licensure and license renewal. It does not add any new requirements.

(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;

There are no known federal laws or regulations or state laws or regulations mandating the promulgation of such rules.

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

Soil Scientists seeking licensure in Tennessee will be most directly affected by the amendments regarding the elimination of the requirement for the Professional Practice Exam for Certified Professional Soil Scientist certification. Soil Scientists seeking initial licensure or to renew licensure in Tennessee will be most directly affected by the amendments to the renewal section of the rules.

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

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

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

This rule is not expected to have an increase or decrease in state and local government revenues and expenditures.

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director

Soil Scientists
TN Department of Commerce and Insurance

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director
Soil Scientists
TN Department of Commerce and Insurance

(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

Elizabeth Goldstein
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Elizabeth.Goldstein@gmail.com

Anthony Glandorf – Chief Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Anthony.Glandorf@tn.gov

Roxana Gumucio
500 James Robertson Parkway
Nashville, TN 37243
615-741-1310
Roxana.Gumucio@tn.gov

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

None.

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

For Department of State Use Only

Sequence Number: 09-22-18
Rule ID(s): 7246
File Date: 9/27/18
Effective Date: 12/26/18

Proposed Rule(s) FILING FORM

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

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

Agency/Board/Commission:	Soil Scientists
Division:	Department of Commerce and Insurance Regulatory Boards Division
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-770-0089
Email:	Elizabeth.Goldstein@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0780-05-06	Soil Scientists
Rule Number	**Rule Title**
0780-05-06-.04	Application Requirements
0780-05-06-.05	Renewal Requirements
0780-05-06-.07	Fees

Chapter 0780-05-06
Soil Scientists
Amendments

Rule 0780-05-06-.04 Application Requirements is amended by deleting the language "and professional practice soil science" in paragraph (c), so as amended the rule shall read:

(1) Any person who desires to obtain a license as a professional soil scientist shall submit an application to the commissioner, along with the required application fee and all required documentation, including proof that the applicant:

(a) Has graduated from an accredited college or university with a Bachelor of Science degree or higher in soils, agronomy or a closely related field. The applicant shall have successfully completed a minimum of fifteen (15) semester hours of course work in soil science as required by T.C.A. 62-18-208(a)(1);

(b) Has at least three (3) years of soil science professional experience. Any combination of the following kinds of education and experience qualify towards accumulating the required (3) years:

1. Masters of science degree in soils, agronomy or a closely related field and two (2) years of professional experience;

2. Doctorate degree in soils, agronomy or a closely related field and one (1) year of professional experience; or,

3. Each year of teaching or soil science research by persons teaching upper-level soil science courses at the college or university levels; provided, that such teaching or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to a year of professional experience.

(c) Has passed the fundamentals ~~and professional practice soil science~~ examination~~s~~ administered by the Council of Soil Science Examiners (CSSE).

The commissioner shall waive the examination requirement for licensure as a soil scientist for an applicant who makes written application to the commissioner not later than July 1, 2011, and who otherwise meets the requirements of this rule.

Authority: T.C.A. §§ 62-18-208 and 62-18-211.

Rule 0780-05-06-.05 Renewal Requirements is amended by deleting paragraph (2) and substituting instead the following language, so that as amended paragraph (2) shall read:

(2) In order to renew his or her license, a licensee shall submit a renewal application with the appropriate renewal fee and submit a signed statement setting forth the number of continuing education hours that he or she has completed during the reporting period. No less than twelve (12) hours of continuing education will be required during the two (2) year period immediately preceding renewal. One (1) of the twelve (12), but no more than three (3) continuing education hours required for renewal shall be in ethics. ~~and any other prerequisites for renewal.~~

Authority: T.C.A. § 62-18-211.

Rule 0780-05-06-.07 Fees is amended by deleting the text of paragraph (3) and substituting the following language so that as amended paragraph (3) reads:

(3) Initial license and renewal fee for active license $~~400.00~~ $300.00

* 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)
N/A					

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

Date: _____

Signature: _____

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

0780-05-06 Soil Scientists

0780-05-06-.04
0780-05-06-.06(5)
0780-05-06-.06(7)

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

_____
Herbert H. Slatery III
Attorney General and Reporter

_____
Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

_____
Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

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

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

Tennessee currently regulates fifty-six (56) soil scientists. The rule amendments will likely benefit small businesses in Tennessee by creating conditions conducive for attracting more Soil Scientists to become licensed in Tennessee. Removing the requirement to pass an exam that is no longer required by the national organization, the Soil Scientist Society of America, will make licensure less burdensome for Soil Scientists attempting to obtain licensure and open a small business in Tennessee.

The rule amendments reducing the cost of licensure from $400 to $300 will make applying for licensure in Tennessee a more attractive choice for small businesses in deciding where they will practice their profession. This will affect all future soil scientist applicants and the renewal for all licensed soil scientists waiting to renew.

The amendments to renewal, as related to reporting continuing education, will help small business avoid confusion in complying with active license requirements and thus should help small businesses remain active in their field.

(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 projected reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules.

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

The proposed rule amendments have a probable positive effect on small businesses in Tennessee. Because the amendments allow Tennessee to become less restrictive in granting licensure for Soil Scientists in Tennessee by eliminating one examination requirement and by lowering fees, it is likely more Soil Scientists will come to our state to practice in their industry. Small businesses will have a decrease in overhead costs associated with obtaining and maintaining Soil Science licensure in Tennessee. The probable effect of the amendment is the alignment of Tennessee with national standards in Soil Scientist licensure schemes.

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

These amendments decrease the current requirements for Soil Scientists in Tennessee. Because these amendments decrease current regulations, they are not perceived as intrusive. Thus, no alternative means would be less burdensome to small businesses.

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

There are no known federal or state counterparts.

(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 amendments would decrease regulatory requirements and, as such, small businesses would not benefit from being exempted from this change.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

The Department of Commerce and Insurance was informed that the Soil Scientist Society of America will no longer require the Professional Practice Exam for Certified Professional Soil Scientist (CPSS) certification. The current rules require the Professional Practice Exam for licensure in Tennessee. The amendment to Rule 0780-05-06-.04 will remove that exam requirement for licensure.

Rule 0780-05-06-.07 is amended to reduce the initial license and renewal fee for an active license from $400 to $300.

Rule 0780-05-06-.05 is amended to clarify continuing education requirements for initial licensure and license renewal. It does not add any new requirements.

(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;

There are no known federal laws or regulations or state laws or regulations mandating the promulgation of such rules.

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

Soil Scientists seeking licensure in Tennessee will be most directly affected by the amendments regarding the elimination of the requirement for the Professional Practice Exam for Certified Professional Soil Scientist certification. Soil Scientists seeking initial licensure or to renew licensure in Tennessee will be most directly affected by the amendments to the renewal section of the rules.

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

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

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

This rule is not expected to have an increase or decrease in state and local government revenues and expenditures.

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director

Soil Scientists
TN Department of Commerce and Insurance

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Anthony Glandorf – Chief Counsel
TN Department of Commerce and Insurance

Roxana Gumucio – Executive Director
Soil Scientists
TN Department of Commerce and Insurance

(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

Elizabeth Goldstein
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Elizabeth.Goldstein@gmail.com

Anthony Glandorf – Chief Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Anthony.Glandorf@tn.gov

Roxana Gumucio
500 James Robertson Parkway
Nashville, TN 37243
615-741-1310
Roxana.Gumucio@tn.gov

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

None.

* 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)
N/A					

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

AMANDA DEAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires MAY 6, 2019

Date: 8/22/18

Signature:

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: August 22, 2018

Notary Public Signature: Amanda Dean

My commission expires on: May 6, 2019

0780-05-06 Soil Scientists

0780-05-06-.04
0780-05-06-.06(5)
0780-05-06-.06(7)

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

Herbert H. Slatery III
Attorney General and Reporter

9/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/27/18

Effective on: 12/26/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

BOARD: Pharmacy

SUBJECT: Third Party Logistics Provider Licensing/Fee

STATUTORY AUTHORITY: In November of 2013, Congress enacted the Drug Supply Chain Security Act ("the Act") into the United States Food, Drug, and Cosmetic Act. The Act specifies that "no state shall regulate third-party logistics providers as wholesale distributors." 21 U.S.C Section 360-eee-4(b)(2) (2013).

EFFECTIVE DATES: December 11, 2018, through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: In November of 20I3, Congress enacted the Drug Supply Chain Security Act ("the Act") into the United States Food Drug and Cosmetic Act. The Act specifies that no state shall regulate third-party logistics providers as wholesale distributors." 21 U S.C. Section 360-eee-4(b)(2) (2013). The Department of Health's Office of General Counsel interprets, consistently with other states, the foregoing statutory provision to mean that a separate licensure category must be established for third party logistics providers ("3PL") and that wholesale distributors who engage in providing 3PL services shall obtain two separate licenses - a license to engage in the distribution of prescription drugs and/or prescription devices and a license to engage in 3PL services, both of which are issued by the Tennessee Board of Pharmacy ("Board"). As such, this rule scheme is proposed to satisfy the requirements of federal law.

This proposed rule packet adds the definition of "common carrier" and "third party logistics provider ("3PL")" to the definitions Chapter. This rule packet also establishes a fee for a 3PL license which amends the fees Chapter.

Before a 3PL provides services within the State of Tennessee, the entity shall be licensed by the Board. Physical location is irrelevant for purposes of licensure within this state. If operations are conducted at more than one location, each location shall be licensed.

Facilities that are located outside the State of Tennessee and are used in coordination by a 3PL must be either: (1)

VAWD certified, (2) licensed by the State of Tennessee; or (3) licensed by the facility's home state. Any facility that distributes a drug into or from the State of Tennessee must be licensed separately by the Board.

Minimum information will be required of each 3PL applicant. The information collected is consistent with information collected about other licensees of the Board. Information pertaining to prior convictions, including convictions involving controlled substances, and any adverse licensure actions will be considered by the Board.

In the event a 3PL stores or handles prescription drugs and/or prescription devices, the 3PL shall abide by the (proposed) rule provisions pertaining to the facility used, security, storage, reporting, examination of materials, the return of damaged and/or outdated prescription drugs and/or prescription devices, record keeping, written policies and procedures, responsible persons, compliance with federal, state, and local laws, and salvaging and processing.

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 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.

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

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

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

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

The proposed rules establish flexible compliance and/or reporting requirements for small businesses by virtue of the Board's waiver authority.

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

The proposed rules contain reporting requirements consistent with reporting requirements of other, similarly situated licensees of the Board.

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

The proposed rules do not consolidate or simplify compliance or reporting requirements for small businesses.

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

The proposed rules establish minimum standards of compliance for small businesses which store and/or warehouse prescription drugs and / or prescription devices. To the extent that public safety is implicated regarding design or operational standards, the proposed rules establish security and storage requirements.

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

The proposed rules establish a fee schedule to obtain a license to operate as a 3PL. The fee schedule is designed to offset costs of regulating 3PLs and the fees are not so high as to chill applicant interest. The fee schedule is consistent with other, similarly situated licensees of the Board.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Pharmacy

Rulemaking hearing date: July 17, 2018

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:**

   While it is difficult to estimate the number of drug wholesalers who now must be licensed as a 3PL, it can be assumed that some percentage of wholesalers shall become licensed (and bear the costs of the proposed rule) as a 3PL based upon the federal requirement that states must separately license a 3PL and a wholesaler drug distributor. (21 U.S.C. § 360eee-4(b)(2) (2013).

   Ultimately, the intent of relevant federal law pertaining to the drug supply chain is to provide safety and transparency regarding the flow of drugs from manufacturers to wholesalers and / or distributors through 3PLs.

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:**

   Each licensed 3PL shall be required to comply with the recordkeeping requirements established in the proposed rule. However, the recordkeeping requirements of the proposed rule are not more burdensome than recordkeeping requirements followed by other licensees of the Tennessee Board of Pharmacy.

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

   A licensed prescription drug and / or prescription device wholesaler, who engages in 3PL services, shall obtain a 3PL license. Any other entity engaged in 3PL services, as defined, shall be licensed as a 3PL. The impact of the licensure includes initial and renewal fees. Also, federal and state laws and regulations must be followed.

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:**

   Until the United States Food and Drug Administration ("FDA") provides guidance by way of regulations, as required by federal law (21 U.S.C. §360eee-3(d) (2013)), there is not a less burdensome, less intrusive, or less costly alternative to this rule chapter. The FDA has yet to enact regulations regarding the licensure structure of 3PLs.

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

   Federal: Federal statutory law dictates that 3PLs shall be licensed separately from wholesale drug distributors. While the FDA was tasked with drafting rules for states to follow, these rules have not been promulgated and states have decided to enact their own schemes based upon industry standards, until such time as the FDA promulgates rules.

   State: There are no state rules on point regarding 3PLs.

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

   There are no exemptions to this rule chapter, but the Board retains waiver authority.

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;

In November of 2013, Congress enacted the Drug Supply Chain Security Act ("the Act") into the United States Food, Drug, and Cosmetic Act. The Act specifies that "no state shall regulate third-party logistics providers as wholesale distributors." 21 U.S.C. § 360-eee-4(b)(2) (2013). The Department of Health's Office of General Counsel interprets, consistently with other states, the forgoing statutory provision to mean that a separate licensure category must be established for third-party logistics providers ("3PL") and that wholesale distributors who engage in providing 3PL services shall obtain two separate licenses – a license to engage in the distribution of prescription drugs and / or prescription devices and a license to engage in 3PL services, both of which are issued by the Tennessee Board of Pharmacy ("BOP"). As such, this rule scheme is proposed to satisfy the requirements of federal law.

This proposed rule packet adds the definition of "common carrier" and "third party logistics provider ("3PL")" to the definitions Chapter. This rule packet also establishes a fee for a 3PL license which amends the fees Chapter.

Before a 3PL provides services within the State of Tennessee, the entity shall be licensed by the Tennessee Board of Pharmacy ("Board"). Physical location is irrelevant for purposes of licensure within this state. If operations are conducted at more than one location, each location shall be licensed.

Facilities that are located outside the State of Tennessee and are used in coordination by a 3PL must be either: (1) VAWD certified, (2) licensed by the State of Tennessee; or (3) licensed by the facility's home state. Any facility that distributes a drug into or from the State of Tennessee must be licensed separately by the Board.

Minimum information will be required of each 3PL applicant. The information collected is consistent with information collected about other licensees of the Board. Information pertaining to prior convictions, including convictions involving controlled substances, and any adverse licensure actions will be considered by the Board.

In the event a 3PL stores or handles prescription drugs and / or prescription devices, the 3PL shall abide by the (proposed) rule provisions pertaining to the facility used, security, storage, reporting, examination of materials, the return of damaged and / or outdated prescription drugs and / or prescription devices, record keeping, written policies and procedures, responsible persons, compliance with federal, state, and local laws, and salvaging and processing.

(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;

In November of 2013, Congress enacted the Drug Supply Chain Security Act ("the Act") into the United States Food, Drug, and Cosmetic Act. The Act specifies that "no state shall regulate third-party logistics providers as wholesale distributors." 21 U.S.C. § 360eee-4(b)(2) (2013).

(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;

While it is difficult to estimate the number of drug wholesalers who now must be licensed as a 3PL, it can be assumed that some percentage of wholesalers shall become licensed (and bear the costs of the proposed rule) as a 3PL based upon the federal requirement that states must separately license a 3PL and a wholesaler drug distributor. (21 U.S.C. § 360eee-4(b)(2) (2013)).

(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 result in any increase or decrease in state or local government revenues or expenditures.

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

Matthew Gibbs, Assistant General Counsel, Department of Health.

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

Matthew Gibbs, Assistant General Counsel, Department of Health.

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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Matthew.Gibbs@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: 09-15-18
Rule ID(s): 7243-7244
File Date: 9/12/18
Effective Date: 12/11/18

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 Board of Pharmacy
Division:	
Contact Person:	Matthew Gibbs, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Matthew.Gibbs@tn.gov

Revision Type (check all that apply):
X Amendment
X 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**
1140-01	Introductory Rules
Rule Number	**Rule Title**
1140-01-.01	Definitions
1140-01-.10	Fees

Chapter Number	**Chapter Title**
1140-16	Third Party Logistics Provider
Rule Number	**Rule Title**
1140-16-.01	Purpose
1140-16-.02	Third Party Logistics Provider Licensing
1140-16-.03	Minimum Information Required
1140-16-.04	Minimum Qualifications
1140-16-.05	Personnel
1140-16-.06	Minimum Requirements for General Operation

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-01
INTRODUCTORY RULES

TABLE OF CONTENTS

1140-01-.01	Definitions
1140-01-.02	Violations Constitute Unprofessional Conduct
1140-01-.03	Application for Pharmacist License
1140-01-.04	Pharmacy Internship
1140-01-.05	Licensing Examinations
1140-01-.06	Summary Suspension of License
1140-01-.07	Inactive Licenses and License Reinstatement
1140-01-.08	Application for Pharmacy Practice Site, Manufacturer, Outsourcing Facility, Oxygen Supplier and Wholesaler/Distributor Licenses
1140-01-.09	Renewal of Licenses
1140-01-.10	Fees
1140-01-.11	Controlled Substance Registration
1140-01-.12	Sterile Product Registration
1140-01-.13	Standards for Pharmacies and Prescription Department Security
1140-01-.14	Standards for Manufacturers, Outsourcing Facilities, Oxygen Suppliers and Wholesalers/Distributors
1140-01-.15	Repealed
1140-01-.16	Pilot Programs

1140-01-.01 DEFINITIONS.

(1) "ACPE" means the Accreditation Council for Pharmacy Education.

(2) "Alternate or alternative infusion pharmacy practice site" means a pharmacy practice site where parenteral, enteral or respiratory therapies, and ancillary supplies, medications and equipment are provided to patients in a non-institutional setting.

(3) "Accreditation Council for Pharmacy Education (ACPE)" means the national organization for accreditation of professional degree programs in pharmacy and for accreditation of providers of continuing pharmacy education.

(4) "Automated Dispensing System" means a mechanical or electronic system outside the premises of an institutional or long-term care pharmacy that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and

(Rule 1140-01-.01, continued)

maintenance of all transaction information, to provide security and accountability for such drugs.

(5) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(6) "Blood fraction/component" means that part of blood separated by physical or mechanical means.

(7) "Centralized Prescription Processing" is the filling or refilling of a lawful prescription order written by the patient's authorized prescriber by one (1) pharmacy licensed by the State of Tennessee at the request of another pharmacy licensed by the State of Tennessee for the delivery of the prescription drugs to the patient or patient's agent.

(8) "Certified pharmacy technician" means an individual who is certified by a national or state agency that offers a certification program that is recognized by the board.

(9) "Commercially available" means any marketed FDA-approved drug or biologic product not currently listed on any official shortage list recognized by the Board of Pharmacy.

(10) "Common carrier" means any person or entity who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs and / or devices for compensation. A common carrier is only responsible for transportation. A common carrier has no responsibility to direct the sale or disposition of property.

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(11)~~(10)~~ "Component" means any active ingredient, or any added substance, inactive ingredient, excipient or pharmaceutic ingredient, intended for use in the compounding of a drug product, including those that may not appear on the product label.

(12)~~(11)~~ "Consultant pharmacist" means a pharmacist retained on a routine basis to consult with organizations, institutional facilities or patients in areas that pertain to the practice of pharmacy.

(Rule 1140-01-.01, continued)

(13)~~(12)~~ "Contact hour" means any hour of completed continuing pharmaceutical education programming which is:

(a) Accredited by ACPE (including, but not limited to, live programs, independent study courses, home correspondence courses, and audio or video cassettes); or

(b) Approved by the board (including, but not limited to, attendance at state, district, or local pharmacy association meetings).

(14)~~(13)~~ "Continuing education unit" means ten (10) hours of participation in an ACPE approved or board-approved continuing pharmaceutical education program under responsible sponsorship, capable direction, and qualified instruction.

(15)~~(14)~~ "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the prescription drug.

(16)~~(15)~~ "Electronic medical or prescription order" means a medical or prescription order which is transmitted by computer technology other than by electronic image transmission.

(17)~~(16)~~ "Facsimile (FAX) medical or prescription order" means a medical or prescription order which is transmitted by an electronic image transmission.

(18)~~(17)~~ "Foreign pharmacy graduate" means a person whose undergraduate pharmacy degree was conferred by any college or school of pharmacy not accredited by the ACPE but which is listed in the World Health Organization World Directory of Colleges and Schools of Pharmacy, or otherwise approved by the Foreign Pharmacy Graduate Examination Committee (FPGEC) certification program as established by the National Association of Boards of Pharmacy.

(19)~~(18)~~ "Hazardous product" means any substance that may be cytotoxic, genotoxic, oncogenic, mutagenic, teratogenic, or otherwise pose a potential health hazard.

(Rule 1140-01-.01, continued)

(20)~~(19)~~ "Institutional facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain acute or short-term health care services, including but not limited to a(n):

(a) Hospital and associated clinics;

(b) Developmental disability center;

(c) Inpatient psychiatric center;

(d) Sub-acute care facility; and

(e) University health center.

(21)~~(20)~~ "Institutional pharmacy practice site" means a pharmacy practice site serving patients within an institutional facility.

(22)~~(21)~~ "Long term care pharmacy practice site" means a pharmacy practice site serving patients within a long term care facility.

(23)~~(22)~~ "Long term care facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain healthcare services, and where patients spend a majority of their time within the facility, including, but not limited to a(n):

(a) Nursing home

(b) Hospice or residential hospice; and

(Rule 1140-01-.01, continued)

(c) Assisted living facility.

(24)~~(23)~~ "Medication assessment" means a consultation between a pharmacist and a patient undertaken for the specific purpose of managing or discussing a course of drug therapy or treatment. Counseling as required by Board Rule 1140-03-.01 shall not be considered a medication assessment for the purposes of this part.

(25)~~(24)~~ "Medication order" means a prescription order for any prescription drug or device or related material issued by an authorized prescriber to authorized healthcare personnel in an institutional facility or institutional pharmacy practice site.

(26)~~(25)~~ "National Association of Boards of Pharmacy (NABP)" means the professional organization that represents the individual state boards of pharmacy.

(27)~~(26)~~ "Nuclear pharmacy practice site" means a pharmacy practice site providing radiopharmaceutical services.

(28)~~(27)~~ "Outsourcing facility" means a facility engaged in the compounding of sterile drugs which has elected to register as an outsourcing facility with the U.S. Food and Drug Administration and which complies with all relevant federal laws and regulations.

(29)~~(28)~~ "Oxygen supplier" means any person who sells, delivers, distributes or wholesales medical gases which require a prescription or medical order prior to administration, dispensing or delivery and which are considered legend drugs pursuant to the federal Food, Drug, and Cosmetic Act to any person residing in this state.

(30)~~(29)~~ "Patient counseling" means communication by the pharmacist of information to the patient or caregiver in order to improve therapeutic outcome.

(31)~~(30)~~ "Pharmaceutical care" is the responsible provision of drug therapy through, among other things, pharmacists identifying potential and actual drug-related problems and resolving and preventing drug-related problems, for the purpose of achieving definite outcomes that improve a patient's quality of life. The outcomes include but are not limited

(Rule 1140-01-.01, continued)

to cure of a disease, elimination or reduction of a patient's symptomatology, arresting or slowing of a disease process and the preventing of a disease or symptomatology.

(32)~~(31)~~ "Pharmacy internship" is a period of practical pharmacy experience under the direct supervision of a licensed pharmacist and pursuant to the rules of the board.

(33)~~(32)~~ "Pharmacy practice site" means any place within this state where prescription drugs or prescription devices are dispensed and where pharmaceutical care is provided, and any place outside of the state where prescription drugs or prescription devices are dispensed and pharmaceutical care is provided to persons residing in this state.

(34)~~(33)~~ "Preceptor" means an individual who is currently licensed as a pharmacist and who meets the qualifications of a preceptor under the rules of the board and participates in the education of pharmacy interns.

(35)~~(34)~~ "Prescription department" means the area of a pharmacy practice site in which prescription drugs and devices and related materials are stocked and medical and prescription orders are compounded and dispensed.

(36)~~(35)~~ "Quality assurance" means a system for identifying problems in patient care that are resolved via administrative, clinical, or educational actions to ensure that final products and outcomes meet applicable specifications.

(37)~~(36)~~ "Radiopharmaceutical service" means, but is not limited to:

(a) The compounding, dispensing, labeling, and delivering of radiopharmaceuticals;

(b) The participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews;

(c) The proper and safe storage and distribution of radiopharmaceuticals;

(Rule 1140-01-.01, continued)

(d) The maintenance of radiopharmaceutical quality assurance;

(e) The responsibility for advising, where necessary or where regulated, of the diagnostic and therapeutic value, hazards, and use of radiopharmaceuticals; and

(f) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a nuclear pharmacy practice site.

(38)~~(37)~~ "Reciprocity" means to issue a license to an applicant who furnishes satisfactory proof of licensing by examination in another state or territory pursuant to the rules of the board.

(39)~~(38)~~ "Shall" means that compliance is mandatory.

(40)~~(39)~~ "Sterile product" means any dosage form, drug product, or biological product devoid from all living microorganisms, including but not limited to bacteria and fungus.

(41)~~(40)~~ "Sterile manufacturing" means the production, propagation, processing, pooling, or repackaging of sterile products for wholesale or any other form of distribution, not pursuant to a prescription or medical order.

(42) "Third-party logistics provider (3PL)" means a person who provides or coordinates warehousing or other logistics services of a drug or device on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device, but does not take ownership of the drug or device, nor has responsibility to direct the sale or disposition of the drug or device;

(43)~~(41)~~ "Third party pharmacy program" means any system of providing for the reimbursement of medical or prescription orders and/or pharmaceutical care services under a contractual arrangement or agreement between a provider of such services and the third party program administrator who is not the consumer of those services.

(Rule 1140-01-.01, continued)

(44)~~(42)~~ "Third party pharmacy program administrator" means, but is not limited to, insurance companies, managed care organizations, health maintenance organizations, preferred provider organizations, pharmacy benefit managers, and pharmacy services administrative organizations.

(45)~~(43)~~ "Unit dose packaging" means that packaging which is designed to hold a quantity of a drug product intended for administration as a single dose.

(46)~~(44)~~ "USP" means the United States Pharmacopeia.

(47)~~(45)~~ "USP standards" means any applicable standard or standards published in the most current version of United States Pharmacopeia National Formulary guidelines, to the extent that such guidelines do not conflict with state law, rules, or Board Policy Statements and as those guidelines may, from time to time, be amended.

Authority: *T.C.A. §§ 63-10-101, 63-10-102, 63-10-204, 63-10-214, 63-10-216, 63-10-216, 63-10-301, ~~63-10-304, 63-10-30463-10-304(b)(1), 63-10-404(5), (6), (14), (22), (26), (28), and (29),~~ 63-10-306, 63-10-504(b)(1), and Chapter 966 of the Public Acts of 2008 § 1.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009. Amendment filed December 23, 2009; effective March 23, 2010. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendment filed July 11, 2014; effective October 9, 2014. Amendment filed March 24, 2015; effective June 22, 2015. Amendments filed November 22, 2016; effective February 20, 2017.*

1140-01-.02 VIOLATIONS CONSTITUTE UNPROFESSIONAL CONDUCT.

(1) Any person who violates any rule of the board may be deemed guilty of dishonorable, immoral, unethical or unprofessional conduct within the meaning of *T.C.A. § 63-10-305(6).*

Authority: *T.C.A. §§ 63-10-301, 63-10-304, and 63-10-305.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed August 14, 1974; effective September 13, 1974. Repeal filed January 11, 1977; effective February 10, 1974. Repeal and new rule filed February 7, 1983; effective*

1140-01-.10 FEES.

(1) An applicant for examination for a license as a pharmacist shall pay a fee of fifty dollars ($50.00) plus cost of the examination and materials.

(2) An applicant for a reciprocal license or NAPLEX score transfer shall pay a fee of three hundred dollars ($300.00).

(3) Each person becoming licensed as a pharmacist shall pay a registration fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist who desires to continue in the practice of pharmacy shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist and who wishes to obtain an inactive license shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of sixty-three dollars ($63.00).

(4) Each person becoming registered as a pharmacy technician shall pay a registration fee of seventy-five dollars ($75.00). Each person who desires to continue to practice as a pharmacy technician shall biennially, on or before the last day of the month that the person's registration shall expire, pay a renewal fee of seventy-five dollars ($75.00).

(5) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any establishment or institution where prescription drugs and devices and related materials are kept for the purpose of the compounding and dispensing of medical and prescription orders shall pay a registration fee of three-hundred dollars ($300.00) biennially. Any new pharmacy practice site to be opened or established, or any change in location, name or ownership of any existing pharmacy practice site, shall before active operation obtain a license from the Board of Pharmacy and shall pay a fee of three-hundred dollars ($300.00)

~~(6) All manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors of prescription drugs and devices and related materials doing business in the state of Tennessee must be licensed by the Board of Pharmacy by paying a registration fee of five-hundred twenty-five dollars ($525.00), and thereafter a biennial renewal fee of five-hundred twenty-five dollars ($525.00).~~

(Rule 1140-01-.10, continued)

(6) All manufacturers, outsourcing facilities, oxygen suppliers, wholesalers/distributors, and 3PLs of prescription drugs and / or devices and related materials doing business in the state of Tennessee must be licensed by the Board of Pharmacy by paying a registration fee of five-hundred twenty-five dollars ($525.00), and thereafter a biennial renewal fee of five-hundred twenty-five dollars ($525.00).

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(7) The fee for the Board of Pharmacy's publication of Pharmacy Drug Laws, Rules and Regulations shall be an amount which covers the cost of publication and shipping, as determined by the Board of Pharmacy. The Board may also publish Pharmacy Drug Laws, Rules and Regulations electronically, and may make an electronic publication freely available on the Board's website.

(8) The charge for a roster of Tennessee pharmacies, pharmacists and printing of mailing labels of Tennessee pharmacies and pharmacists shall be determined by the administration of the Department of Health.

(9) The fee for certification of license examination grades shall be twenty five dollars ($25.00).

(10) The fee for any duplicate or revised license, registration, modifier or license wall certificate shall be twenty five dollars ($25.00).

(11) If any person fails to renew a license, such license may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(12) If any person fails to renew a license or registration certificate, such license or registration certificate may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(Rule 1140-01-.10, continued)

(13) A penalty of fifty dollars ($50.00) may, in the discretion of the board, attach to each failure of a licensee or registration certificate holder to provide any required notice to the director as may be required by the rules of the board.

(14) Any licensee who wishes to modify the terms or conditions of a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall file those modifications with a non-refundable fee of five dollars ($5.00).

(15) Any person who holds a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall pay a renewal fee of one-hundred dollars ($100.00) biennially from the date of issuance.

(16) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any other establishment licensed pursuant to this chapter, where sterile products are compounded, manufactured, prepared, propagated, repackaged, processed, stored, or distributed shall pay a registration fee of two-hundred and fifty dollars ($250.00), and thereafter a biennial renewal fee of two-hundred and fifty dollars ($250.00).

(17) Each automated dispensing system becoming registered with the Board shall pay a registration fee of three-hundred dollars ($300.00), and thereafter a biennial renewal fee of three-hundred dollars ($300.00).

(18) Each licensed practitioner, including pharmacy technicians, shall pay a fee of ten dollars ($10.00) in addition to any initial licensure or renewal fee. All fees collected pursuant to this paragraph shall be for the purpose of funding a peer assistance program.

(19) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

(Rule 1140-01-.10, continued)

Authority: *T.C.A. §§ 4-5-202, 63-10-102(a), 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-308, 63-10-404(17), 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-508.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed June 7, 1974; effective July 7, 1974. Amendment filed December 15, 1977; effective January 16, 1978. Amendment filed September 26, 1978; effective December 29, 1978. Repeal and new rule file February 7, 1983; effective March 9, 1983. Amendment filed May 23, 1986; effective August 12, 1986. Amendment filed January 26, 1987; effective April 29, 1987. Amendment filed October 1, 1987; effective January 27, 1988. Amendment filed November 18, 1989; effective February 28, 1989. Amendment filed October 18, 1990; effective January 29, 1991. Amendment filed May 3, 1991; effective August 28, 1991. Amendment filed December 22, 1992; effective March 31, 1993. Amendment filed June 25, 1993; effective September 28, 1993. Amendment filed October 19, 1996; effective February 28, 1996. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendments filed July 11, 2014; effective October 9, 2014. Amendments filed March 24, 2015; effective June 22, 2015. Amendments filed November 22, 2016; effective February 20, 2017.*

1140-01-.11 CONTROLLED SUBSTANCE REGISTRATION.

No licensee may obtain, possess, administer, dispense, distribute, or manufacture any controlled substance in this state, and no representative of a manufacturer or wholesaler/distributor may distribute any controlled substance in this state, without obtaining a controlled substance registration from the board. Application for such registration shall be submitted on a form prescribed by the board, and shall be accompanied by a fee of forty dollars ($40.00) and thereafter a biennial renewal fee of forty dollars ($40.00).

Authority: *T.C.A. §§ 53-10-303, 63-10-102, 63-10-102(a), 63-10-404, 63-10-404(6), 63-10-504, 63-10-504(b)(1) and (2), and 63-10-508.* ***Administrative History:*** *Original rule filed October 30, 1991; effective December 14, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-01-.12 STERILE PRODUCT REGISTRATION.

(1) No licensee may compound, manufacture, prepare, propagate, or process any sterile product to be dispensed, sold, traded, or otherwise distributed in or from this state without first obtaining a sterile compounding modifier registration from the Board of Pharmacy.

Chapter 1140-16
Third Party Logistics Provider

New Rule Chapter

Table of Contents.

1140-16-.01 Purpose
1140-16-.02 Third-Party Logistics Provider Licensing
1140-16-.03 Minimum Information Required
1140-16-.04 Minimum Qualifications
1140-16-.05 Personnel
1140-16-.06 Minimum Requirements for General Operation

Rule 1140-16-.01 Purpose.

Pursuant to 21 U.S.C. § 360eee-4(b)(2) (2013), a Third-Party Logistics Provider (3PL), as defined, shall be licensed separately from a wholesale distributor.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.02 Third-Party Logistics Provider Licensing.

(1) Before any 3PL provides or coordinates warehousing or other logistics services within this state for a prescription drug and / or prescription device on behalf of a manufacturer, wholesale distributor, or

dispenser the 3PL shall be licensed by the Board in accordance with this Chapter whether physically located within this state or outside this state. Where operations are conducted at more than one location, each such location shall be licensed by the Board. A warehouse provided by a 3PL shall be inspected by the Board's inspector(s) or inspectors of the state where the warehouse is physically located prior to providing services.

(2) A 3PL that coordinates with facilities that are engaged in the act of wholesale drug distribution and are also located outside of this state, shall provide documentation to the Board within 60 days of issuance of a 3PL license that each facility used by the 3PL has received either:

(a) A Verified-Accredited Wholesale Distributors accreditation from the National Association of Boards of Pharmacy;

(b) A manufacturer, wholesaler, or distributor license issued by the Board, including any license modifiers and / or additional registrations; or

(c) A manufacturer, wholesaler, or distributor license issued by the state where the facility is physically located, including any license modifiers and / or additional registrations.

(3) Failure to provide the required documentation within 60 days of the issuance of a 3PL license or within 60 days from any change in status of any previously submitted documentation may result in disciplinary action.

(4) Each manufacturer, wholesaler, or distributor that ships prescription drugs and / or prescription devices into or from the State of Tennessee shall be licensed by the Board accordingly and shall comply with all requirements of Tenn. Comp. R. & Regs. 1140-01-.08 and 1140-09-.01 *et. seq.*

(5) Each wholesale distributor, who is also engaged in providing 3PL services, as defined in Tenn. Code Ann. § 63-10-204(46), shall obtain a license to operate as a wholesale distributor issued by the Board and shall obtain a separate license to operate as a 3PL issued by the Board.

(6) An applicant with physical facilities located in this state must obtain and display prominently a separate license for each principal place of business where the applicant manufactures or distributes prescription drugs and / or prescription devices.

(7) Any 3PL that obtains controlled substances shall obtain the Board's controlled substance registration in accordance with Tenn. Comp. R. & Regs. 1140-01-11.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.03 Minimum Information Required.

(1) The Board shall require the following minimum information from an applicant applying for a license to operate as a 3PL or any renewal of such license:

(a) All trade or business names used by the 3PL (includes "is doing business as" and "formerly known as"), full business address, and telephone number of the 3PL;

(b) Addresses, telephone numbers, and the names of contact persons for all facilities used by the 3PL for storage, handling, and distribution;

(c) The name and contact information of the owner, the owner's agent, or another such individual employed at or contracted by the applicant who can be reached at any time by the Board, the Department of Health or any agents thereof in the event of a potential or actual public health threat related to the sterility or potency of any drug or biologic product manufactured, wholesaled or distributed by the applicant;

(d) A list of all state and federal licenses, registrations, or permits, including the number of each such license, registration, or permit issued to the 3PL by any other state and federal authority

authorizing the 3PL to possess and / or distribute prescription drugs, and including any disciplinary action taken against the 3PL and / or its principals, owners, directors, or officers;

(e) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and;

(f) The name(s) of the owner and operator of the 3PL, including:

1. If a person, the name of the person;

2. If a partnership, the name of each partner, and the name of the partnership;

3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

5. United States Drug Enforcement Administration (DEA) registration number if applicable; and

6. The results of a criminal background check for the owner and manager of the 3PL seeking licensure, submitted directly to the Board by the vendor identified in the Board's licensure application materials.

(2) Changes in any information in paragraphs (1)(a) through (f) of this rule shall be submitted in writing to the Board within one business day of the change.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.04 Minimum Qualifications.

(1) The Board shall consider, at a minimum, the following factors in reviewing an application for a license as a 3PL:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples or distribution of controlled substances;

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the distribution of prescription drugs and / or prescription devices, including controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with distribution;

(e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the distribution of any drugs, including controlled substances, prescription drugs and / or prescription devices;

(f) Compliance with licensing requirements under previously granted licenses, if any;

(g) Compliance with requirements to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required by federal, state or local laws; and

(h) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(2) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.

(3) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.05 Personnel. The Board shall require that personnel employed by a 3PL have appropriate education and/or experience to assume positions of responsibility for compliance with Board requirements.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.06 Minimum Requirements for General Operation. The following shall be the minimum requirements for the storage and handling of prescription drugs and / or prescription devices and for the establishment and maintenance of prescription drug and / or prescription device distribution records by a 3PL:

(1) Facilities. All facilities at which prescription drugs and / or prescription devices are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(a) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(b) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(c) Have a quarantine area for storage of prescription drugs and / or prescription devices that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(d) Be maintained in a clean and orderly condition; and

(e) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Security.

(a) All facilities at which prescription drugs and / or prescription devices are stored, warehoused, handled, held, offered, marketed, or displayed shall be secure from unauthorized entry.

1. Access from outside the premises shall be kept to a minimum and be well-controlled.

2. The outside perimeter of the premises shall be well-lit.

3. Entry into areas where prescription drugs and / or prescription devices are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(d) All facilities shall be equipped with inventory management and control systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting.

(e) All common carriers used by a 3PL shall ensure security via one of the following:

1. a verifiable security system; or

2. a Board-approved accreditation or certification program.

(3) Storage. All prescription drugs and / or prescription devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs

and devices, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia-National Formulary (USP-NF).

(a) If no storage requirements are established for a prescription drug, the prescription drug may be held at "controlled" room temperature, as defined in an official compendium such as USP-NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(b) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment and/or logs shall be utilized to document proper storage of prescription drugs and / or devices.

(c) Packaging of the prescription drugs and / or devices shall be in accordance with an official compendium such as USP-NF and identify any compromise in the integrity of the prescription drugs and / or devices due to tampering or adverse storage conditions.

(d) Controlled substance drugs shall be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

(e) The record keeping requirements in paragraph (7) of this Rule shall be followed for the distribution of all prescription drugs and / or devices.

(4) Reporting. A 3PL must comply with all reporting requirements and must exchange transaction history, transaction information, and transaction statements with authorized trading partners in accordance with all applicable state and federal reporting requirements.

(5) Examination of materials.

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs and / or prescription devices that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(b) Each outgoing shipment shall be carefully inspected for identity of the prescription drug and / or prescription devices products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(6) Returned, damaged, and outdated prescription drugs and prescription devices.

(a) Prescription drugs and / or prescription devices that are damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and / or prescription devices until destroyed or returned.

(b) Any prescription drugs and / or prescription devices whose immediate or sealed outer or sealed secondary containers have been opened or used shall be quarantined and physically separated from other prescription drugs and / or prescription devices until either destroyed or returned.

(c) If the conditions under which a prescription drug and / or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, then the prescription drug and / or prescription device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the prescription drug and / or prescription device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug and / or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, the 3PL shall consider, among other things, the conditions under which the prescription drug and / or prescription device has been held, stored or shipped before or during return and the condition of the prescription drug and / or device or related material and its container, carton, or labeling, as a result of storage or shipping.

(d) The record keeping requirements in paragraph (7) of this rule shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and / or prescription devices and reported to all applicable state and federal authorities.

(7) Record Keeping.

(a) A 3PL shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and / or devices as outlined in federal law. These records shall include:

1. Dates of receipt and distribution; or

2. Other disposition of the prescription drugs and / or devices.

(b) Such records shall include the inventories and transaction records and shall be made available for inspection and photocopying for a period of two (2) years following their creation date.

(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of any state or federal governmental agency charged with enforcement of these rules.

(d) A 3PL shall maintain an ongoing list of persons with whom it provides services.

(e) All facilities shall establish and maintain procedures for reporting counterfeit and contraband or suspected counterfeit and contraband drugs and / or devices, as well as counterfeiting and contraband or suspected counterfeiting and contraband activities, to the Board and United States Food and Drug Administration (FDA).

(8) Written Policies and Procedures

(a) A 3PL shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, and shipping and distribution of prescription drugs and / or prescription devices, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories.

(b) A 3PL shall include in its written policies and procedures the following:

1. A procedure to be followed for handling recalls and withdrawals of prescription drugs and / or devices. Such procedure shall be adequate to deal with recalls and withdrawals due to any action initiated at the request of the FDA or any other federal, state, or local law enforcement or other government agency, including the Board;

2. A procedure to ensure that a 3PL prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

3. A procedure to ensure that any outdated prescription drugs shall be segregated from other prescription drugs and either returned to the manufacturer or destroyed in accordance with federal and state laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated prescription drugs;

4. A procedure for the destruction of outdated prescription drugs in accordance with federal and state laws;

5. A procedure for the disposal and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of two (2) years, and the appropriate witnessing of the destruction of any labels, packaging,

immediate containers, or containers in accordance with all applicable federal and state requirements;

6. A procedure for identifying, investigating and reporting significant prescription drug inventory discrepancies involving counterfeit, contraband, or suspected counterfeit or contraband prescription drugs, including reporting of such discrepancies as required by federal and state law to the FDA, Board and/or appropriate federal or state agency upon discovery;

7. A procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drug(s) and / or device(s) as required to the Board, FDA, and, if applicable, DEA;

8. A procedure to correct errors and inaccuracies in inventories;

9. A procedure for maintaining the capability to trace the receipt and outbound distribution of a product, and supplies and records of inventory; and

10. A procedure for verifying security provisions of common carriers.

(c) Responsible persons. A 3PL shall establish and maintain lists of officers, directors, managers, and other persons in charge of distribution, storage, and handling, including a description of such persons' duties and a summary of such persons' qualifications.

(d) Compliance with federal, state, and local law. A 3PL shall operate in compliance with applicable federal, state, and local laws and regulations.

1. A 3PL shall permit the Board and authorized federal, state, and local law enforcement officials to enter and inspect premises and delivery vehicles, if applicable, and to audit records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

2. A 3PL that handles controlled substances shall register with the Board and with the DEA and shall comply with applicable local, state, and federal laws and DEA regulations.

(9) Salvaging and reprocessing. A 3PL shall be subject to the provisions of any applicable federal, state, and local laws or regulations that relate to salvaging or reprocessing of prescription drugs and / or prescription devices.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Rule 1140-16-.07 Upon request, the Board may waive selected portions of this Chapter so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

* 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)
Debra Wilson, D.Ph	X				
Rissa H. Pryse D.Ph	X				
Katy Wright, D.Ph.	X				
Lisa Tittle	X				
Adams Rodgers, D.Ph.	X				
Kevin K. Eidson, Pharm. D.	X				
R. Michael Dickenson, D.Ph.			X		

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Pharmacy (board/commission/ other authority) on 07/17/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *05/15/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *07/17/18 (mm/dd/yy)*

Date: July 19, 2018

Signature:

Name of Officer: Matthew Gibbs

Title of Officer: Assistant General Counsel, Department of Health

Subscribed and sworn to before me on: July 19, 2018

Notary Public Signature:

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOVSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Agency/Board/Commission: Tennessee Board of Pharmacy

Rule Chapter Number(s): 1140-01 and 1140-16

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
Attorney General and Reporter

9/6/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/12/18

Effective on: 12/11/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Health Related Boards
SUBJECT:	Drug Testing and Reporting
STATUTORY AUTHORITY:	2017 Public Chapter 481
EFFECTIVE DATES:	December 5, 2018, through June 30, 2019
FISCAL IMPACT:	These rules may affect government revenues or expenditures as these rules will apply to licensees employed at hospitals owned and operated by local governments; however, any effect should be minimal
STAFF RULE ABSTRACT:	This New Rules Chapter incorporates 2017 Public Chapter 481, which was signed by the Governor on June 6, 2017. These rules set out reporting requirements for employers to follow when a health care practitioner fails a drug test or refuses to submit to a drug test.

Public Hearing Comments

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

There were no written comments received regarding the proposed rules. One oral comment was received from Chris Clarke with the Tennessee Hospital Association (THA).

Mr. Clarke made several requests for clarification:

1. Will the Department clarify whether it intended the reporting requirement to the Office of Investigations detailed in this rule to satisfy the reporting requirement of the employer to both the Office of Investigations and the employee's licensing board or committee?

   Response: The Department intends the reporting requirement to the Office of Investigations as outlined in this rule for reports required by T.C.A. §§ 63-1-126 and 68-11-218 to suffice in one report both reporting requirements to the employee's licensing board or committee and the report to the Office of Investigations. This report from an employer does not alter any responsibility on the part of the employee licensee, including reporting to their licensing agency.

2. Will the Department publish a mechanism by which to make these reports?

   Response: The Department of Health, Office of Investigations accepts reports on a report form that can be found on the Department's website at:https://www.tn.gov/content/dam/tn/health/documents/PH-3466.pdf The certified documents required to be submitted, may be submitted with this form. However, provided all the required information is included, the Department will accept these reports written upon letter-head from the employer, if that is the employer's preferred reporting method.

3. Will the Department accept the certified documents in electronic format?

   Response: Unfortunately the Department is unable to accept electronic copies of the certified documents. The Department requires hard copies of the original certifying affidavits.

4. Is there a mechanism for the submitting employer to confirm receipt by the Department?

   Response: If the employer wishes to submit the required documentation by certified mail, return receipt requested, the Department will sign the green card certifying receipt of the mail.

5. Will the Department define valid medical reason as a prescription?

   Response: The Department has added explanatory language to this rule regarding a valid medical reason for using the drug.

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, or local governmental rules.

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

These rules are clear, concise, and unambiguous.

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

These rules explain the reporting process for new statutorily authorized reporting requirements. Employers of health care practitioners who are using certain drug tests must notify the department within ten (10) days of the three (3) day statutory grace period allowed an employee, following that individual's positive drug test or refusal to submit to testing. Additionally, the rules allow such a failed or refuse drug testing report to satisfy the employer's statutory requirement to report disciplinary action taken concerning any licensed person, by the inclusion of a statement regarding the disciplinary action taken, thus condensing employer reporting requirements.

These reporting requirements are as flexible as possible given the Department's interest in protecting the public.

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

These reporting requirements are as friendly as possible given the Department's interest in protecting the public.

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

These reporting requirements consolidate the reporting requirements created in 2017 Public Chapter 481 and T.C.A. § 68-11-218.

(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.

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

These rules do not create any unnecessary barriers and do not stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Department of Health, Health Related Boards

Rulemaking hearing date: April 3, 2018

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 could affect all health care practitioners as well as their employers. Depending on the manner in which an employer's drug testing system is set up, either health care practitioners or their employers could bear the costs of drug testing. These rules do not create any additional burden on the employers from those imposed by 2017 Public Chapter 481, but these rules will clarify for employers the statutorily mandated reporting process. The public will also benefit from these rules as the statutes and rules will streamline the Department's ability to discipline, or enroll in a peer assistance program, those health care practitioners who are under the influence of drugs or alcohol by making the process more efficient.

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 provide a clear timeline and requirements of reporting. The new statutory reporting requirements should not result in an increase in cost as employers already compile the information and maintain the records which are included in these reports.

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

   While 2017 Public Chapter 481 created new reporting requirements for employers, these rules provide clarity to the reporting process and consolidate two reporting requirements where the employer may determine which will best suit its needs.

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

   There are no less burdensome, less intrusive or less costly methods of achieving the purpose and objectives of the rules. The new reporting requirements provided for in these rules are necessary to comply with 2017 Public Chapter 481, which was signed by the Governor on June 6, 2017.

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 rules do 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)

These rules should not have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This New Rules Chapter incorporates 2017 Public Chapter 481, which was signed by the Governor on June 6, 2017.

These rules set out reporting requirements for employers to follow when a health care practitioner fails a drug test or refuses to submit to a drug test.

(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 481

(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 all health care practitioners as well as their employers.

(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 may affect government revenues or expenditures as these rules will apply to licensees employed at hospitals owned and operated by local governments; however, any effect should be minimal.

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

Mary Katherine Bratton, Deputy General Counsel, Department of Health.

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

Mary Katherine Bratton, Deputy General Counsel, Department of Health.

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

Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37205, (615) 741-1611, Mary.Bratton@tn.gov.

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

None.

Department of State
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-07-18
Rule ID(s): 7240
File Date: 9/6/18
Effective Date: 12/5/18

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 Health
Division:	Division of Health Related Boards
Contact Person:	Mary Katherine Bratton, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mary.Bratton@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-10-03	Drug Testing and Reporting
Rule Number	**Rule Title**
1200-10-03-.01	Time of Reporting
1200-10-03-.02	Reporting Requirements
1200-10-03-.03	Disciplinary Action Reporting

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 http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 1200-10-03
Drug Testing and Reporting
New Rule Chapter

Table of Contents

1200-10-03-.01 Time of Reporting
1200-10-03-.02 Reporting Requirements
1200-10-03-.03 Disciplinary Action Reporting

Authority: T.C.A. § 50-9-115.

Rule 1200-10-03-.01. Time of Reporting. When an employer is required to report a healthcare practitioner's refusal to submit to a drug test or positive drug test result, such report shall be made in writing to the Tennessee Department of Health, Office of Investigation, within ten (10) business days from the third day allowed the healthcare practitioner to produce a lawful prescription or report to a substance abuse peer assistance program.

Authority: T.C.A. §§ 50-9-115, 63-1-101, 63-1-126, 63-1-150 and 68-1-101.

Rule 1200-10-03-.02. Reporting Requirements.

(1) The employer's report to the Tennessee Department of Health, Office of Investigation shall:

(a) be in writing;

(b) detail the date the drug test was refused or administered;

(c) in the case of a positive result, contain a certified copy of the drug test results, chain of custody, and verification;

(d) contain a certified copy of the notification given to the healthcare practitioner; and

(e) contain the last known address of the healthcare practitioner.

(2) For purposes of this rule, "certified" means accompanied by an affidavit of the custodian or other qualified person certifying, in accordance with Tennessee Rules of Evidence 902(11), that it was produced as a record of a regularly conducted activity. Such a certifying affidavit form can be provided by the Department upon request.

(3) As used in T.C.A. § 63-1-126 the term "lawful prescription" means a prescription that complies with T.C.A. § 53-10-401, and "valid medical reason for using the drug" means a use for which the healthcare practitioner can produce a prescriber's written recommendation.

Authority: T.C.A. §§ 50-9-115, 63-1-126 and 68-1-101.

Rule 1200-10-03-.03 Disciplinary Action Reporting.

(1) The chief administrative official for each hospital or other health care facility, shall make a report if disciplinary action is taken concerning any person licensed under Title 63 or Title 68, where that action is related to professional ethics, professional incompetence or negligence, moral turpitude, or drug or alcohol abuse, in writing, within sixty (60) days of the date of the action. The hospital or health care facility shall make available to the Tennessee Department of Health, Office of Investigation, all records pertaining to the disciplinary action taken.

(2) Where an employer reports a refused or positive drug test pursuant to this chapter, the requirement to

report a disciplinary action shall be satisfied if the report also contains a statement of the disciplinary action taken.

(3) Notwithstanding the provisions of paragraph (2) above, all other provisions regarding disciplinary reporting remain in effect.

Authority: T.C.A. §§ 63-1-126, 68-1-101 and 68-11-218.

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Health (board/commission/ other authority) on 04/03/2018 (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: *01/31/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *04/03/18 (mm/dd/yy)*

Date: 4/16/18

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

Title of Officer: Chief Deputy General Counsel, Department of Health

Subscribed and sworn to before me on: 4-16-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC

Agency/Board/Commission: Department of Health

Rule Chapter Number(s): 1200-10-03

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

Herbert H. Slatery III
Attorney General and Reporter

8/30/2018
Date

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Filed with the Department of State on: 9/6/18

Effective on: 12/5/18

Tre Hargett
Secretary of State