G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Health Requirements for Admission and Transportation of Livestock and Poultry
STATUTORY AUTHORITY:	Under Tennessee Code Annotated, § 44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health with the state. 9 CFR Part 81 details federal restrictions for identification and movement of cervidae.
EFFECTIVE DATES:	December 21, 2018 through June 15, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This emergency rule adds inventory and movement requirements for captive cervidae within the state and extends the control zone around confirmed cases of Chronic Wasting Disease from 25 miles to 50 miles for purposes of limiting import and movement. The remaining portions of the previous rule are reorganized and rewritten for clarity.

Impact on Local Governments

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

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule adds inventory and movement requirements for captive cervidae within the state and extends the control zone around confirmed cases of CWD from 25 miles to 50 miles for purposes of limiting import and movement. Remaining portions of the previous rule are reorganized and rewritten for 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;

Under T.C.A. §44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health within the state. 9 CFR part 81 details federal restrictions for identification and movement of cervidae.

(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;

Captive cervidae farmers are most directly affected by this rule.

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

Bean v. Bredesen, 2005 WL 1025767 (Tenn. Ct. App. 2005) (ban on private possession of white-tailed deer for prevention of CWD spread is not unconstitutional for vagueness or violation of commerce clause; "Preventing the spread of CWD to Tennessee's indigenous white-tailed deer is an interest of the highest order," id at *7); *Griffin v. State*, 595 S.W.2d 96 (Tenn. Cr. App. 1980) (regulation for prevention of spreading disease was valid and reasonable exercise of power; courts will not disturb reasonable decision by agency with expertise, experience, and knowledge in appropriate field); Tenn. Op. Atty. Gen. No. 07-49 (re TDA and TWRA classification and jurisdiction over various elk species in Tennessee)

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

The estimated increase in departmental revenues and expenditures resulting from this rule is minimal.

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

Charles Hatcher, DVM, State Veterinarian, Tennessee Department of Agriculture

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

Charles Hatcher, DVM, State Veterinarian, Tennessee Department of Agriculture

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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5183; charles.hatcher@tn.gov

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

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Sequence Number: 12-27-18
Rule ID(s): 7956
File Date: 12/21/18
Last Effective Day: 6/15/19

REDLINE

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

Agency/Board/Commission: Department of Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

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

Statement of Necessity:
This rule is promulgated to prevent or to slow the spread of Chronic Wasting Disease (CWD) in Tennessee's cervidae populations.

Under T.C.A. §44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health within the state. In December 2018, 13 positive cases of CWD were reported and confirmed in northern Mississippi and southwest Tennessee. These are the first confirmed cases of CWD within the state and exhibit a significant concentration of the disease within a defined area.

CWD is a contagious neurological disease affecting deer, elk, and moose. Infected animals suffer from a spongy degeneration of the brain resulting in emaciation, abnormal behavior, loss of bodily functions and death. CWD is always fatal to infected animals, and no known treatment or vaccine exists for the disease. While CWD is not known to affect humans, the contagious disease poses significant concerns for management of wild deer and elk populations in Tennessee. Negative effects to those populations may potentially cascade across state interests, including: the ecological stability of affected areas; eroded confidence in agri-tourism and hunting of cervidae; and commercial viability of custom slaughter facilities that process deer; etc.

For these reasons, the department finds that greater accounting, testing, and movement restrictions for Tennessee's cervidae populations are immediately necessary to the sustainability of these animal populations and that the concentration of CWD in the state poses an immediate danger to the public welfare such that use of any other form of rulemaking authorized under the Tennessee Uniform Administrative Procedures Act would not adequately protect the public.

This rule is promulgated to continue in effect from the date of its filing until June 15, 2019.

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

Chapter Number	**Chapter Title**
0080-02-01	Health Requirements for Admission and Transportation of Livestock and Poultry
Rule Number	**Rule Title**

Amendment

Chapter 0080-02-01
Health Requirements for Admission and Transportation of Livestock and Poultry

Rule 0080-02-01-.12 Bison and Cervidae is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

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

(2) ~~Requirements for~~ Cervidae.

(a) ~~Tuberculosis~~ Definitions.

1. ~~All cervidae under the jurisdiction of the Department of Agriculture shall have originated from herds that have tested negative on a whole herd test for tuberculosis, using the USDA-approved single cervical test or other USDA-approved tests, not more than twelve (12) months prior to entering the state. In addition, individual imported animals shall have tested negative on the USDA-approved single cervical test or other USDA-approved tests not more than thirty (30) days prior to entry; or~~ Captive cervidae means any animal of the family Cervidae (commonly referred to as "the deer family") that is domesticated in captivity. This definition does not include white-tail deer, wild elk, or any other animal held by means of high-fencing that preserves wildlife conditions within its enclosure;

2. ~~Shall have originated from an accredited herd, and individual imported animals shall have tested negative on the USDA-approved single cervical test or other USDA-approved test not more than thirty (30) days prior to entry; or~~ Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards;

3. ~~Animals that have not originated from tested herds as described above must have tested negative on two (2) single cervical tests at least ninety (90) days apart, with the second test conducted not more than thirty (30) days prior to entry.~~ CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals;

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

5. Move, ship, transport, or words of similar import mean to relocate in any manner an item from one real property to another.

(b) ~~Brucellosis~~ Import.

1. Brucellosis. Any person who imports ~~All~~ sexually intact cervidae six months of age or older shall~~:~~

~~(i) H~~have in his possession proof that the animal tested negative for brucellosis within 30 days prior to ~~entry~~ import~~;~~ or

~~(ii) Have~~ that the animal originated directly from a certified brucellosis-free cervidae herd.

2. CWD.

(i) No person shall import CWD susceptible cervidae from an area where CWD has been detected by a state or federal animal health control official. The control zone around such area shall be 50 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.

(ii) Any person who imports CWD susceptible cervidae shall have in his possession:

(I) Proof that the cervidae originated from a certified status herd that has not suffered a loss or reduction in status during its program enrollment; and,

(II) A certificate of veterinary inspection (CVI), completed in full; and, an entry permit, obtained by the veterinarian issuing the CVI, for the cervidae.

3. Tuberculosis.

(i) Any person who imports captive cervidae or CWD susceptible cervidae shall have in his possession proof that the animal:

(I) Tested negative for tuberculosis within 30 days prior to import and that it originated from a herd that tested negative on a whole herd test for tuberculosis within 12 months prior to import; or,

(II) Tested negative for tuberculosis within 30 days prior to import and that it originated from a certified status herd; or,

(III) Tested negative on two single cervical tests at least 90 days apart and the second of which was conducted within 30 days prior to import.

(ii) Proof of tuberculosis testing must be conducted by either USDA-approved single cervical test methods or other USDA-approved tests.

(c) Intrastate movement and maintenance.

1. Any person who holds captive cervidae within the state must:

(i) Annually report to the department herd inventory, including the location, number and species of cervidae held, on or before February 1 of each year on forms provided by the department;

(ii) Immediately report to the department any captive cervidae illness or death within 24 hours of discovery; and,

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

2. No person shall move captive cervidae within the state unless:

(i) The cervidae is identified by two forms of identification, one of which must be an official tag or microchip used within the department's CWD Herd Certification Program; and,

(ii) The state veterinarian has provided prior written approval authorizing the movement.

3. No person shall move captive cervidae to or from a location that is within 50 miles of an area where CWD has been detected by a state or federal animal health control official,

unless otherwise ordered by the state veterinarian for purposes of destruction, research, or other good cause shown.

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

~~(a) Definitions.~~

~~1. Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards.~~

~~2. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals.~~

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

~~(b) Import Requirements.~~

~~1. No person shall import CWD susceptible cervidae from an area where CWD has ever been diagnosed in wildlife. The control zone around such area shall be 25 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.~~

~~2. No person shall import CWD susceptible cervidae into the state unless,~~

~~(i) The cervidae originated from a certified status herd that has had no loss or reduction in status during its program enrollment; and,~~

~~(ii) The person importing the cervidae has in his possession a certificate of veterinary inspection, completed in full including signature of the owner/agent section—and a prior entry permit for the cervidae obtained by the issuing veterinarian from the state veterinarian's office.~~

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: December 20, 2018

Signature:

Name of Officer: Charles W. Hatcher, DVM

Title of Officer: State Veterinarian

DANNA L. O'NEAL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 11-5-2019

Subscribed and sworn to before me on: 12-20-18

Notary Public Signature: Danna L. O'Neall

My commission expires on: 11-05-19

Agency/Board/Commission: Department of Agriculture

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

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

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

12/21/2018
Date

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Filed with the Department of State on: 12/21/18

Effective for: 176 *days

Effective through: 6/15/19

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

Tre Hargett by Mary Katherine Evans as POA
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Wildlife
SUBJECT:	Chronic Wasting Disease Zones
STATUTORY AUTHORITY:	No state or federal laws mandate the promulgation of this rule repeal or amendment
EFFECTIVE DATES:	December 21, 2018 through June 19, 2019
FISCAL IMPACT:	Unknown
STAFF RULE ABSTRACT:	This emergency rule establishes chronic wasting disease management zones, restricts the exportation of wildlife carcasses from such zones, and prohibits the feeding of wildlife within such zones. There are no relevant changes to current or previous regulations.

NOTE: Rule not submitted in redline form but the entire rule contains new language.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

This rule establishes Chronic Wasting Disease Management Zones, restricts the exportation of wildlife carcasses from said zones, and prohibits the feeding of wildlife within said zones. There are no relevant changes to current or previous regulations.

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

None

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

Deer hunters, deer processors, taxidermist, and the Tennessee Department of Agriculture.

(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;

Unknown

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

Chris Richardson, Assistant Director TWRA

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

Chris Richardson, Assistant Director TWRA

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

P.O. Box 40747, Nashville, TN 37204; 615-308-0477; chris.richardson@tn.gov

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

None

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Sequence Number: 12-26-18
Rule ID(s): 7952
File Date: 12/21/18
Last Effective Day: 6/19/19

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Wildlife Division
Contact Person:	Chris Richardson
Address:	P.O. Box 40747, Nashville, Tennessee
Zip:	37204
Phone:	615-308-0477
Email:	Chris.Richardson@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

Statement of Necessity:

On December 18, 2018, Chronic Wasting Disease (CWD) was confirmed in ten (10) deer harvested by hunters in Hardeman County and Fayette County, Tennessee. To date, these are the only known cases of CWD in Tennessee. The Agency has been conducting CWD surveillance for more than 16 years, testing over 15,000 animals. There is currently no evidence that CWD is present in any other Tennessee county.

CWD is a transmissible disease that affects all cervids, including white-tailed deer and elk native to Tennessee. There is no treatment, and the disease is fatal. A misfolded protein called a prion causes the disease. Prions are nearly impossible to destroy, and they remain in the environment indefinitely. Prions are transmitted through direct animal-to-animal contact, and contact with feces, saliva, urine, contaminated environments, or infected carcass parts. Long after infected carcass remains decompose, the soil around the remains stay infectious, possibly exposing other deer.

The United States Center for Disease Control and Prevention (CDC) and the World Health Organization have reviewed available scientific data. They concluded that there is no strong evidence for the occurrence of CWD in people and that it is not known if people can get infected with CWD prions. However, the CDC recently published guidance on human handling of venison harvested from areas with CWD. The CDC recommends that hunters harvesting a cervid from a CWD endemic area submit a sample of their animal for CWD testing prior to consuming the meat. The CDC also urges hunters, to be safe as possible, to not consume animals known to be positive. As CWD spreads, more animals become infected. As more animals become infected, there is an increased risk of humans consuming infected meat.

Tennessee Code Annotated § 4-5-208 authorizes emergency rules to protect the public from an immediate danger to public safety or welfare. Title 70 requires the Agency to manage, protect, propagate and conserve all wildlife in the state. The Agency must protect the cervid population from CWD for the benefit of the public welfare. The Agency must also protect the public from the potential safety risk of consuming venison meat infected with CWD. The Agency is addressing these concerns by identifying those areas in which the risk of spreading CWD is greatest and creating CWD Management Zones; prohibiting the transport of carcasses from the greatest risk zones to reduce the risk of spreading CWD; and prohibiting individuals from feeding cervids to reduce the spread of CWD to uninfected cervids.

In order to protect Tennessee's wild cervid herds and to mitigate human health concerns, the Agency needs to take this immediate action to limit the spread of CWD.

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

Chapter Number	**Chapter Title**
1660-01-34	Rules and Regulations for Chronic Wasting Disease Zones
Rule Number	**Rule Title**
1660-01-34-.01	Establishment of Chronic Wasting Disease Management Zones
1660-01-34-.02	Exportation of Wildlife Carcasses, Parts, and Products from a Chronic Wasting Disease Zone
1660-01-34-.03	Feeding of Wildlife within a Chronic Wasting Disease Zone

RULES
OF
TENNESSEE WILDLIFE RESOURCES AGENCY
WILDLIFE RESOURCES

CHAPTER 1660-01-34

RULES AND REGULATIONS FOR CHRONIC WASTING DISEASE ZONES

TABLE OF CONTENTS

1660-01-34-.01 Establishment of Chronic Wasting Disease Management Zones
1660-01-34-.02 Exportation of Wildlife Carcasses, Parts, and Products from Chronic Wasting Disease Management Zones
1660-01-34-.03 Feeding of Wildlife within a Chronic Wasting Disease Zone

1660-01-34-.01 ESTABLISHMENT OF THE CHRONIC WASTING DISEASE MANAGEMENT ZONE

(1) A Chronic Wasting Disease (CWD) Management Zone (CMZ) shall be established upon confirmation that a cervid has tested positive for CWD within the territorial boundaries of Tennessee or within 25 miles thereof. The CMZ shall be comprised of a Core Area, a High Risk Area, and a Buffer Area.

(a) The Core Area of a CMZ shall include any Tennessee county within a five (5) mile radius of the location of harvest or discovery of a cervid that tests positive for CWD.

(b) The High Risk Area of a CMZ shall include any Tennessee county within a ten (10) mile radius of the location of harvest or discovery of a cervid that tests positive for CWD.

(c) The Buffer Area of a CMZ shall include any Tennessee county within a twenty five (25) mile radius of the location of harvest or discovery of cervid that tests positive for CWD

(2) The Agency shall maintain and publish a map and list of counties included in any CMZ.

Authority: *T.C.A. §70-1-206. Administrative History: Emergency rule filed December _____, 2018; effective _____, 2018.*

1660-01-34-.02 EXPORTATION OF WILDLIFE CARCASSES, PARTS, AND PRODUCTS FROM A CHRONIC WASTING DISEASE ZONE

(1) No person may export a cervid carcass or carcass part harvested from a High Risk Area of a CMZ

except as provided herein:

(a) Meat that has bones removed.

(b) Antlers, antlers attached to cleaned skull plates, or cleaned skulls (where no meat or tissues are attached to the skull.)

(c) Cleaned teeth.

(d) Finished taxidermy and antler products.

(e) Hides and tanned products.

Authority: *T.C.A. §70-1-206. Administrative History: Emergency rule filed December _____, 2018; effective _____, 2018.*

1660-01-34-.03 FEEDING OF WILDLIFE WITHIN A CHRONIC WASTING DISEASE ZONE

(1) Within the High Risk Area of a CMZ, the placement of grain, salt products, minerals, and other consumable natural and manufactured products is prohibited.

(2) The prohibition in subsection (1) does not apply to the following:

(a) Feed placed within one hundred (100) feet of any residence or occupied building; or

(b) Feed placed in such a manner to reasonably exclude access by deer; or

(c) Feed placed as part of a wild hog management effort authorized by the agency; or

(d) Feed and minerals present solely as a result of normal agricultural practices, normal forest management practices, or crop and wildlife food production practices.

Authority: *T.C.A. §70-1-206. Administrative History: Emergency rule filed December _____, 2018; effective _____, 2018.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Angie Box	X				
Jeff Cook	X				
Bill Cox	X				
Dennis Gardner	X				
Kurt Holbert	X				
Connie King	X				
Brian McLerran	X				
Tony Sanders	X				
James Stroud	X				
Bill Swan	X				
Kent Woods	X				
Jamie Woodson	X				

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

Date: 12/20/2018

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director, Tennessee Wildlife Resources Agency

Subscribed and sworn to before me on: 12/20/2018

Notary Public Signature: Kimberly K. White

My commission expires on: November 8, 2022

KIMBERLY K. WHITE STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-01-34

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/20/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/21/18

Effective for: 180 *days

Effective through: 6/19/19

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

Tre Hargett by [illegible]
do pos

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Dept. of Mental Health and Substance Abuse Services
DIVISION:	Administrative and Regulatory Services
SUBJECT:	Minimum Program Requirements for Nonresidential Office-Based Opiate Treatment Facilities
STATUTORY AUTHORITY:	There is no federal law mandating promulgation of this rule. However, Public Chapter 978 of the Public Acts of 2018 required the Commissioner of Mental Health and Substance Abuse Services to, by January 1, 2019, revise rules for nonresidential office-based opiate treatment facilities to establish: (1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility; (2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and (3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment. Public Chapter 978 authorized the Commissioner of Mental Health and Substance Abuse Services to use emergency rulemaking to promulgate the rules for (1) - (3) above.
EFFECTIVE DATES:	January 1, 2019 through June 30, 2019
FISCAL IMPACT:	There is minimal estimated fiscal impact to State or local governments due to the promulgation of the proposed rules.
STAFF RULE ABSTRACT:	In light of the opioid epidemic confronting Tennessee and the need for high quality, safe, and effective treatment options, the Department, as authorized by Public Chapter 978 of the Public Chapter Acts of 2018, is promulgating rules to establish:

(1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility; (2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and (3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment.

These requirements, (1) - (3) above, are new rule requirements, and are in addition to the other Minimum Program Requirements for Nonresidential Office-Based Opiate Treatment Facilities (OBOT) found in Chapter 0940-05-35. The Department consulted with physicians, alcohol and substance abuse counselors, and other experts and relied on well-established practice guidance such as SAMHSA's Treatment Intervention Protocol (TIP) 63 in the development of these emergency rules.

These rules establish that a dosage of greater than 16mg per day shall be considered a high dose of the treatment medication. Furthermore, the rules establish that when initiating or switching a patient to a high dose of the treatment medication, the prescriber must discuss the high dose treatment with the patient and document the rationale for why it is clinically appropriate. Finally, the rules establish that prescribers shall initiate and lead a discussion with the patient regarding readiness to taper down or off treatment medications with each patient at any time the patient requests, but no later than one year after initiating treatment and then every six months thereafter.

Impact on Local Governments

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

The proposed rules will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

In light of the opioid epidemic confronting Tennessee and the need for high quality, safe, and effective treatment options, the Department, as authorized by Public Chapter 978 of the Public Chapter Acts of 2018, is promulgating rules to establish:

(1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility;
(2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and
(3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment.

These requirements, (1) – (3) above, are new rule requirements, and are in addition to the other Minimum Program Requirements for Nonresidential Office-Based Opiate Treatment Facilities (OBOT) found in Chapter 0940-05-35. The Department consulted with physicians, alcohol and substance abuse counselors, and other experts and relied on well-established practice guidance such as SAMHSA's Treatment Intervention Protocol (TIP) 63 in the development of these emergency rules.

These rules establish that a dosage of greater than 16mg per day shall be considered a high dose of the treatment medication. Furthermore, the rules establish that when initiating or switching a patient to a high dose of the treatment medication, the prescriber must discuss the high dose treatment with the patient and document the rationale for why it is clinically appropriate. Finally, the rules establish that prescribers shall initiate and lead a discussion with the patient regarding readiness to taper down or off treatment medications with each patient at any time the patient requests, but no later than one year after initiating treatment and then every six months thereafter.

(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 is no federal law mandating promulgation of this rule. However, Public Chapter 978 of the Public Acts of 2018 required the Commissioner of Mental Health and Substance Abuse Services to, by January 1, 2019, revise rules for nonresidential office-based opiate treatment facilities to establish:

(1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility;
(2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and
(3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment.

Public Chapter 978 authorized the Commissioner of Mental Health and Substance Abuse Services to use emergency rulemaking to promulgate the rules for (1) – (3) above.

(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 entities that will be most directly impacted by these rules are service entities that include, but are not limited to, stand-alone clinics, treatment resources, individual physical locations occupied as the professional practice of a prescriber or prescribers licensed pursuant to Title 63, or other entities prescribing products containing buprenorphine, or products containing any other controlled substance designed to treat opioid use disorder by preventing symptoms of withdrawal to twenty-five percent (25%) or more of its patients or to one hundred fifty (150) or more patients. Although this is an emergency rule and therefore no rulemaking hearing was held, a

rulemaking hearing for the permanent rule regarding this licensure category, which included the revisions found in this rule as well as several additional revisions to Chapter 0940-05-35, was held on October 30, 2018. The Department received several comments at that rulemaking hearing, a few of which related to (1) through (3) in (B) above. The Department will consider those comments when drafting the final version of the permanent rule regarding this licensure category. All in all, the Department did not receive any comments urging rejection of this rule.

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

None.

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

There is minimal estimated fiscal impact to State or local governments due to the promulgation of the proposed rules.

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

Jim Layman
TDMHSAS
Legislative Liaison and Rules Coordinator

Dr. Wesley Geminn
TDMHSAS
Chief Pharmacist and State Opioid Treatment Authority

Alex King
TDMHSAS
Director of Licensure

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

Jim Layman
TDMHSAS
Legislative Liaison and Rules Coordinator

Dr. Wesley Geminn
TDMHSAS
Chief Pharmacist and State Opioid Treatment Authority

(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

Jim Layman
TDMHSAS
Legislative Liaison and Rules Coordinator
500 Deaderick Street, 5th Floor
Nashville, TN 37243
(615) 532-0977
Jim.Layman@tn.gov

Dr. Wesley Geminn
TDMHSAS

Chief Pharmacist and State Opioid Treatment Authority
500 Deaderick Street, 6th Floor
Nashville, TN 37243
(615) 532-6736
Wesley.Geminn@tn.gov

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

None.

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For Department of State Use Only

Sequence Number: 12-24-18
Rule ID(s): 7941
File Date: 12/20/18
Effective Date: 1/1/19
Last Effective Day: 6/30/19

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Administrative and Regulatory Services
Contact Person:	Jim Layman, Legislative Liaison and Rules Coordinator
Address:	500 Deaderick Street, 5th Floor, Andrew Jackson Building, Nashville, TN
Zip:	37243
Phone:	615-532-0977
Email:	Jim.Layman@tn.gov

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

Statement of Necessity:
Public Chapter 978 of the Public Acts of 2018 required the Commissioner of Mental Health and Substance Abuse Services to, by January 1, 2019, revise rules for nonresidential office-based opiate treatment facilities to establish:

(1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility;
(2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and
(3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment.

Public Chapter 978 authorized the Commissioner of Mental Health and Substance Abuse Services to use emergency rulemaking to promulgate the rules for (1) – (3) above. This emergency rule filing is necessary in order to meet the requirement of Public Chapter 978 to implement the rules described in (1) – (3) above by January 1, 2019. The Department of Mental Health and Substance Abuse Services has begun the process of promulgating a rulemaking hearing rule to meet the requirements of (1) – (3) above, as well as other rules requirements found in Public Chapter 978 not required to be implemented by January 1, 2019, and additional rule revisions related to nonresidential office-based opiate treatment facilities. The rulemaking hearing for these permanent rules changes was held on October 30, 2018.

Additionally, these rules are necessary because of the increased prevalence and awareness of the disease of opioid use disorder and the treatment associated with it, including products containing buprenorphine. With these rules, the Department proposes to modify the minimum requirements for facilities meeting licensure criteria. These minimum requirements are guided by legislation and the relevant best practice guidelines published by the Substance Abuse and Mental Health Services Agency (SAMHSA) and the American Society of Addiction Medicine. With the adoption of these rules, it is the hope of the Department that patients seen at these facilities receive treatment that is both safe and effective.

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule

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Sequence Number: _____
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File Date: _____
Last Effective Day: _____

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Administrative and Regulatory Services
Contact Person:	Jim Layman, Legislative Liaison and Rules Coordinator
Address:	500 Deaderick Street, 5th Floor, Andrew Jackson Building, Nashville, TN
Zip:	37243
Phone:	615-532-0977
Email:	Jim.Layman@tn.gov

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

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please 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**
0940-05-35	Minimum Program Requirements for Nonresidential Office-Based Opiate Treatment Facilities
Rule Number	**Rule Title**
0940-05-35-.12	Medication Management

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.

0940-05-35-.12 Medication Management is amended by deleting this rule in its entirety and substituting instead the following:

(1) Opioid Drugs. Facilities shall develop and implement written policies and procedures for the prescription of opioid drugs. Any changes to these policies and procedures shall be done in consultation with the Facility's medical director. These policies and procedures shall include the following:

(a) Prescribing.

1. The proper initial dose, medication type, and dosage form shall be based on the clinical judgement of the program physician who has examined the patient and who has considered all available relevant patient-specific information including, but not limited to, drug screens, initial screenings, medication availability and cost, and in consultation with the patient.

2. No standardized routines or schedules of increases or decreases of medication doses may be established or used.

3. A patient dose greater than sixteen milligrams (16mg), or its equivalent, per day shall be considered a high dose.

~~3.~~4. A copy of all prescriptions written for a patient at the Facility shall be documented in the patient's medical chart.

(b) Protocols for initiating or switching a patient to a high dose of the treatment medication used at the facility.

1. The patient's medical chart shall include documentation of rationale that it is clinically appropriate for the patient to receive a high dose of the treatment medication.

2. The prescriber shall have a discussion with the patient and the patient shall provide written consent acknowledging that the patient will receive a high dose of the treatment medication.

(i) This discussion shall include dosing information to assure that the patient is using appropriate techniques for administering the particular prescribed treatment medication.

(c) Prescriber-Initiated-and-Led Tapering Discussions

1. Prescribers shall initiate and lead a discussion with the patient regarding patient readiness to taper down or taper off treatment medications employed in the patient's treatment with each patient at any time upon the patient's request but no later than one (1) year after initiating treatment and then every six (6) months thereafter.

(i) Documentation of all prescriber-initiated-and-led tapering discussions shall be placed in the patient's medical chart.

(2) CSMD Check. The facility shall check the CSMD upon every visit of the patient with a program physician. The patient's medical record shall include documentation of the check of the CSMD and the date upon which it occurred.

(3) Benzodiazepine Use. Benzodiazepines should only be prescribed to a patient after careful evaluation while utilizing caution and good judgement. Benzodiazepines may be prescribed to a patient on buprenorphine or a buprenorphine and naloxone combination under the following conditions:

(a) Benzodiazepines may not be initiated with a patient with opioid use disorder or the disease of addiction who has never been prescribed these products or has a history of misusing or abusing these products, except in extreme circumstances for severe anxiety or panic disorder, and only after evaluation by a board certified psychiatrist.

(b) Patients who present with a longstanding prescription for benzodiazepines for a legitimate medical condition from another prescribed may be prescribed buprenorphine products by a physician with a DATA 2000 waiver. Contact should be initiated with the prescriber of the benzodiazepine to coordinate care and clear documentation should be recorded in the patient's medical chart.

(c) A program physician at an OBOT may assume management of a patient's benzodiazepine prescribing from another physician if the patient is willing to initiate a program of tapering.

(d) If a patient presents at an OBOT with a dual diagnosis of opioid use disorder and a clear history of benzodiazepine use disorder, the duration and extent of the abuse should be clearly documented in the medical record. A program physician at an OBOT may prescribe a long acting benzodiazepine, such as clonazepam or its equivalent, under the following conditions:

1. A patient may continue on benzodiazepine therapy as medically indicated as long as there is an ongoing effort to taper the patient to the lowest effective dose in order to prevent benzodiazepine withdrawal syndrome and clear documentation of this effort is made in the patient's medical record.

(i) Prescribing more than two (2) milligrams of clonazepam or its equivalent daily is considered "high dose therapy".

(ii) Patients receiving high dose therapy should have justification for the dosing clearly documented in the patient's record.

(iii) Patients receiving high dose therapy should be tapered as rapidly as possible to two (2) milligrams or less of clonazepam or its equivalent twice daily, and if the taper is unsuccessful, the reason(s) shall be clearly documented in the patient's medical record.

(iv) Patients receiving high dose therapy for a period of longer than six (6) weeks shall be managed by a physician who is board certified in addiction medicine or who is board certified or fellowship trained in addiction psychiatry, or by a physician with a DATA 2000 waiver who has obtained a formal consult from a physician who is board certified in addiction medicine or who is board certified or fellowship trained in addiction psychiatry. The formal consult shall be clearly documented in the patient's medical record.

(4) The Facility shall develop guidelines for review of prescriptions from other providers. These shall include:

(a) Procedures to ensure that a patient's prescriptions from outside physicians will be reported to the medical staff and reviewed by the program physician at admission and annually thereafter;

(b) Procedures describing the Facility's response when information about prescriptions from outside physicians is not reported to ensure compliance with this rule; and

(c) Documentation of the Facility's efforts to obtain information about prescriptions from outside physicians in the patient's record, if a Facility is unable to acquire information about a patient's prescriptions.

Authority: T.C.A. §§ 4-3-1601, 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-402, 33-2-403. 33-2-404, 33-2-407, and Chapter 978 of the Public Acts of 2018.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: November 5, 2018

Signature:

Name of Officer: Marie Williams, LCSW

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

SUE B. HUNT STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON

Subscribed and sworn to before me on: November 5, 2018

Notary Public Signature: Sue B. Hunt

My commission expires on: March 8, 2021

Agency/Board/Commission: Tennessee Department of Mental Health and Substance Abuse Services

Rule Chapter Number(s): 0940-05-35

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

Herbert H. Slatery III
Attorney General and Reporter

11/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/20/18

Effective Date: 1/1/19

Effective for: 180 *days

Effective through: 6/30/19

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

RECEIVED 2018 DEC 20 PM 3:21 SECRETARY OF STATE PUBLIC SERVICES

Tre Hargett
Secretary of State of Tennessee

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Forestry
SUBJECT:	Free Use Areas for Firewood Removal
STATUTORY AUTHORITY:	Public Chapter 730 of 2018.
EFFECTIVE DATES:	March 28, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule requires the state forester to designate portions or all of each state forest as free-use areas for the purpose of allowing state residents to remove downed and dead timber, without cost, for personal use and not for sale.

NOTE: Rule not submitted in redline form but the entire rule contains new language.

Public Hearing Comments

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

A public rulemaking hearing was held at Ellington Agricultural Center at 10:00 A.M CDT, October 24, 2018, with Theresa Denton as the hearing officer. There were no public comments.

Regulatory Flexibility Addendum

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

This rule will not have any impact on small businesses.

Impact on Local Governments

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

This rule 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;

This new rule is proposed by the department in compliance with Public Chapter 730 of 2018, which requires the state forester to designate portions or all of each state forest as free-use areas for the purpose of allowing state residents to remove downed and dead timber, without cost, for personal use and not for sale.

(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 730 of 2018.

(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;

Will affect Tennessee residents who comply with the Division of Forestry rules for free firewood gathering, including those who may not be able to afford to heat their homes by any means other than free firewood.

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

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

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

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

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

David Todd, Assistant State Forester

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

David Todd, Assistant State Forester, Department of Agriculture

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

David Todd, Assistant State Forester, Ellington Agricultural Center
440 Hogan Road, Nashville, TN 37220
p. 615-837-5539 c. 615-218-5532 f. 615-837-5003
david.todd@tn.gov

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

Will provide a free public service for home use only and not for sale.

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Sequence Number: 12-28-18
Rule ID(s): 8015
File Date: 12/28/18
Effective Date: 3/28/19

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Department of Agriculture
Division: Forestry
Contact Person: Theresa Denton
Address: Post Office Box 40627
Zip: 37204
Phone: (615) 837-5280
Email: Theresa.denton@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**
0080-07-01	
Rule Number	**Rule Title**
0080-07-01-.12	Free Use Areas For Firewood Removal

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

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.

New
Chapter 0080-07-01-.12

(1) The district forester shall designate a "free use area" for each state forest where Tennessee residents may remove downed and dead timber from a state forest, without cost, for their own personal use as firewood for home heating and cooking, provided that none of the firewood is offered for sale.

(2) Permits to remove downed and dead timber from free use areas for use as firewood shall be issued by the district forester or representative for each state forest during normal business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, or at other times at the district forester's discretion.

(3) Permits will be valid for a specified date and time; will include a unique identifying number; and may be issued by any reasonable means, including by telephone, in person or by Internet.

(4) Permit requests may be made by persons 18 years of age or older and shall include the permittee's name, vehicle license number, and county to which the firewood will be transported.

(5) The district forester or representative may refuse to issue a permit if he or she determines that refusal is necessary for safety reasons or in the best interest of the state forest.

(6) Permits will not be issued during hunts managed by the Tennessee Wildlife Resources Agency.

(7) Permits are not transferable.

(8) Permit shall be displayed on the permittee's vehicle at all times during timber removal.

(9) Permittee is prohibited from setting fires during firewood cutting and removal, and equipment used shall have appropriate spark arrestors.

(10) Permittee shall remove all trash and litter resulting from Permittee's activities.

(11) Permittee shall comply with the division's guidelines on firewood transport posted on the department's internet website and available at all division offices.

(12) Timber or firewood removal outside the designated free use area is strictly prohibited.

(13) Permittee and permitted activities are subject to all applicable state laws and regulations.

Authority: T. C. A. §§4-3-201 et seq. and § 11-4-807.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on 12/12/2018, 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: 08/28/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 10/24/2018

Date: 12/12/2018

Signature:

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/12/2018

Notary Public Signature:

My commission expires on: 07/05/2021

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission: TN Department of Agriculture

Rule Chapter Number(s): 0080-07-01-.12

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

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/28/18

Effective on: 3/28/19

Tre Hargett
Secretary of State

SECRETARY OF STATE
2018 DEC 28 PM 2:14
RECEIVED

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Requirements for Tracking Wounded Deer
STATUTORY AUTHORITY:	No state or federal laws mandate the promulgation of this rule repeal or amendment
EFFECTIVE DATES:	March 10, 2019 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule authorizes a hunter to use a dog to track a wounded deer or employ a handler who may use a dog to track a wounded deer.

NOTE: Rule not submitted in redline form but the entire rule contains new language.

Public Hearing Comments

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

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

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Pursuant to T.C.A. 70-4-118, the rule authorizes a hunter to use a dog to track a wounded deer or employ a handler who may use a dog to track a wounded deer.

(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 federal or state laws mandating this rule repeal or amendment.

(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;

Whitetail deer hunters will be directly affected.

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

No Attorney General Opinion or judicial ruling directly relating to the rule has been identified.

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

The fiscal impact to state and local government is minimal.

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

Darren Rider, Colonel, Boating & Law Enforcement Division, TWRA, 615-781-6669, darren.rider@tn.gov

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

Chris Richardson, Asst. Director, TWRA, will explain the rule at the scheduled meeting of the Government Operations Committee

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

Chris Richardson, TWRA, PO Box 40747, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

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

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Sequence Number: 12-12-18
Rule ID(s): 7900
File Date: 12/10/18
Effective Date: 3/10/19

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating & Law Enforcement Division
Contact Person:	Chris Richardson
Address:	P.O. Box 40747, Nashville, Tennessee
Zip:	37204
Phone:	615-308-0477
Email:	Chris.Richardson@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**
1660-01-33	Rules and Regulations Governing Tracking Wounded Deer
Rule Number	**Rule Title**
1660-01-33-.01	Tracking Wounded Deer Requirements

Rulemaking Hearing Rules of the
Tennessee Wildlife Resources Agency

Rule Chapter 1660-01-33
Rules and Regulations Governing Tracking Wounded Deer

New Rule

1660-01-33-.01, Tracking Wounded Deer, is added as a new rule chapter with the following new rule:

1660-01-33-.01 Tracking Wounded Deer Requirements

The use of one dog may be used to locate a wounded deer under the following provisions:

(a) Deer season must be legally open.

(b) The dog must be maintained on a leash at all times and under the control of the hunter.

(c) Only weapons legal for hunting for that season are allowed while tracking with the dog.

(d) No weapons are permitted after legal shooting hours.

(e) If the hunter chooses to use the services of a handler, then the hunter must accompany the handler at all times while afield.

(f) The handler may only use one dog which must be leashed at all times and under the control of the handler. The handler is not required to possess a hunting license when providing this service to the hunter.

(g) If the season requires hunters to wear daylight fluorescent orange, then the accompanying handler should also wear daylight fluorescent orange for safety.

(h) If the deer travels off the property where it was legally shot, it is incumbent upon the hunter to obtain permission from any and all landowners to cross their property and/or to retrieve the deer.

(i) The hunter shall notify the appropriate regional office of the Agency before initiating any tracking effort with a dog. The hunter shall specify the location where the tracking will occur, including the county and physical address.

(j) Any tracking effort utilizing a dog shall terminate at midnight, local time.

Authority: *T.C.A. §§ 70-4-118 and 70-1-206.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker				✓	
Angie Box	✓				
Jeff Cook	✓				
Bill Cox	✓				
Dennis Gardner	✓				
Kurt Holbert	✓				
Connie King	✓				
Brian McLerran	✓				
Tony Sanders	✓				
James Stroud	✓				
Bill Swan				✓	
Kent Woods	✓				
Jamie Woodson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 10-25-2018 (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: *(09/06/18)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(10/25/18)*

Date: 10/25/18

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10-25-18

Notary Public Signature: Kate T. Hamm

My commission expires on: 12-22-18

KATE T. HAMM STATE OF TENNESSEE NOTARY PUBLIC DEKALB COUNTY Commission Expires December 22, 2018

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-01-33-.01

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/10/18

Effective on: 3/10/19

Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Treasury
DIVISION:	Unclaimed Property
SUBJECT:	Regulations Governing the Uniform Unclaimed Property Act
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 66-29-158
EFFECTIVE DATES:	March 4, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The Department seeks to promulgate the rule in light of the General Assembly's passage of the Uniform Unclaimed Property Act (the "Act") in 2017, which addresses some of the items in the existing rules. Through the rule, the Department also seeks to clarify the obligations of both the Unclaimed Property Division and holders of unclaimed property. Rule 1700-02-01-.01 [Organizations and Individuals Required to Report] is amended by deleting the language in the rule and replacing it with a definitions section. The language in the prior rule was unnecessary because state law defines which organizations and individuals are required to report. Rule 1700-02-01-.02 [Repealed] is amended by replacing the language in the rule with requirements for reporting. The new rule clarifies the requirements for form and timely receipt. Rule 1700-02-01-.03 [Authorization to Postpone Reporting Date] is amended by deleting the language in the rule and replacing it with requirements for delivery of property. The language in the prior rule was unnecessary because state law provides the Treasurer the authority to extend the time for delivery of property. The language in the new rule clarifies how property is to be remitted.

Rule 1700-02-01-.04 [Reporting Forms] is amended by deleting the language in the rule and replacing it with the requirements for delivery of securities. The language in the prior rule is unnecessary because it is either covered by T.C.A. § 66-29-123 and Rule 1700-02-01-.02.

Rule 1700-02-01-.05 [Repealed] is amended by deleting the language in the rule and replacing it with minimum dollar values for property held by the Treasurer that is required to be on the Unclaimed Property Division's website and for required notices for property held by the Treasurer.

Rule 1700-02-01-.06 [Submission of Reports to State Treasurer] is amended by deleting the language in the rule and replacing it with requirements for claims submission. The rule clarifies that claims are required to be filed on the Unclaimed Property Division's website. The rule also indicates the types of proof of ownership that the Unclaimed Property Division may require.

Rule 1700-02-01-.07 [Negative Reports] is amended by deleting the language in the rule and replacing it with requirements for examination of books and records. The new rule indicates the factors that the Treasurer may use in determining whether to conduct an examination of a particular holder; indicates what information must be disclosed to holders under examination at the entrance conference; and explains when estimation may be used. The language in the prior rule is included, as modified, in Rule 1700-02-01-.02.

Rule 1700-02-01-.08 [Voluntary Reporting] is amended by deleting the language in the rule and replacing it with requirements for Finders' Agreements. The new rule is similar to the prior rule on these types of agreements except that it requires that the Finders include in their agreements that they have the requisite licenses to perform the services under the agreements. The language in the prior rule is included in Rule 1700-02-01-.02.

Rule 1700-02-01-.09 [Repealed] is deleted.

Rule 1700-02-01-.10 [Repealed] is deleted.

Rule 1700-02-01-.11 [Abandonment of Certificates of Deposit] is repealed because it is now covered in T.C.A. § 66-29-105.

Rule 1700-02-01-.12 [Owner of a Cashier's Check] is repealed because it is now covered by Rule 1700-02-01.02
.

Rule 1700-02-01-.13 [Repealed] is deleted. SS-7038 (November 2017) 12 RDA 1693

Rule 1700-02-01 -.14 [Repealed] is deleted.

Rule 1700-02-01-.15 [Repealed] is deleted.

Rule 1700-02~01 -.16 [Reports Made by Insurance Companies] is repealed because it is now covered in T.C.A. § 66-29-105(a)(14).

Rule 1700-02-01-.17 [Reports Made by Utility Companies] is repealed because the term "lawful deductions" is not used in the new law.

Rule 1700-02-01-.18 [Reports of Miscellaneous Property Held for Another Person] is repealed because it is now covered in T.C.A. § 66-29-105(a)(14).

Rule 1700-02-01-.19 [Duties of Holders] is repealed because it is now covered in T.C.A. § 66-29-128.

Rule 1700-02-01-.20 [Delivery of Property to State Treasurer] is repealed because it is now covered by T.C.A. § 66-29-134 and Rule 1700-02-01-.03.

Rule 1700-02-01-.21 [Repealed] is deleted.

Rule 1700-02-01-.22 [Prohibited Agreements] is repealed because it is now covered by T.C.A. § 66-29-174.

Rule 1700-02-01-.23 [Holder Reimbursement for Claims Paid] is repealed because it is now covered by T.C.A. § 66-29-136.

Rule 1700-02-01 -.24 [Procedures Governing Disposition of Marketable Securities Traded on a National Exchange] is repealed because it is now covered by Rule 1700-02-01-.04.

Rule 1700-02-01-.25 [Repealed] is deleted.

Rule 1700-02-01-.36 [Repealed] is deleted.

Rule 1700-02-01-.37 [Reports of Safe Deposit Box Contents] is repealed because it is now covered by T.C.A. § 66-29-134(e) and by Rule 1700-02-01-.02.

Rule 1700-02-01-.38 [Agreements Relative to Unreported Property] is repealed because it is now covered by T.C.A. § 66-29-176.

Rule 1700-02-01-.39 [Proxies] is repealed because it is now covered by Rule 1700-02-01-.04.

Regulatory Flexibility Addendum

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

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

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

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

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

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

The proposed rules do not establish any new compliance or reporting requirements.

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

The proposed rules do not establish any new schedules or deadlines.

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

The proposed rules do not establish any new compliance or reporting requirements.

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

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

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

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

Statement of Economic Impact to Small Businesses

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:**

   The types of small businesses that may be affected are those businesses holding unclaimed property and those small businesses engaged in finding unclaimed property in Tennessee for apparent owners. The number of small businesses which may be affected is unknown to the Department.

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

   There are no anticipated additional reporting, recordkeeping and administrative costs required for compliance with the proposed rule.

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

   The probable effect of the rule on small businesses is that companies holding unclaimed property will have greater clarity regarding how to report unclaimed property. The probably effect of the rule on consumers is that owners of unclaimed property will have greater clarity regarding how to claim their property.

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

   None.

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

   Federal: None.

   State: The proposed rules will bring the Unclaimed Property Division's rules into compliance with new statutory changes to the Tennessee Code Annotated since the Uniform Unclaimed Property Act was passed.

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 proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

It is not anticipated that the proposed rule will have an effect 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 seeks to promulgate the rule in light of the General Assembly's passage of the Uniform Unclaimed Property Act (the "Act") in 2017, which addresses some of the items in the existing rules. Through the rule, the Department also seeks to clarify the obligations of both the Unclaimed Property Division and holders of unclaimed property.

Rule 1700-02-01-.01 [Organizations and Individuals Required to Report] is amended by deleting the language in the rule and replacing it with a definitions section. The language in the prior rule was unnecessary because state law defines which organizations and individuals are required to report.

Rule 1700-02-01-.02 [Repealed] is amended by replacing the language in the rule with requirements for reporting. The new rule clarifies the requirements for form and timely receipt.

Rule 1700-02-01-.03 [Authorization to Postpone Reporting Date] is amended by deleting the language in the rule and replacing it with requirements for delivery of property. The language in the prior rule was unnecessary because state law provides the Treasurer the authority to extend the time for delivery of property. The language in the new rule clarifies how property is to be remitted.

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Rule 1700-02-01-.09 [Repealed] is deleted.

Rule 1700-02-01-.10 [Repealed] is deleted.

Rule 1700-02-01-.11 [Abandonment of Certificates of Deposit] is repealed because it is now covered in T.C.A. § 66-29-105.

Rule 1700-02-01-.12 [Owner of a Cashier's Check] is repealed because it is now covered by Rule 1700-02-01-.02 .

Rule 1700-02-01-.13 [Repealed] is deleted.

Rule 1700-02-01-.14 [Repealed] is deleted.

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Rule 1700-02-01-.17 [Reports Made by Utility Companies] is repealed because the term "lawful deductions" is not used in the new law.

Rule 1700-02-01-.18 [Reports of Miscellaneous Property Held for Another Person] is repealed because it is now covered in T.C.A. § 66-29-105(a)(14).

Rule 1700-02-01-.19 [Duties of Holders] is repealed because it is now covered in T.C.A. § 66-29-128.

Rule 1700-02-01-.20 [Delivery of Property to State Treasurer] is repealed because it is now covered by T.C.A. § 66-29-134 and Rule 1700-02-01-.03.

Rule 1700-02-01-.21 [Repealed] is deleted.

Rule 1700-02-01-.22 [Prohibited Agreements] is repealed because it is now covered by T.C.A. § 66-29-174.

Rule 1700-02-01-.23 [Holder Reimbursement for Claims Paid] is repealed because it is now covered by T.C.A. § 66-29-136.

Rule 1700-02-01-.24 [Procedures Governing Disposition of Marketable Securities Traded on a National Exchange] is repealed because it is now covered by Rule 1700-02-01-.04.

Rule 1700-02-01-.25 [Repealed] is deleted.

Rule 1700-02-01-.36 [Repealed] is deleted.

Rule 1700-02-01-.37 [Reports of Safe Deposit Box Contents] is repealed because it is now covered by T.C.A. § 66-29-134(e) and by Rule 1700-02-01-.02.

Rule 1700-02-01-.38 [Agreements Relative to Unreported Property] is repealed because it is now covered by T.C.A. § 66-29-176.

Rule 1700-02-01-.39 [Proxies] is repealed because it is now covered by Rule 1700-02-01-.04.

(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. § 66-29-158 provides that the Treasurer shall prescribe by rule procedures and standards for an examination under T.C.A. § 66-29-157.

(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;

Holders of unclaimed property under the Act, local governments, and persons in the business of locating property under the Act.

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

The Department is unaware 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.

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

It is anticipated that the rules will result in neither an increase nor a decrease in revenues and expenditures.

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

Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street; Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

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

Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street; Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

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

Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street; Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

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

The Department will provide any additional information relative to these rules at the committee's request.

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: 12-04-18
Rule ID(s): 7686
File Date: 12/4/18
Effective Date: 3/4/19

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:	Department of Treasury
Division:	Unclaimed Property
Contact Person:	Heather Iverson
Address:	502 Deaderick Street, Andrew Jackson Building, 13th Floor, Nashville, Tennessee
Zip:	37243
Phone:	(615) 770-1754
Email:	heather.iverson@tn.gov

Revision Type (check all that apply):

___ Amendment
x New
x Repeal

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

Chapter Number	**Chapter Title**
1700-02-01	Regulations Governing the Uniform Unclaimed Property Act
Rule Number	**Rule Title**
1700-02-01-.01	Definitions
1700-02-01-.02	Reports
1700-02-01-.03	Delivery of Property
1700-02-01-.04	Securities
1700-02-01-.05	Custody by Treasurer
1700-02-01-.06	Claims
1700-02-01-.07	Examination of Books and Records
1700-02-01-.08	Finders' Agreements
1700-02-01-.09	Repealed
1700-02-01-.10	Repealed
1700-02-01-.11	Abandonment of Certificates of Deposit

1700-02-01-.12	Owner of Cashier's Check Defined
1700-02-01-.13	Repealed
1700-02-01-.14	Repealed
1700-02-01-.15	Repealed
1700-02-01-.16	Reports Made by Insurance Companies
1700-02-01-.17	Reports Made by Utility Companies
1700-02-01-.18	Reports of Miscellaneous Property Held for Another Person
1700-02-01-.19	Duties of Holders
1700-02-01-.20	Delivery of Property to the State Treasurer
1700-02-01-.21	Repealed
1700-02-01-.22	Prohibited Agreements
1700-02-01-.23	Holder Reimbursement for Claims Paid
1700-02-01-.24	Procedures Governing Disposition of Marketable Securities Traded on a National Exchange
1700-02-01-.25	Repealed
1700-02-01-.36	Repealed
1700-02-01-.37	Reports of Safe Deposit Box Contents
1700-02-01-.38	Agreements Relative to Unreported Property
1700-02-01-.39	Proxies

Rule 1700-02-01-.01 Organizations and Individuals Required to Report is amended by deleting the language contained in the rule in its entirety and replacing it with the following language, so that, as amended, the rule shall read:

Definitions. The following definitions are applicable to this chapter:

(1) "The Act" means the Uniform Unclaimed Property Act found at T.C.A. § 66-29-101 et. seq.

(2) "Apparent Owner" shall have the meaning as in T.C.A. § 66-29-102(1).

(3) "Finder" means a party who enters into an agreement with an owner of Property whereby the owner pays a fee or other remuneration to the party for locating, delivering, recovering or assisting in the recovery of Property.

(4) "Holder" shall have the meaning as in T.C.A. § 66-29-102(10).

(5) "Examiner" shall mean the party conducting an examination of a Holder's books and records pursuant to the Act, which shall be either the Treasurer or a private examination firm.

(6) "Person" shall have the meaning as in T.C.A. § 66-29-102(23).

(7) "Property" shall have the meaning as in T.C.A. § 66-29-102(24).

(8) "Report" means a report required by T.C.A. § 66-29-123.

(9) "Security" shall have the meaning as in T.C.A. § 66-29-102(27).

(10) "Treasurer" shall have the meaning as in T.C.A. § 66-29-102(31).

(11) "Unclaimed Property Division" means the Tennessee Department of Treasury, Division of Unclaimed Property.

Authority: T.C.A. § 66-29-104.

Rule 1700-02-01-.02 Repealed is amended by deleting the language contained in the rule in its entirety and replacing it with the following language, so that, as amended, the rule shall read:

RULES
OF
TENNESSEE DEPARTMENT OF TREASURY
DIVISION OF UNCLAIMED PROPERTY

CHAPTER 1700-02-01
REGULATIONS GOVERNING THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

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~~1700-02-01-.03 Authorization to Postpone Reporting Date~~
~~1700-02-01-.04 Reporting Forms~~
~~1700-02-01-.05 Repealed~~
~~1700-02-01-.06 Submission of Reports to State Treasurer~~
~~1700-02-01-.07 Negative Reports~~
~~1700-02-01-.08 Voluntary Reporting~~
~~1700-02-01-.09 Repealed~~
~~1700-02-01-.10 Repealed~~
~~1700-02-01-.11 Abandonment of Certificates of Deposit~~
~~1700-02-01-.12 Owner of Cashier's Check Defined~~
~~1700-02-01-.13 Repealed~~
~~1700-02-01-.14 Repealed~~
~~1700-02-01-.15 Repealed~~
~~1700-02-01-.16 Reports Made by Insurance Companies~~
~~1700-02-01-.17 Reports Made by Utility Companies~~
~~1700-02-01-.18 Reports of Miscellaneous Property Held for Another Person~~
~~1700-02-01-.19 Duties of Holders~~
~~1700-02-01-.20 Delivery of Property to the State Treasurer~~
~~1700-02-01-.21 Repealed~~
~~1700-02-01-.22 Prohibited Agreements~~
~~1700-02-01-.23 Holder Reimbursement for Claims Paid~~
~~1700-02-01-.24 Procedures Governing Disposition of Marketable Securities Traded on a National Exchange~~
~~1700-02-01-.25 through 1700-02-01-.36 Repealed~~
~~1700-02-01-.37 Reports of Safe Deposit Box Contents~~
~~1700-02-01-.38 Agreements Relative to Unreported Property~~
~~1700-02-01-.39 Proxies~~

1700-02-01-.01 Definitions
1700-02-01-.02 Reports
1700-02-01-.03 Delivery of Property
1700-02-01-.04 Reporting Forms
1700-02-01-.05 Custody by Treasurer
1700-02-01-.06 Claims
1700-02-01-.07 Examination of Books and Records
1700-02-01-.08 Finders' Agreements

1700-02-01-.01 ~~ORGANIZATIONS AND INDIVIDUALS REQUIRED TO REPORT~~.

~~(1) Every holder of property belonging to another person who has not claimed such property or with whom no correspondence has been had for the statutory period is required to file an annual report to the State Treasurer of Tennessee. Organizations and individuals which are required to report to the State Treasurer include but are not limited to:~~

~~(a) state government agencies~~

~~(b) state and national banks~~

~~(c) clerks of court~~

~~(d) cooperative organizations and marketing associations~~

~~(e) businesses, corporations, partnerships, associations and other business organizations and firms~~

~~(f) local government agencies~~

~~(g) educational units, including, but not limited to, colleges, universities, and private schools~~

~~(h) hospitals~~

~~(i) life insurance and other insurance companies~~

~~(j) issuers of money orders and travelers checks~~

~~(k) public utilities~~

~~(l) savings and loan associations and credit unions.~~

DEFINITIONS. The following definitions are applicable to this chapter:

(1) "The Act" means the Uniform Unclaimed Property Act found at T.C.A. § 66-29-101 et. seq.

(2) "Apparent Owner" shall have the meaning as in T.C.A. § 66-29-102(1).

(3) "Finder" means a party who enters into an agreement with an owner of Property whereby the owner pays a fee or other remuneration to the party for locating, delivering, recovering or assisting in the recovery of Property.

(4) "Holder" shall have the meaning as in T.C.A. § 66-29-102(10).

(5) "Examiner" shall mean the party conducting an examination of a Holder's books and records pursuant to the Act, which shall be either the Treasurer or a private examination firm.

(6) "Person" shall have the meaning as in T.C.A. § 66-29-102(23).

(7) "Property" shall have the meaning as in T.C.A. § 66-29-102(24).

(8) "Report" means a report required by T.C.A. § 66-29-123.

(9) "Security" shall have the meaning as in T.C.A. § 66-29-102(27).

(10) "Treasurer" shall have the meaning as in T.C.A. § 66-29-102(31).

(11) "Unclaimed Property Division" means the Tennessee Department of Treasury, Division of Unclaimed Property.

(Rule 1700-02-01-.01, continued)

Authority: *T.C.A. § 66-29-104.* ~~*§ 66-29-113 and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 30, 2010; effective February 28, 2011.*~~

1700-02-01-.02 ~~REPEALED~~. **REPORTS.**

(1) Holders shall submit to the Treasurer Reports required by T.C.A. § 66-29-123 and any voluntary reports under T.C.A. § 66-29-138 electronically through the Unclaimed Property Division's online portal in the format prescribed on the portal. Property that is not timely reported and remitted by a Holder on the first reporting date after the Property is presumed abandoned shall be reported upon discovery of the omission. A Report will be deemed not timely received and filed under the Act if:

(a) it is submitted after the required filing date;

(b) payment is made after the required filing date;

(c) it is submitted in a form other than the form authorized by these rules; or

(d) it is incomplete or otherwise does not meet the requirements of the Act.

(2) Negative Reports. Any Person which in any year does not hold Property subject to the Act may file a signed statement to that effect using the Unclaimed Property Division's electronic portal.

(3) Cashier's Checks. For purposes of the Act, the owner of a cashier's check shall be deemed to be the Person who is in possession of the instrument, provided such Person is either the purchaser or the payee of the check. Any Report that includes a cashier's check shall include the name and address, if known, of both the payee and the purchaser of the check.

(4) Safe Deposit Boxes. Any Holder who removes contents from a safe deposit box, vault or other safe deposit receptacle in accordance with the procedures set forth in T.C.A. § 45-2-907(b), shall provide an initial report to the Treasurer electronically using the Unclaimed Property Division's electronic portal but shall not deliver any Property to the Treasurer at that time. After the Holder has complied with the requirements of T.C.A. § 45-2-907(d), including holding the Property for one (1) year, the Holder shall file a final report with the Unclaimed Property Division in the form prescribed by the Treasurer; and deliver any proceeds and remaining Property to the Treasurer, including any savings bonds and military medals. The information required to be in the initial and final reports pursuant to this rule shall include:

(a) a listing of the full names of the respective lessees in alphabetical order, according to their surnames;

(b) the relationship between the lessees, if known to the lessor;

(c) the name and address of any other Person who, according to the lessor's records, may have an interest in the box's contents;

(d) the lessee's Social Security number, if known to the lessor;

(e) the identifying number used by the lessor for the safe deposit box;

(f) the date the box was opened and inventoried; and

(Rule 1700-02-01-.01, continued)

(g) a brief description of the Property.

Authority: *T.C.A. §§ 45-2-907, 66-29-104, 66-29-123, 66-29-124, 66-29-125(b), 66-29-134, 66-29-138, 66-29-152(a), and 66-29-157.~~§64-2913. **Administrative History:** Original rule filed October 26, 1978; effective January 29, 1979. Repeal filed September 4, 1996; effective January 28, 1997.~~*

1700-02-01-.03 ~~**AUTHORIZATION TO POSTPONE REPORTING DATE.** Upon receipt of a written request, the State Treasurer may allow an additional one (1) year period from the date specified for final distribution for reporting of intangible personal property distributable in the course of voluntary or involuntary dissolution of a business association, banking organization, or financial organization. For all other holders, the State Treasurer may, in his discretion, grant one thirty (30) day extension for reporting. A written request for an extension must be received by the Treasurer on or before May 1 for property held as of the previous December 31.~~ **DELIVERY OF PROPERTY.** Except as provided in T.C.A. § 66-29-134 of the Act or otherwise herein, all Property other than tangible Property, Securities or savings bonds required to be delivered to the Treasurer pursuant to the Act shall be remitted by ACH (Automated Clearing House) payments or other electronic means prescribed by the Treasurer.

Authority: *T.C.A.~~-~~§§ 66-29-104 and 66-29-134. ~~§§66-29-113(a) and (d) and 66-29-130. **Administrative History:** Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 22, 1988; effective December 28, 1988. Amendment filed January 18, 1990; effective May 1, 1990.~~*

1700-02-01-.04 ~~**REPORTING FORMS.** Holders shall report unclaimed property, including the verification required in T.C.A. § 66-29-113, on electronic media only and in the format prescribed by the State Treasurer. A description of the type of electronic media on which the report shall be filed and the prescribed format of the report shall be available to holders at the Tennessee Department of Treasury, Division of Unclaimed Property's Internet web site. The State Treasurer has the authority to waive the requirements of this Rule with respect to any holder where strict compliance would be too costly or oppressive to the holder. In such event, the holder shall file the report in paper form and in the format prescribed by the Treasurer, or in such other alternate electronic media as the Treasurer deems acceptable. To obtain a waiver, the holder shall demonstrate in writing to the Treasurer that compliance with this Rule would be too costly or oppressive.~~ **SECURITIES.**

(1) The Treasurer shall provide written instructions to the Holder for the remittance of a particular Security.

(2) All Securities remitted to the Treasurer shall include all dividends, interest, warrants or other rights, or associated cash payable by check or electronically as prescribed by the Treasurer.

(3) Holders shall deliver Securities in such form that future earnings from those Securities will be delivered in the form of cash rather than an increase in the number of shares.

(4) Holders shall deliver Securities to the Treasurer in such form that will empower the Treasurer to sell or otherwise negotiate the Securities at any time to the extent necessary to effectuate the purposes of the Act.

(5) Due to the short time period within which Securities are held under the Act prior to their sale, the Treasurer shall not vote proxies received in connection with Securities delivered to the Unclaimed Property

(Rule 1700-02-01-.01, continued)
Division.

Authority: *T.C.A.* §§ 66-29-104 and 66-29-134(h). ~~*66-29-113 and 66-29-130.*~~ ~~***Administrative History:***~~ ~~*Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed August 31, 2000; effective December 29, 2000.*~~
~~*Amendment filed September 30, 2010; effective February 28, 2011.*~~

1700-02-01-.05 ~~REPEALED.~~ **CUSTODY BY TREASURER.**

(1) For all Property having a minimum value of Fifty Dollars ($50.00) that is held by the Treasurer, the Treasurer shall provide notice to the Apparent Owner meeting the requirements of T.C.A. § 66-29-130.

(2) For all Property having a minimum value of Twenty-Five Dollars ($25.00) that is held by the Treasurer, the Treasurer shall list the names of the Apparent Owners on a website or database electronically searchable by the public.

Authority: *T.C.A. §§ 66-29-104, 66-29-130(a), and 66-29-130(b)(4).* ~~*66-29-113 and 66-29-130.*~~ ~~***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 22, 1988; effective December 28, 1988.*~~
~~*Amendment filed September 4, 1996; effective January 28, 1997. Amendment filed August 31, 2000; effective December 29, 2000. Repeal filed September 30, 2010; effective February 28, 2011.*~~

1700-02-01-.06 ~~**SUBMISSION OF REPORTS TO STATE TREASURER.** Unclaimed Property Reports should be mailed or delivered to the State Treasurer at such address and in such manner as the Treasurer shall direct~~ **CLAIMS.**

(1) Method of Filing. Except as provided in T.C.A. § 66-29-152(b), any Person claiming any Property held by the Treasurer pursuant to the Act must file a claim on the form prescribed by the Unclaimed Property Division and must include all supporting documentation required by the Unclaimed Property Division. By submitting a claim, the claimant is asserting that the claimant is the true owner of the Property. If a claimant knowingly makes any false statement with respect to a claim, the claimant shall repay the Unclaimed Property Division the amount of the claim upon request and shall indemnify the Treasurer and the State of Tennessee in the event of a successful claim to such Property by another claimant.

(2) In the event the claim is incomplete and remains incomplete for thirty (30) days after it is filed, the Unclaimed Property Division may close the claim. In the event a claim is closed, the claimant may file a new claim regarding the same Property.

(3) Proof of Ownership. As part of a claim filed under Rule 1700-02-01-.06(1), the following information may be required by the Unclaimed Property Division to prove ownership of the Property:

(a) driver's license or other photo identification;

(b) document proving claimant's tax identification number;

(c) birth certificate or adoption records;

(d) last will and testament;

(e) evidence of probate distribution or letters testamentary;

(f) marriage certificate;

(g) divorce decree;

(Rule 1700-02-01-.01, continued)

(h) documentation providing a connection with the reported address or business for the year cited as the date of last transaction in the Report;

(i) copy of contract;

(j) guardianship or trust agreement;

(k) income tax returns and other tax records;

(l) court records;

(m) an affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;

(n) copies of checks, passbooks, or safe deposit box rental agreements;

(o) stock certificates and broker statements;

(p) insurance policies;

(q) invoices and bills of lading; and

(r) any other documentation necessary to support the claim, as requested by the Unclaimed Property Division.

(4) Local Government Refunds. Any person claiming an interest in property for which funds have been delivered by the Unclaimed Property Division to a local government or cooperative pursuant to T.C.A. §§ 66-29-146(c) and 66-29-146(d) shall file such claim with the local government or cooperative in receipt of the funds.

Authority: *T.C.A. §§ 66-29-104, 66-29-146, 66-29-153 and 66-29-152.* ~~*66-29-113 and 66-29-130.*~~
~~***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997.*~~
~~*Amendment filed August 31, 2000; effective December 29, 2000.*~~

1700-02-01-.07 ~~**NEGATIVE REPORTS.** Any banking organization, financial organization, life insurance company, or utility company within this State which in any year does not hold property subject to~~

~~(Rule 1700-02-01-.07, continued)~~

~~Tennessee's Uniform Disposition of Unclaimed Property Act (the Act) shall file a certified statement to that effect when requested by the State Treasurer.~~ **EXAMINATION OF BOOKS AND RECORDS.**

(1) Factors the Treasurer may consider in determining whether to commence an examination or participate in an examination initiated by another state regarding a Person pursuant to T.C.A. § 66-29-158 include, but are not limited to:

(a) Whether the Person fails to report types of unclaimed Property typically reported by like Persons;

(b) Whether amounts on a Holder's Report or amounts remitted from the Holder are not comparable to those received from similar Holders;

(c) Whether governmental agencies or other reliable sources have provided information indicating that a Person may be holding unclaimed Property that has not been reported;

(d) Whether the Unclaimed Property Division has received evidence or complaints of failure by the Person to send any required notice to an Apparent Owner; and

(e) Whether an examination has been initiated by another state or more than one state.

(2) The Unclaimed Property Division shall provide written notice of the examination to the Person under examination at least thirty (30) days prior to the commencement of the examination. The notice shall include the contact information for both the examination firm (if applicable) and the Unclaimed Property Division.

(3) The Examiner shall contact the Person subject to examination to schedule an entrance conference. At the entrance conference, the Examiner shall provide the Person with the following information:

(a) identification of other states (if any) participating in the examination;

(b) tentative timeline and duration of the examination;

(c) description of the respective responsibilities of the Person subject to examination and the examination firm;

(d) identification of the potential types of records subject to examination;

(e) identification of the time period subject to examination; and

(f) explanation of the examination methods, including estimation techniques that may be used by the examination firm for those periods where records are not available or are insufficient.

(4) The examination may include, but shall not be limited to:

(a) records of current accounts, dormant accounts and accounts that may have been closed and archived;

(b) verification of contractual agreements regarding the deduction of service charges; increases or decreases in account value; and interest payments;

(c) the Person's policies and procedures, including annual procedures for reviewing dormant accounts.

(5) If a Person subject to examination does not maintain the records required by T.C.A. § 66-29-126 and the records of the Person available for the periods covered by the examination are insufficient to permit the preparation of the Report, the Treasurer may determine the Person's liability under the Act based on the amount the Treasurer reasonably estimates, on the basis of any available records of the Person or by any other reasonable method of estimation, should have been but was not reported. Prior to the conclusion of the examination, the Examiner shall provide written notice to the Person containing the estimation methodology to be used and for which years during the time period covered by the examination estimation will be used. The Person subject to examination may object to the estimation methodology by following the process outlined in T.C.A. § 66-29-163.

Authority: *T.C.A. §§ 66-29-104 and 66-29-158. ~~66-29-113 and 66-29-130. **Administrative History:** Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997.~~*

1700-02-01-.08 ~~**VOLUNTARY REPORTING.** Since the Act is purely custodial, any holder of unclaimed property may voluntarily report funds before the statutory due date and be relieved of all accountability and responsibility upon delivery of the unclaimed property to the State Treasurer, to the extent of the value of the property reported and delivered. Provided, however, if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate and the property has a value of fifty dollars ($50.00) or more, the holder must exercise due diligence, as such term is defined in Rule 1700-02-01-.19 below, to ascertain the whereabouts of the owner prior to reporting such property. The due diligence required by this rule shall be performed not more than one hundred twenty (120) days or less than sixty (60) days before filing the report.~~ **FINDERS' AGREEMENTS.**

(1) Any agreement between an owner of Property and a Finder for the recovery of Property not yet held by the Treasurer pursuant to the Act is enforceable only if, in addition to the information required by T.C.A. § 66-29-176, it also:

(a) Disclosed that, absent the agreement, the Property deemed abandoned under the Act would be required to be delivered to the Unclaimed Property Division for safekeeping, and that the owner would be able to recover the Property without charge and without utilizing the Finder's services;

(b) Informs the Apparent Owner that he or she may obtain additional information about unclaimed Property programs by visiting the Unclaimed Property Division's website; and

(c) Provides that the Finder shall deliver to the Apparent Owner evidence that the Finder has all required licenses to perform the services under the agreement.

(2) Any agreement between an owner of Property and a Finder for the recovery of Property held by the Treasurer pursuant to the Act is enforceable only if, in addition to the information required by T.C.A. § 66-29-176, it also:

(a) Provides that, for any successful claim through the efforts of the Finder pursuant to the agreement, the Unclaimed Property Division will direct the full amount of payment to the Apparent Owner and not to the Finder; and

(b) Provides that the Finder shall deliver to the Apparent Owner evidence that the Finder has all

required licenses to perform the services under the agreement.

(3) A Finder shall submit evidence of the Finder's required licensure with any claim filed with the Unclaimed Property Division.

Authority: *T.C.A. §§ 66-29-104 and 66-29-176. ~~66-29-113(f), 66-29-116, and 66-29-130.~~* ~~***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997. Repeal and new rule filed December 29, 2005; effective April 28, 2006.*~~

~~**1700-02-01-.09 REPEALED.**~~

~~***Authority:*** *T.C.A. §§64-2913 and 64-2917.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.10 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2903.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.11 ABANDONMENT OF CERTIFICATES OF DEPOSIT.** Certificates of deposit which are automatically renewed at the end of a term and for which no contact has been made shall be deemed to be abandoned at the end of the term in which the statutory abandonment period has run.~~

~~***Authority:*** *T.C.A. §§66-29-104 and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.12 OWNER OF CASHIER'S CHECK DEFINED.** For purposes of the Act, the owner of a cashier's check shall be deemed to be the person who is in possession of the instrument, provided such person is either the purchaser or the payee of the check. Any banking or financial organization or business association which has issued a cashier's check which is deemed abandoned under the Act shall report the name and address, if known, of both the payee and the purchaser of the check in accordance with T.C.A. § 66-29-113.~~

~~***Authority:*** *T.C.A. §§66-29-104, 66-29-113, and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.13 REPEALED.**~~

~~***Authority:*** *T.C.A. §§64-2903 and 64-2913.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal by Public Chapter 575; effective July 1, 1986.*~~

~~**1700-02-01-.14 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2929.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal by Public Chapter 575; effective July 1, 1986.*~~

~~**1700-02-01-.15 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2921.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal by Public Chapter 575; effective July 1, 1986.*~~

~~**1700-02-01-.16 REPORTS MADE BY INSURANCE COMPANIES.** In addition to proceeds of unclaimed matured or terminated policies or contracts, insurance companies are required to report funds held by them including, but not limited to, unclaimed dividends and salary checks.~~

~~***Authority:*** *T.C.A. §§66-29-112, 66-29-113, and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979.*~~

~~**1700-02-01-.17 REPORTS MADE BY UTILITY COMPANIES.** "Lawful deductions" shall be defined as deductions for the gross amount of services left owing or damages to property owned by the utility company.~~

~~***Authority:*** *T.C.A. § 66-29-106 and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979.*~~

~~**1700-02-01-.18 REPORTS OF MISCELLANEOUS PROPERTY HELD FOR ANOTHER PERSON.**~~

~~(1) "Miscellaneous property held for another person" shall include but shall not be limited to:~~

~~(a) wages, commissions or other compensation which are not otherwise covered under Tennessee Code Annotated, Section 66-29-136~~

~~(b) royalties~~

~~(c) deposits or payment for repair or purchase of goods and services~~

~~(d) credit checks or memo~~

~~(e) customer overpayments~~

~~(f) gift certificates (uncashed)~~

~~(g) unidentified remittances~~

~~(h) refunds~~

~~(i) credit balances - accounts receivable~~

~~(j) discounts~~

~~(k) vendor checks~~

~~(l) claim payments~~

~~(m) unpaid accounts payable~~

~~(Rule 1700-02-01-.18, continued)~~

~~(n) miscellaneous outstanding checks~~

~~(o) any sum owing to a shareholder, certificate holder, member, bondholder, or other security holders or participating patron of a cooperative.~~

~~***Authority:*** *T.C.A. §§66-29-112, 66-29-130, and 66-29-136.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed August 31, 2000; effective December 29, 2000.*~~

~~**1700-02-01-.19 DUTIES OF HOLDERS.**~~

~~(1) Before filing the annual report of property presumed abandoned, the holder shall exercise due diligence to ascertain the whereabouts of the owner to prevent abandonment from being presumed. "Due diligence" is defined herein as the degree of care which a reasonably prudent man would exercise in the normal course of business operations.~~

~~(a) Evidence that the location of the owner cannot be ascertained may be the return of a first-class or superior mailing sent to the owner's last known address.~~

~~(b) First-class or superior mailings to owners in the ordinary course of the holder's business which are not returned as "undeliverable" shall constitute contact with the owner, and shall constitute an indication of interest in the property in accordance with the Act. Examples of such mailings include, but are not limited to, computerized statements of account and statements of interest earnings required by the Internal Revenue Service.~~

~~***Authority:*** *T.C.A. §§66-29-104(1)(C), 66-29-104(2)(C), 66-29-104(3)(A), 66-29-109, 66-29-113(e), and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.20 DELIVERY OF PROPERTY TO THE STATE TREASURER.**~~

~~(1) Except as provided in Rule 1700-02-01-.37, all property reported must be delivered to the State Treasurer unless, in his discretion, the State Treasurer determines that it is not in the interest of the State to take custody of the property and authorizes the holder, in writing, to dispose of the property.~~

~~(2) Holders shall deliver unclaimed shares of stock or mutual funds in such form that future earnings from those shares or funds will be delivered in the form of cash rather than an increase in the number of shares. When there is an option of cash or stock dividends, the Treasurer prefers to receive cashholder shall deliver cash.~~

~~(3) Holders shall deliver property to the State Treasurer accompanied by the remittance advice provided by the Treasurer.~~

~~(4) Holders shall deliver property to the State Treasurer in such form as will empower him to sell or otherwise negotiate the property at any time to the extent necessary to effectuate the purposes of the Act.~~

~~***Authority:*** *T.C.A. §§66-29-107, 66-29-115, and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 24, 1990; effective December 29, 1990. Amendment filed August 31, 2000; effective December 29, 2000.*~~

~~**1700-02-01-.21 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2914.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Repeal by Public Chapter 575; effective July 1, 1986.*~~

~~**1700-02-01-.22 PROHIBITED AGREEMENTS.** Contractual agreements are not permitted which tend to circumvent the intention of the Tennessee General Assembly and provide any holder subject to this Act with a windfall or allow the holder to maintain custody of property deemed abandoned under the provisions of the Act.~~

~~***Authority:*** *T.C.A. §64-2929.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979.*~~

~~**1700-02-01-.23 HOLDER REIMBURSEMENT FOR CLAIMS PAID.** Any holder who has reported and delivered property to the Treasurer may make payment to the owner when presented with proper proof of ownership. If the property has not previously been returned by the Treasurer to the owner, the Treasurer shall reimburse the holder upon receipt of a photocopy, front and back, of the cancelled check issued to the recipient along with information identifying the type of property and the date it was delivered to the Treasurer.~~

~~***Authority:*** *T.C.A. § 66-29-116 and 66-29-130.* ***Administrative History:*** *Original rule filed October 26, 1978; effective January 29, 1979. Amendment filed September 24, 1990; effective December 29, 1990.*~~

~~**1700-02-01-.24 PROCEDURES GOVERNING DISPOSITION OF MARKETABLE SECURITIES TRADED ON A NATIONAL EXCHANGE.**~~

~~(1) Time of Disposal - The sale of all marketable securities delivered to the Unclaimed Property Division shall be authorized by the Treasurer eight (8) months following advertisement or as soon thereafter as practicable.~~

~~(2) Manner of Disposal~~

~~(a) Securities shall first be offered for sale to the Tennessee Consolidated Retirement System at their current market price.~~

~~(b) Securities not purchased by the Tennessee Consolidated Retirement System shall be sold by a licensed broker designated by the Treasurer, who is a member of the New York Stock Exchange.~~

~~1. Instructions to the broker shall be to sell the Security prior to the close of the market within three (3) days after delivery of the stock to him.~~

~~(3) Proceeds From Sale - The full amount received from the sale shall be remitted to the Unclaimed Property Division and shall be held for the rightful owner.~~

~~(4) Costs of Sale - All costs associated with the sale shall be paid by the Unclaimed Property Division.~~

~~(5) Claims Prior to Sale of Security - If a claim is made for a security prior to its sale, the Unclaimed Property Division will attempt to transfer the security to the claimant. If the transfer is unsuccessful, at the written request of the claimant, the security will be sold prior to the date specified above and the proceeds will be paid to the claimant.~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981.*~~

~~**1700-02-01-.25 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.26 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.27 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.28 REPEALED.**~~

~~***Authority:*** *T.C.A. §§66-29-119 and 66-29-130.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Amendment filed September 24, 1990; effective December 29, 1990. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.29 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.30 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.31 REPEALED.**~~

~~***Authority:*** *T.C.A. §§66-29-119 and 66-29-130.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Amendment filed September 24, 1990; effective December 29, 1990. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.32 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~**1700-02-01-.33 REPEALED.**~~

~~***Authority:*** *T.C.A. §§66-29-119 and 66-29-130.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 24, 1990; effective December 29, 1990.*~~

~~**1700-02-01-.34 REPEALED.**~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~1700-02-01-.35 REPEALED.~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~1700-02-01-.36 REPEALED.~~

~~***Authority:*** *T.C.A. §64-2919.* ***Administrative History:*** *Original rule filed January 29, 1981; effective April 29, 1981. Repeal filed September 4, 1996; effective January 28, 1997.*~~

~~1700-02-01-.37 REPORTS OF SAFE DEPOSIT BOX CONTENTS.~~

~~(1) Any lessor, as defined in Tennessee Code Annotated, Section 45-2-901(4), who removes contents from a safe deposit box, vault, or other safe deposit receptacle in accordance with the procedures set forth in Tennessee Code Annotated, Section 45-2-907 shall report such contents to the State Treasurer by no later than May 1st of the year following the calendar year in which the box is opened. The contents from such boxes shall be reported separately from any other type of unclaimed property reportable to the State Treasurer by the lessor shall report the contents from such boxes separately from any other type of unclaimed property reportable to the State Treasurer. The State Treasurer shall create a separate and distinct unclaimed property report form for the reporting of safe deposit box contents. The report form shall elicit such information, as the Treasurer deems appropriate including, but not limited to, the following:~~

~~(a) A listing of the full names of the respective lessees in alphabetical order according to their surnames. The names of the lessees and their respective last known addresses shall appear in horizontal columns.~~

~~(b) Beside each lessee name, the following information shall be listed:~~

~~1. if more than one lessee of the box exists, the relationship between the lessees;~~

~~2. the name and address of any other person who, according to the lessor's records, may have an interest in the box's contents;~~

~~3. the lessee(s) social security number if known to the lessor;~~

~~4. the identifying number used by the lessor for the safe deposit box;~~

~~5. the date the box was opened and inventoried; and~~

~~6. a brief description of the property.~~

~~(2) (a) Every lessor filing a report under this rule shall, at the time of filing such report and with that report, pay or deliver to the State Treasurer the following types of property removed from a safe deposit box:~~

~~1. Intangible property including, but not limited to, stocks and bonds;~~

~~2. Coins or currency with a face value of twenty dollars ($20.00) or less each which are valued at no more than twice the face value; and~~

~~3. Coins or currency with a face value of greater than twenty dollars ($20.00) each which are valued at one hundred twenty-five percent (125%) or less of face value.~~

~~(Rule 1700-02-01-.37, continued)~~

~~(b) The coins or currency described in subparagraphs (2)(a)2 and (2)(a)3 above shall not be delivered to the State Treasurer if the same can be deposited to the credit of the lessee in any existing account maintained by the lessor on behalf of the lessee. In such event, the lessor shall deposit the coins or currency to the credit of the lessee, minus any accumulated charges deducted by the lessor pursuant to Tennessee Code Annotated, Section 45-2-907. The lessor shall specify on the report: (i) the cash amount of the coins and currency, (ii) the amount deposited to the lessee's account after deduction of any accumulated charges and (iii) the fact that the funds have been deposited to an existing account of the lessee.~~

~~(c) The coins or currency described in subparagraphs (2)(a)2 and (2)(a)3 shall also not be delivered to the State Treasurer if other property is removed from the respective safe deposit box and held for subsequent sale. Instead, such coins and currency shall be retained until the sale and shall be treated as proceeds from the sale pursuant to paragraph (3) of this rule below.~~

~~(3) All other property removed from a safe deposit box shall not be delivered to the State Treasurer at the time of filing the report. Instead, the lessor shall sell or otherwise dispose of the property in accordance with the procedures set forth in Tennessee Code Annotated, Section 45-2-907. The monetary proceeds resulting from any such sale, after deducting accumulated charges, including a proportionate share of the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any existing account maintained by the lessor on behalf of the lessee. If no account exists, the proceeds shall be delivered to the State Treasurer within sixty (60) days of the sale along with the updated report required in paragraph (4) of this rule below.~~

~~(4) Updated Report. After disposition of all contents of a safe deposit box, the lessor shall provide to the State Treasurer an updated report concerning the contents of the box. The updated report shall contain all the information provided in the initial report filed with the Treasurer pursuant to paragraph (1) of this rule above. In addition, the report shall contain the following information for each item of property described in the initial report:~~

~~(a) A statement as to whether the item was returned to the owner, sold or destroyed;~~

~~(b) The net amount realized from the sale of that item; and~~

~~(c) If the net amount realized from the sale of the item was deposited to the credit of the lessee as provided in paragraph (3) of this rule above, a statement that the amount has been deposited to an existing account of the lessee.~~

~~***Authority:*** *T.C.A. §§45-2-907, 66-29-104(4)(A), 66-29-115(c), and 66-29-130.* ***Administrative History:*** *Original rule filed August 31, 2000; effective December 29, 2000. Amendment filed December 29, 2005; effective April 28, 2006.*~~

~~**1700-02-01-.38 AGREEMENTS RELATIVE TO UNREPORTED PROPERTY.**~~

~~(1) Any agreement entered into on or after July 1, 2005 with an owner whereby the owner is to pay a fee or other remuneration for locating, delivering, recovering, or assisting in the recovery of property that has not yet been reported to the State Treasurer pursuant to the Act is enforceable only if:~~

~~(a) The agreement is in writing;~~

~~(b) Clearly sets forth the nature of the property and the services to be rendered;~~

(Rule 1700-02-01-.38, continued)

~~(c) Is signed by the apparent owner;~~

~~(d) States the value of the property before and after the fee;~~

~~(e) Discloses that, absent the agreement, the property would otherwise be delivered to a state administered unclaimed property program for safekeeping on the owner's behalf and that upon such delivery, the owner would have been able to recover the property from the state administered program without charge; and~~

~~(f) Informs the apparent owner that the owner may obtain additional information about unclaimed property programs by logging onto the Tennessee Department of Treasury, Division of Unclaimed Property's Internet web site.~~

~~(2) Nothing in this rule shall be construed to prevent an owner from asserting at any time that an agreement to locate, deliver, recover, or assist in the recovery of property is based upon an excessive or unjust consideration.~~

~~***Authority:*** *T.C.A. §§66-29-122 and 66-29-130.* ***Administrative History:*** *Original rule filed December 29, 2005; effective April 28, 2006. Amendment filed September 30, 2010; effective February 28, 2011.*~~

~~**1700-02-01-.39 PROXIES.** Due to the short time period within which securities are held under the Act prior to their sale, the State Treasurer shall not vote proxies received in connection with securities delivered to the Unclaimed Property Division.~~

~~***Authority:*** *T.C.A. §§66-29-107, 66-29-119, and 66-29-130.* ***Administrative History:*** *Original rule filed December 29, 2005; effective April 28, 2006.*~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 11/20/18

Signature: [signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer

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

Subscribed and sworn to before me on: Nov. 20, 2018

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

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

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

2018 DEC -4 AM 8:32 SECRETARY OF STATE

Filed with the Department of State on: 12/4/18

Effective on: 3/4/19

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
SUBJECT:	Public Records
STATUTORY AUTHORITY:	Public Chapter 712 of 2018
EFFECTIVE DATES:	March 10, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Public Chapter 712 of 2018 requires state governmental entities to promulgate rules regarding public records. In compliance with Public Chapter 712, the University of Tennessee is promulgating a public records rule that does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators.

Regulatory Flexibility Addendum

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

The rule is not anticipated to have an impact on small businesses.

Impact on Local Governments

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

The rule 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;

Public Chapter 712 (2018) requires state governmental entities to promulgate rules regarding public records. In compliance with Public Chapter 712, the University of Tennessee is promulgating a public records rule that does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators.

(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 712 (2018)

(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 University of Tennessee Board of Trustees urges adoption. Individuals/entities who wish to inspect or receive copies of public records of the State of Tennessee are directly affected by this rule. The University of Tennessee Board of Trustees did not receive any requests to address the Board about this rule.

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

None known

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

None

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

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

Matthew Scoggins
General Counsel
The University of Tennessee
719 Andy Holt Tower

Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

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

Sequence Number: 12-12-18
Rule ID(s): 7799
File Date: 12/10/18
Effective Date: 3/10/19

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:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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**
1720-01-11	Public Records
Rule Number	**Rule Title**
1720-01-11-.01	Introduction
1720-01-11-.02	Definitions
1720-01-11-.03	Requesting Access to Public Records
1720-01-11-.04	Responding to Requests for Public Records
1720-01-11-.05	Fees and Charges for Public Records; Procedures for Billing and Payment
1720-01-11-.06	Confidentiality Exceptions

Rules of
The University of Tennessee
(All Campuses)

Chapter 1720-01-11
Public Records

Table of Contents

1720-01-11-.01	Introduction	1720-01-11-.04	Responding to Requests for Public Records
1720-02-11-.02	Definitions	1720-01-11-.05	Fees and Charges for Public Records; Procedures for Billing and Payment
1720-03-11-.03	Requesting Access to Public Records	1720-01-11-.06	Confidentiality Exceptions

1720-01-11-.01 Introduction

(1) This rule is adopted for The University of Tennessee by The University of Tennessee Board of Trustees to provide economical and efficient access to public records as provided under the Tennessee Public Records Act. The Tennessee Public Records Act provides that all public records must, at all times during business hours, be open for personal inspection by any citizen of the state of Tennessee, and those in charge of the public records must not refuse such right of inspection to any citizen of the state of Tennessee, unless otherwise provided by law. Accordingly, the public records of The University of Tennessee are presumed to be open for inspection unless otherwise provided by law.

(2) University employees must timely and efficiently provide access and assistance to persons requesting to inspect or receive copies of public records. The provisions of this rule must not be used to hinder access to non-confidential public records. However, the integrity, confidentiality, and organization of public records, as well as the efficient and safe operation of the University, must be protected as provided by law.

(3) Concerns about this rule should be addressed to the appropriate Public Records Request Coordinator or to the Tennessee Office of Open Records Counsel.

(4) This rule is based on policies and guidelines published by the state of Tennessee's Office of Open Records Counsel as of November 2, 2018, including the Model Public Records Policy, the Best Practices & Guidelines document, the Safe Harbor Policy, the Schedule of Reasonable Charges, and the Reasonable Charges for Frequent and Multiple Requests Policy.

(5) This rule must be applied consistently throughout the various units of the University.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-11-.02 Definitions

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

(2) "Public record(s)" or "record(s)" 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 in connection with the transaction of official business by The

University of Tennessee. "Public record(s)" does not mean the device or equipment that may have been used to create or store a public record including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment.

(3) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, designated in Section .03(2) who has, or have, the responsibility to ensure that public records requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. The Public Records Request Coordinator may also be a records custodian and/or a designee of the Public Records Request Coordinator.

(4) "Public Records Request Response Form" means the records request response form developed by the Office of Open Records Counsel in accordance with T.C.A. § 10-7-503(a)(2)(B).

(5) "Records custodian" means the University unit, 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 a public record.

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

(7) "TPRA" or "Tennessee Public Records Act" means the state law codified in T.C.A. §§ 10-7-501 et seq.

(8) "The University of Tennessee" or "University" means the campuses, centers, units and institutes of The University of Tennessee, and all their constituent parts, and The University of Tennessee system administration. Neither "The University of Tennessee" nor "University" means The University of Tennessee Foundation, Inc., or The University of Tennessee Research Foundation.

(9) "University unit" means any academic, administrative, or auxiliary office, department or division of the University or any other official entity of the University, functioning through University employees acting within the scope of their University employment.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-11-.03 Requesting Access to Public Records

(1) Public records requests must be made to the appropriate Public Records Request Coordinator to ensure that public records requests are routed to the appropriate records custodian and fulfilled in a timely manner.

(2) The University's PRRCs are:

(a) For records of the University of Tennessee System Administration:

Public Records Request Coordinator
systempublicrecords@tennessee.edu

(b) For purchasing records of all units in the University of Tennessee System:

Public Records Request Coordinator
purchasingrecords@tennessee.edu

(c) For records of the University of Tennessee at Chattanooga:

Public Records Request Coordinator
publicrecords@utc.edu

(d) For records of the University of Tennessee Health Science Center:

Public Records Request Coordinator
publicrecords@uthsc.edu

(e) For records of the University of Tennessee Health Institute of Agriculture:

Public Records Request Coordinator
utiapublicrecords@tennessee.edu

(f) For records of the University of Tennessee Institute of Public Service:

Public Records Request Coordinator
ipspublicrecords@tennessee.edu

(g) For records in the University of Tennessee Archives:

Public Records Request Coordinator
archives@utk.edu

(h) For non-law enforcement records of the University of Tennessee, Knoxville:

Public Records Request Coordinator
publicrecords@utk.edu

(i) For law enforcement records of the University of Tennessee, Knoxville:

Public Records Request Coordinator
utpdrecords@utk.edu

(j) For intercollegiate athletics records of the University of Tennessee, Knoxville:

Public Records Request Coordinator
utadpublicrecords@utk.edu

(k) For non-law enforcement records of the University of Tennessee at Martin:

Public Records Request Coordinator
publicrecords@utm.edu

(l) For law enforcement records of the University of Tennessee at Martin:

Public Records Request Coordinator
publicsafetyrecords@utm.edu

(3) Requests to Inspect Public Records

(a) Requests to inspect public records may be communicated in person to the appropriate PRRC or communicated to the appropriate PRRC via telephone, mail, fax, e-mail, or via internet portal (if the PRRC maintains an internet portal for accepting public records requests).

(b) The PRRC must not require a requestor to submit a written request to inspect public records. However, the PRRC may request that a requestor submit a written request in order to facilitate recordkeeping and ensure accuracy in fulfilling the request. The PRRC should request a mailing or e-mail address from the requestor for providing any responsive written communication required under the TPRA.

(c) The PRRC determines the location for the inspection of public records and may require an appointment for the inspection of public records. The PRRC must not allow a requestor to inspect original records outside of the presence of a University employee designated by the PRRC. The PRRC must take reasonable precautions to ensure that the integrity of public records is maintained during the inspection of the records.

(d) If a requestor makes two (2) or more requests to inspect a public record within a six (6) month period and, for each request, the requestor fails to inspect the public record within fifteen (15) business days of receiving notification from the PRRC that the record is available for inspection, then the PRRC is not required to comply with any public records request from the requestor for a period of six (6) months from the date of the second request to inspect the public record unless the PRRC determines that the failure to inspect the public record was for good cause.

(e) Requests for Copies of Public Records

1. Requests for copies, or requests for inspection and copies, must be made in writing and submitted to the appropriate PRRC in person or via mail, e-mail, or internet portal (if the PRRC maintains an internet portal for accepting public records requests). The PRRC may provide requestors with a form that requestors may use to make requests for copies or requests for inspection and copies of public records. The PRRC may waive the requirement that a request for copies, or a request for inspection and copies, be made in writing.

2. A requestor will not be allowed to make copies of records with personal equipment (e.g., cell phones, portable scanners, portable copy machines).

(f) Proof of Tennessee citizenship by presentation of a valid Tennessee driver license to the PRRC (or alternative form of identification acceptable to the PRRC) is required as a condition to inspect and/or receive copies of public records.

(g) Notices of upcoming meetings of the University's Board of Trustees, along with materials relating to Board meetings, are posted and readily available at trustees.tennessee.edu.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-11-.04 Responding to Requests for Public Records

(1) Records custodians must refer requests to inspect and/or receive copies of public records to the appropriate PRRC.

(2) Upon receiving a public records request:

(a) The PRRC must review the request and make an initial determination of the following:

1. Whether the requestor has presented proof of Tennessee citizenship;

2. Whether the requestor described the records requested with sufficient specificity to identify the records requested; and

3. Whether the University is the custodian of the records requested.

(b) The PRRC must acknowledge receipt of the request and should advise the requestor about the applicable sections of this rule.

(c) The PRRC may ask the requestor whether the request can be narrowed.

(d) The PRRC may offer to assist the requestor in clarifying the request if the request lacks sufficient specificity to identify the records requested.

(e) The PRRC must communicate with the appropriate records custodian(s) about the request (e.g., when the request was received and when a response is due; what records exist; how long the records custodian reasonably estimates it will take to produce the records; tracking employee time required to produce the records).

(f) The PRRC must promptly make requested public records available to the requestor for inspection unless there is a basis upon which to deny the request. If not practicable to promptly provide requested records for inspection 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; to redact records; or for other similar reasons, then the PRRC must do one of the following within seven (7) business days from the University's receipt of the request:

1. Make the records available to the requestor;

2. Deny the request in writing in accordance with Section 4.3; or

3. Provide the requestor with a completed Public Records Request Response Form.

(3) If denying the request is appropriate, then the PRRC must deny the request in writing (the PRRC may use the Public Records Request Response Form) and provide the basis for the denial, such as one of the following:

(a) The requestor is not, or has not presented proof of being, a Tennessee citizen;

(b) The request lacks sufficient specificity to identify the records requested;

(c) An exemption makes the record not subject to disclosure under the TPRA (the PRRC must state the basis for the denial in writing);

(d) The University is not the custodian of the requested records (if requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, then the PRRC should advise the requestor of the correct governmental entity and PRRC for that entity if known); or

(e) The records do not exist.

(4) The TPRA does not require the University to sort through files to compile information or to create or recreate a record that does not exist.

(5) If the PRRC reasonably determines that production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, then the PRRC should notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If the production of records is segmented, then the PRRC may segment the pre-payment of production costs.

(6) If the PRRC discovers that public records responsive to a public records request were omitted, then the PRRC should contact the requestor concerning the omission and produce the public records as quickly as practicable.

(7) Redaction

(a) If a record contains information that is not open for public inspection (e.g., confidential information), then the PRRC must coordinate with the records custodian to prepare a redacted copy of the public record prior to providing access to the requestor. If questions arise concerning redaction, the PRRC or the records custodian should consult with the Office of the General Counsel.

(b) Whenever a redacted record is provided, the PRRC should provide the requestor with the basis for redaction. The basis given for redaction must be general in nature and not disclose confidential information.

(8) Law Enforcement Personnel Records

(a) If a requestor makes a request to inspect the personnel records of an employee in a University police department, then prior to allowing an inspection the PRRC must:

1. Obtain the requestor's name, address, business telephone number, home telephone number, and driver license number or other appropriate identification, or if the request is made for a professional, business purpose, or official purpose, obtain the requestor's business address, business telephone number, business e-mail address, and if requested by the campus chief law enforcement officer or his/her designee, the name and contact number or e-mail address for a supervisor for verification purposes;

2. Redact personal information as required by law;

3. Notify the chief law enforcement officer for the campus (or his/her designee), who must consider whether there is a reason not to disclose additional personal information relating to the law enforcement employee. "Personal information" includes, but is not limited to, an officer's residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled;

4. If the request is for a professional, business, or official purpose, then the chief law enforcement officer (or his/her designee) must consider the specific circumstances and determine whether there is a reason not to disclose other information relating to the employee; and

5. Ensure that the chief law enforcement officer (or his/her designee), prior to making a final decision on whether to withhold information in addition to reasons required by law, has notified the employee whose file has been requested and has provided two (2) business days for the employee to be heard and oppose the release of the information.

(b) After giving an employee time to oppose the release of information, if the chief law enforcement officer for the campus (or his/her designee) decides to withhold information (other than pursuant to reasons required by law), then a specific reason must be given to the requestor in writing within two (2) business days, and the file must be released with the personal information redacted.

(c) The chief law enforcement officer for the campus (or his/her designee) may keep information that could be used to identify or to locate an undercover employee in a location other than the employee's personnel file.

(d) When the personnel records of a University law enforcement employee are inspected, the PRRC must make a record of such inspection and provide notice, within three (3) days from the date of the inspection, to the employee whose personnel records have inspected. The record made by the PRRC must include the following information:

1. That an inspection of the employee's personnel records took place;

2. The name, address, and telephone number of the person making the inspection;

3. For whom the inspection was made; and

4. The date of such inspection.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 10-7-504(g); T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-11-.05 Fees and Charges for Public Records; Procedures for Billing and Payment

(1) Unless charges are waived (Section 5.1.5), the PRRC must charge the requestor for all reasonable costs the University incurred to produce copies of the public records requested by the requestor ("production costs").

(a) Production costs include copying costs (Section 5.5), labor costs (Section 5.6), and delivery costs (Section 5.7).

(b) Charges for production costs should not be used to unlawfully hinder access to public records.

(c) The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount that a requestor will be charged for production costs.

(d) No charges will be assessed for copies of public records unless the production costs exceed five dollars ($5).

(e) When the production costs exceed five dollars ($5), the production costs may be waived by the PRRC in the following circumstances:

1. When the requestor is an employee of a federal, state, or local government agency acting in the requestor's official government capacity;

2. When the requestor is a current employee of the University who has requested copies of the requestor's personnel records; and

3. Other circumstances in which the PRRC determines, after consultation with appropriate University employees, that such a waiver is in the best interest of the University.

(f) Production costs associated with aggregated records requests (Section 5.10) will not be waived.

(2) There must be no charge for the inspection of public records unless required by law. However, the PRRC is not prohibited from charging the requestor for production costs if the requestor requests copies of public records after requesting to inspect public records, but the PRRC may charge the requestor only for the production costs reasonably attributable to the copies requested by the requestor.

(3) A PRRC, working with the records custodian, must promptly respond to a public records request for copies in the most economic and efficient manner practicable as determined by the PRRC.

(4) Estimate of Production Costs and Pre-Payment of Production Costs

(a) The PRRC must provide a requestor with an estimate of the production costs prior to producing copies of records unless:

1. Production costs are estimated to be less than five dollars ($5) and, thus, no charges will be assess for copies of public records (Section 5.1.4); or

2. Charges for production costs are waived (Section 5.1.5).

(b) The PRRC may use an estimate of production costs form to provide a requestor with an estimate of the production costs.

(c) When estimated production costs are more than fifty dollars ($50), must require pre-payment of at least fifty percent (50%) of such production costs before beginning the process of producing the requested records. The University is not bound by the estimate of the production costs.

(5) Copying Costs

(a) Copying costs include the costs related to making copies of the public records requested by the requestor by photographic or other means of duplication.

(b) Copying costs must be as follows:

1. The PRRC must assess a charge of fifteen cents ($0.15) per page for each standard 8 ½ x 11" or 8 ½ 14" black and white copy produced.

2. If a public record is maintained in color, then the PRRC must advise the requestor that the record can be produced in color if the requestor is willing to pay the higher charge for a color copy. If the requestor then requests a

color copy, then the PRRC must assess a copy charge of fifty (50) cents per page for each 8 ½ x 11" or 8 ½ x 14" color copy produced.

3. The charge for a duplex copy must be the same as the charge for two (2) separate copies.

4. If a copy of a public record is produced on a medium other than 8 ½ x 11" or 8 ½ x 14" paper, then the PRRC must assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.

5. The PRRC is not obligated to provide electronic copies of the requested records when the requested records are not maintained electronically. When the requested records are maintained electronically the PRRC generally will produce electronic copies of the requested records in a secure, read-only format. When providing electronic copies of public records, the PRRC may charge per-page copying costs only when paper copies that did not already exist were required to be produced in responding to the request, such as when an electronic public record must be printed to be redacted. When records that are maintained electronically need to be redacted, the PRRC may produce paper copies of the requested records in lieu of electronic copies.

6. The PRRC may charge the actual costs for flash drives or similar storage devices on which electronic copies are provided.

(c) Labor Costs

1. The PRRC must charge the requestor the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold.

(i) The "labor threshold" is the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the University in producing the records.

(ii) "Labor" means the employee time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.

(iii) The "hourly wage" is based upon the employee(s) base salary and does not include benefits.

2. In calculating the labor costs to be charged to the requestor, the PRRC must:

(i) First, determine the number of hours each employee spent producing the requested public records;

(ii) Second, subtract the one (1) hour labor threshold from the number of hours the highest paid employee spent producing the request;

(iii) Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and

(iv) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requestor.

3. Labor costs should be tracked based on tenths of an hour, rounded down.

4. The PRRC should strive to ensure that current employees with the lowest practicable hourly wage be used to fulfill public records requests. However, the PRRC has the discretion to determine that it is more cost effective to utilize a higher-compensated employee if he/she can accomplish the task more efficiently, which may result in lower total labor costs.

(d) Delivery Costs

1. The PRRC must charge the requestor for the costs incurred by the University in delivering the records to the requestor.

2. Copies will be available for pickup at a location specified by the PRRC.

3. Upon prepayment for postage, copies will be delivered by the United States Postal Service to the address identified by the requestor.

4. In the discretion of the PRRC, copies of public records may be delivered through other means, including electronically.

(e) If the PRRC utilizes an outside vendor to produce copies of the requested records, then the PRRC must charge the requestor for the actual production costs charged by the vendor to the University.

(f) Payment for Production Costs

1. The PRRC has the discretion to determine how payment for production costs must be made (e.g., cash, check, credit/debit card).

2. As stated in Section 5.4, when estimated production costs are more than fifty dollars ($50), the PRRC must require pre-payment in full of the estimated production costs before beginning the process of producing the requested records.

3. The PRRC must require full payment of the actual production costs before copies of public records are delivered or otherwise made available to the requestor. If the actual production costs exceeds the estimated production costs, then the PRRC must collect the difference between the actual production costs and the estimated production costs before copies of public records are delivered or otherwise made available to the requestor. If the actual production costs are less than the estimated production costs, then the PRRC must refund the difference between the estimated production costs and the actual production costs when copies of public records are delivered or otherwise made available to the requestor.

4. When actual production costs are more than fifty dollars ($50.00), then the PRRC must ensure that the production costs collected by the PRRC are distributed to the appropriate University units in proportion to the costs incurred by each unit in responding to the request.

(g) Aggregation of Frequent and Multiple Requests

1. The University will aggregate record requests in accordance with the policy on Reasonable Charges for Frequent and Multiple Requests promulgated by the Office of Open Records Counsel when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals determined to be working in concert).

2. The level at which records requests will be aggregated is by campus or institute.

3. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the Office of Open Records Counsel.

4. Routinely released and readily accessible records excluded from aggregation include, but are not limited to:

(i) Materials for meetings of the Board of Trustees and Board committees; and

(ii) Other records determined by the PRRC.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-11-.06 Confidentiality Exceptions

Exceptions to the right to inspect or copy public records include, without limitation: (1) records made confidential by the TPRA itself or by other state law; and (2) records the University is required to keep confidential by federal statute or regulation as a condition for receipt of federal funds or for participation in a federally funded program. The PRRC may publish a list of common exceptions to the right to inspect or copy public records.

Authority: T.C.A. § 10-7-503 et seq.; T.C.A. § 49-9-209(e); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
John Compton	x				
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Commissioner Jai Templeton	x				
Kim H. White	x				
T. Lang Wiseman	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 11/02/2018, 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: November 12, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

Subscribed and sworn to before me on: 11-12-18

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-01-11 Public Records

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

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/10/18

Effective on: 3/10/19

Tre Hargett
Secretary of State

2018 DEC 10 AM 10:41
SECRETARY OF STATE
RULES

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Special Education Programs and Services
STATUTORY AUTHORITY:	T.C.A. Section 49-10-101 provides that the state board shall adopt rules and regulations to implement the state's special education program. The commentary to 34 C.F.R. Sections 300.320 - 300.323 states, "[I]f a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP."
EFFECTIVE DATES:	March 12, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Chapter 0520-01-09 governs the State's special education program. In addition, the provision of special education services, specifically the provision of Individualized Education Programs (IEPs), is governed by the federal rules and regulations contained in 34 C.F.R. §§ 300.320 - 300.323. The State Board has voted to amend rule 052001-09-.15, which governs Parent Participation, to include a provision that if a local education agency prepares a draft IEP in advance of the IEP meeting, then a copy must be provided to the parent(s) at least 48 hours prior to the meeting, unless the parent opts out of receiving a draft.

TENNESSEE
STATE BOARD OF EDUCATION

RESPONSE TO COMMENTS AT RULEMAKING HEARING

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-09-.15 of the Tennessee State Board of Education, Special Education Programs and Services – Parent Participation. The hearing was held on March 22, 2018, at 9:30 a.m. CDT at the Davey Crockett Tower – Conference Room 1C, 500 James Robertson Parkway, Nashville, Tennessee 37243. The changes to the rule on first reading were proposed by the staff of the State Board of Education in response to feedback a Board member received regarding parents being presented with a draft Individualized Education Program (IEP) at IEP team meetings and not having sufficient time to review the document. Public comments on the rule change were obtained through the rulemaking hearing in addition to written comments.

The comments by those opposed to the rule change focused on the following issues:

- May appear to be a predetermination of eligibility;
- May result in fewer parents attending IEP meetings as the perception would be that the IEP is already completed;
- May send information that is confusing to parents without having immediate access to the professionals that can interpret that information;
- May discourage LEAs from creating drafts, which would lead to less structured meetings and a greater chance for errors;
- May result in LEAs having to hold separate IEP meetings, which could delay initial services up to 30 days after initial eligibility, in order to give time to have a draft ready;
- No means of documenting LEAs' compliance;
- Places undue paperwork burden on already paperwork-heavy SPED teachers; and
- Meetings may start with an adversarial tone.

Those comments in favor of the rule change highlighted the following:

- Drafts are necessary for active, equal, full participation;
- Under the Federal Education Right to Privacy Act parents entitled to records;
- Time needed to read and digest a large amount of paperwork and evaluation results;
- Parents need time to consult with advocates and experts;
- Not providing advanced drafts contributes to the following for parents:
  -Anxiety at meetings
  -Feeling overwhelmed
  -Adversarial relationship with school team;
- Evens the playing field a little and makes the parents more able team players; and
- Parents will be more informed and prepared which will be a better use of everyone's time and produce better outcomes for students.

In response to the feedback received, the Board made additional changes to the rule on final read. The amendments approved by the Board on final read state that *if* a draft IEP is created prior to the IEP team meeting, it shall be provided to the parent(s) at least 48 hours prior to the meeting unless the parent opts out of receiving it.

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.

This rule does not affect small businesses.

Impact on Local Governments

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

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;

Chapter 0520-01-09 governs the State's special education program. In addition, the provision of special education services, specifically the provision of Individualized Education Programs (IEPs), is governed by the federal rules and regulations contained in 34 C.F.R. §§ 300.320 - 300.323. The State Board amended rule 0520-01-09-.15, which governs Parent Participation, to include a provision that if a local education agency prepares a draft IEP in advance of the IEP meeting, then a copy must be provided to the parent(s) at least 48 hours prior to the meeting, unless the parent opts out of receiving a draft.

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

T.C.A. § 49-10-101 provides that the state board shall adopt rules and regulations to implement the state's special education program.

The commentary to 34 C.F.R. §§ 300.320 - 300.323 states, "[I]f a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP."

(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;

Students with disabilities, their parents, and their educators are most directly affected by this rule. They were able to voice their concerns via oral and written comments urging adoption of the rule according to their comments. (See response to comments document attached hereto.)
The Tennessee Association for Administrators in Special Education initially urged rejection of this rule as approved by the board, but was amenable to the rule having an opt-in provision.
Parents of children with disabilities urge adoption of this rule.
The Special Education Advocacy Center urges adoption of this rule.
The Tennessee State Board of Education urges adoption of this rule.

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

N/A

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

N/A

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

Nathan James
Nathan.James@tn.gov

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

Rachel Suppé Rachel.E.Suppe@tn.gov Nathan James Nathan.James@tn.gov

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

Rachel Suppé State Board of Education Andrew Johnson Tower, 9th Floor 710 James Robertson Pkwy Nashville, TN 37243 615-253-4596 Rachel.E.Suppe@tn.gov Nathan James State Board of Education Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy Nashville, TN 37243 615-532-3528 Nathan.James@tn.gov

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

N/A

Department of State
Division of Publications
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: 12-16-18
Rule ID(s): 7834
File Date: 12/12/18
Effective Date: 3/12/19

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Pkwy Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Amy.Owen@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**
0520-01-09	Special Education Programs and Services
Rule Number	**Rule Title**
0520-01-09-.15	Parent Participation

AMENDMENT

Rule 0520-01-09-.15, Parent Participation, is amended by adding additional language to the paragraph so that as amended it shall read:

0520-01-09-.15 PARENT PARTICIPATION.

The LEA must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent(s) will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. § 300.530(e) may be conducted on at least twenty-four (24) hours' notice to the parent(s). The parent meeting notification shall advise the parent(s) that they may decline their right to receive a copy of the draft IEP if one is developed. Unless a parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP, a copy of the draft IEP shall be provided to the parent(s) at least forty-eight (48) hours prior to the scheduled meeting time. The copy of the draft IEP shall become the property of the parent(s). If the LEA prepares a draft IEP prior to the IEP team meeting, the LEA shall make it clear to the parent(s) at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the parent(s). It is not permissible for the LEA to have the final IEP completed before an IEP Team meeting begins.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

RULES OF
STATE BOARD OF EDUCATION

CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES

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0520-01-09-.15 PARENT PARTICIPATION.

The LEA must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. § 300.530(e) may be conducted on at least twenty-four (24) hours' notice to the parent(s). The parent meeting notification shall advise the parent(s) that they may decline their right to receive a copy of the draft IEP if one is developed. Unless a parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP, a copy of the draft IEP shall be provided to the parent(s) at least forty-eight (48) hours prior to the scheduled meeting time. The copy of the draft IEP shall become the property of the parent(s). If the LEA prepares a draft IEP prior to the IEP team meeting, the LEA shall make it clear to the parent(s) at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the parent(s). It is not permissible for the LEA to have the final IEP completed before an IEP Team meeting begins.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Darrell Cobbins	X				
Bob Eby	X				
Mike Edwards	X				
Gordon Ferguson	X				
Lillian Hartgrove	X				
Elissa Kim	X				
Nick Darnell	X				
Wendy Tucker	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 10/19/18, 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: 01/26/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 03/22/2018

CASEY O'NEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Date: 11/5/18

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

Subscribed and sworn to before me on: 11/5/18

Notary Public Signature: C. Griffin

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-09-.15 - Parent Participation

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

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/12/18

Effective on: 3/12/19

Tre Hargett
Secretary of State

2018 DEC 12 AM 8:48
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Education of Incarcerated Students
STATUTORY AUTHORITY:	T.C.A. Section 49-6-3023 provides the State Board of Education the authority to promulgate rules to ensure students incarcerated in detention centers are provided general educational services by the receiving local education agency (LEA).
EFFECTIVE DATES:	March 12, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule would add the minimum length of instructional day for students at juvenile detention centers. While State Board Rule 0520-01-03-.02(1)(a) requires a minimum instructional day of 6.5 hours for students in traditional public schools, State Board Rule 0520-01-12 is currently silent as to the length of instructional day for students in juvenile detention centers. This addition will ensure consistency in instructional day length from one (1) LEA to the next. This proposed rule also makes clear instruction must be provided by a teacher holding a valid Tennessee teacher license as required by T.C.A. Title 49, Chapter 5 and State Board Rule 0520-01-02-.03(1). This will ensure that instruction in the detention centers is provided by educators with similar qualifications as educators at traditional public schools.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

This amendment proposes to add the minimum length of instructional day for students at juvenile detention centers. While State Board Rule 0520-01-03-.02(1)(a) requires a minimum instructional day of 6.5 hours for students in traditional public schools, State Board Rule 0520-01-12 is currently silent as to the length of instructional day for students in juvenile detention centers. This addition will ensure consistency in instructional day length from one (1) LEA to the next.

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

T.C.A. § 49-6-3023 provides the State Board of Education the authority to promulgate rules to ensure students incarcerated in detention centers are provided general educational services by the receiving local education agency (LEA).

This amendment also makes clear instruction must be provided by a teacher holding a valid Tennessee teacher license as required by T.C.A. Title 49, Chapter 5 and State Board Rule 0520-01-02-.03(1). This will ensure that instruction in the detention centers is provided by educators with similar qualifications as educators at traditional public schools.

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

The Tennessee Department of Education is directly affected by this rule and urges adoption of the rule.
The State Board of Education urges adoption of this rule.

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

N/A

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

N/A

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Nathan James Nathan.James@tn.gov Elizabeth Fiveash Elizabeth.Fiveash@tn.gov

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

Nathan James Nathan.James@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-532-3528 Elizabeth Fiveash Elizabeth.Fiveash@tn.gov 9th Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)- 253-1960

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

N/A

Department of State
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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: 12-17-18
Rule ID(s): 7835
File Date: 12/12/18
Effective Date: 3/12/19

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	1st Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-1776
Email:	Amy.Owen@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**
0520-01-12	Education of Incarcerated Students
Rule Number	**Rule Title**
0520-01-12-.04	Basic Educational Services, Testing Requirements

Chapter 0520-01-12-.04 Basic Educational Services, Testing Requirements is amended by adding the requirement length of the instructional day, so that as amended it shall read:

0520-01-12-.04 BASIC EDUCATIONAL SERVICES, TESTING REQUIREMENTS

(1) The minimum length of the school day for students shall be four (4) hours.

(2) Instruction shall be provided by a teacher holding a valid Tennessee teacher license as provided in T.C.A. Title 49, Chapter 5.

(3) For students held in a Center outside their home LEA, the receiving LEA shall consult with the Center on how the receiving LEA may best provide basic educational services in, at a minimum, English Language Arts and Mathematics for the student.

(4) Pursuant to the federal *Every Student Succeeds Act*, each Center shall comply with the following testing requirements:

(a) Each student shall complete a nationally norm-referenced pre-test approved by the Department, no later than the student's fifth (5th) instructional day at the Center.

(b) Each student shall complete a benchmark assessment at least every four (4) weeks the student remains incarcerated in the Center.

(c) The receiving LEA shall be responsible for ensuring the required tests are administered.

Authority: *T.C.A. § 49-6-3023.*

(Rule 0520-01-12-.04)

0520-01-12-.04 BASIC EDUCATIONAL SERVICES, TESTING REQUIREMENTS

(1) The minimum length of the school day for students shall be four (4) hours.

(2) Instruction shall be provided by a teacher holding a valid Tennessee teacher license as provided in T.C.A. Title 49, Chapter 5.

(3) For students held in a Center outside their home LEA, the receiving LEA shall consult with the Center on how the receiving LEA may best provide basic educational services in, at a minimum, English Language Arts and Mathematics for the student.

(~~2~~4) Pursuant to the federal *Every Student Succeeds Act*, each Center shall comply with the following testing requirements:

(a) Each student shall complete a nationally norm-referenced pre-test approved by the Department, no later than the student's fifth (5th) instructional day at the Center.

(b) Each student shall complete a benchmark assessment at least every four (4) weeks the student remains incarcerated in the Center.

(c) The receiving LEA shall be responsible for ensuring the required tests are administered.

Authority: *T.C.A. § 49-6-3023.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove	X				
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 10/19/2018 (*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.

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Date: 11/14/2018

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

Subscribed and sworn to before me on: 11/14/18

Notary Public Signature: C. [illegible]

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-12-.04

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

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/12/18

Effective on: 3/12/19

Tre Hargett
Secretary of State

2018 DEC 12 AM 8:47
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Health
DIVISION:	Office of Health Planning
SUBJECT:	Hospital Cooperation Act of 1993
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section Tenn. Code Ann. §§ 68-11 -1301 through 68-11 -1309.
EFFECTIVE DATES:	March 10, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rule amendments incorporate public comments presented at the September 24, 2015 rulemaking hearing, which implemented Rule Chapter 1200-38-01 [Hospital Cooperation Act of 1993]. More specifically, these rules do the following: 1. Clarify amendments, e.g., clarify that service area refers to the "geographic" service area; 2. Add a requirement that the parties provide a detailed description of the benefits they propose will be achieved and on explanation of why the benefit can best be achieved through a Cooperative Agreement; 3. Expand examples of potential disadvantages of the Cooperative Agreement to be considered, including, closure of facilities, reduction of jobs, and narrowing of payer networks; 4. Add requirements that the parties describe how they propose that the Commissioner measure and monitor achievements of the proposed benefit, including proposed metrics and plans; 5. Add a requirement that the applicants provide a more detailed description of the public participatory process the parties initiated; 6. Add provisions that take into account the impact of the Cooperative Agreement upon independent providers, defined as licensed providers not employed by the applicants; 7. Add a requirement that the applicants include information about whether they have engaged in prior joint ventures and why they believe the prior efforts would not be successful in achieving the goals they seek; and 8. Add a specific provision allowing

periodic onsite inspection of the COPA holder's locations in order to evaluate compliance with the COPA

Public Hearing Comments

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

The Department received one oral comment at the rulemaking hearing and extended the submission period for written comments for one additional week. The Department then received one written comment. Both comments were submitted by Joe Burchfield, Senior Vice President of the Tennessee Hospital Association (THA). The Department has summarized both the oral and written comments submitted by THA concurrently.

On behalf of THA, Mr. Burchfield first presented concerns about the requirements in Rule 1200-38-01-.02(2)(a)(3)(iv) being classified as "disadvantages." THA argued that rather than being disadvantages, certain potential disadvantages included in the list: closure or consolidation of programs and facilities; reducing administrative and clinical funcitons and loss of jobs; narrowing of traditional payer networks; and negative impact on Independent Providers due to anticipated increased market concentration in physician and health care services, should instead be neutrally described, because they could also be considered benefits.

THA further asked the Department to strike the phrase "less anticompetitive" from Rule 1200-38-01-.02(2)(a)(13)(ix)(III) and replace item (III) with the statutory language, "an arrangement that is less restrictive to competition which achieves the same benefit."TDH believes that the use of the phrase "less anticompetitive" fails to recognize the balance of benefits over disadvantages that must be considered by the Commissioner and Attorney General.

THA next addressed the powers of the Commissioner to consult with an advisory group in Rule 1200-38-01-.01(1) and requested that the Department change the paragraph to read "(t)he Commissioner shall have the authority to convene, change the composition of, dismiss, and reconvene the Advisory Group, if necessary, after consultation with appropriate constituencies and government agencies." THA made this recommendation with intent to more fully "recognize the consultation rights granted appropriate constituencies and government agencies."

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 amendments to the Certificate of Public Advantage (COPA) do not overlap, duplicate, or conflict with other rules.

(2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.** The amendments are clear concise, and are not ambiguous.

(3) **The establishment of flexible compliance and/or reporting requirements for small businesses**. There are no compliance or reporting requirements that are unique to small businesses. The merging entities must provide evidence that the proposed transaction is beneficial to the public; however, this is required by statute.

(4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.** There are no compliance or reporting requirements that are unique to small businesses. The merging entities must provide evidence that the proposed transaction is beneficial to the public; however, this is required by statute. The amendments add no new deadlines.

(5) **The consolidation or simplification of compliance or reporting requirements for small businesses.** There are no compliance or reporting requirements that are unique to small businesses. The merging entities must provide evidence that the proposed transaction is beneficial to the public; however, this is required by statute.

(6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.** There are performance standards set out as a matter for active supervision by the state of the merged entity, which is required by standard and is not unique to small businesses.

(7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.** The purpose of the COPA statute and rules is to provide for active state supervision to protect the public interest and to assure that the reduction in competition of health care and related services is outweighed by the benefits to the public.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Division of Health Planning, Hospital Cooperation Act of 1993 – Certificate of Public Advantage (COPA)

Rulemaking hearing date: 10/16/2018

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 amendments to the COPA rules would not directly affect either positively or negatively small businesses. The rules concern the process of active supervision for those hospitals that merge and ensure that there is a public benefit in spite of the loss of competition caused by the merger. The amendments do require the Department of Health (TDH) to consider the effect of the merger on, among other things, the potential for negative impact on independent providers (providers not employed by the hospital), who in some instances could be small businesses.

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:** There are no additional reporting or recordkeeping costs associated with the amendments that are additional to those required by the original rules.

3. **Statement of the probable effect on impacted small businesses and consumers: To the extent that the amendments** The amendments should be beneficial to consumers insofar as they broaden the scope of review of disadvantages to be considered by the TDH in determining whether a COPA should be issued and strengthen the community input requirements. The amendments also require additional requirements regarding the benefits that the COPA applicants seek to achieve, along with how the benefits suggested will be achieved. These amendments should be beneficial to consumers served by the merged entity. The amendments should also be beneficial to some small businesses in that collaboration with independent providers in the service area is to be considered when making the decision as to whether a COPA should be granted.

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 alternatives.

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

   Federal: No federal rules exist for COPAs.

   State: A review of several states rules regarding the issuance of COPAs reveals that the rules all generally provide for consideration of the benefits and disadvantages of the merger to consumers.

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

   This cannot be analyzed insofar as small businesses are not directly being regulated.

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;

These rule amendments incorporate public comments presented at the September 24, 2015 rulemaking hearing, which implemented Rule Chapter 1200-38-01 [Hospital Cooperation Act of 1993]. More specifically, these rules do the following:

Clarify amendments, e.g., clarify that service area refers to the "geographic" service area;

Add a requirement that the parties provide a detailed description of the benefits they propose will be achieved and explanation of why the benefit can best be achieved through a Cooperative Agreement;

Expand examples of potential disadvantages of the Cooperative Agreement to be considered, including, closure of facilities, reduction of jobs, and narrowing of payer networks;

Add requirements that the parties describe how they propose that the Commissioner measure and monitor achievements of the proposed benefit, including proposed metrics and plans;

Add a requirement that the applicants provide a more detailed description of the public participatory process the parties initiated;

Add provisions that take into account the impact of the Cooperative Agreement upon independent providers, defined as licensed providers not employed by the applicants;

Add a requirement that the applicants include information about whether they have engaged in prior joint ventures and why they believe the prior efforts would not be successful in achieving the goals they seek; and

Add a specific provision allowing periodic onsite inspection of the COPA holder's locations in order to evaluate compliance with the COPA.

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

Tenn. Code Ann. §§ 68-11-1301 through 68-11-1309.

(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;

Entities most affected include hospitals, providers, payers, consumers, and parties of a cooperative agreement.

(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;

FTC v. Phoebe Putney Health System, Inc., 133 S. Ct. 1003.

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

These rules should not impact government revenues and expenditures. All costs associated with the implementation and ongoing supervision flow from the Hospital Cooperation Act of 1993. Pursuant to the statute, the parties to a Cooperative Agreement are responsible for the costs of the Department, including the cost for consultants.

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

Jane Young, 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;

Jane Young, 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, 710 James Robertson Parkway, 5th Floor, Nashville, TN, (615) 532-7663, Jane.Young@tn.gov.

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

None.

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

Sequence Number: 12-14-18
Rule ID(s): 7801
File Date: 12/10/18
Effective Date: 3/10/19

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Department of Health
Division: Office of Health Planning
Contact Person: Jane Young, General Counsel
Address: 710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip: 37243
Phone: (615) 532-7663
Email: Jane.Young@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**
1200-38-01	Hospital Cooperation Act of 1993
Rule Number	**Rule Title**
1200-38-01-.01	Purpose and Definitions
1200-38-01-.02	Application Process
1200-38-01-.03	Terms of Certification
1200-38-01-.06	Active Supervision by Terms of Certification
1200-38-01-.07	Modification/Termination

Chapter Number	**Chapter Title**
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1200-38-01-.07	Modification/Termination/Enforcement

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RULES
OF THE
TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF HEALTH PLANNING

CHAPTER 1200-38-01
HOSPITAL COOPERATION ACT OF 1993

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1200-38-01-.01	Purpose and Definitions	1200-38-01-.05	Issuance of COPA
1200-38-01-.02	Application Process	1200-38-01-.06	Active Supervision by Terms of Certification
1200-38-01-.03	Terms of Certification	1200-38-01-.07	Modification/Termination
1200-38-01-.04	Notice and Hearing	1200-38-01-.08	Hearing and Appeals

1200-38-01-.01 PURPOSE AND DEFINITIONS.

The rules in this chapter implement the law relative to Cooperative Agreements and the granting of Certificates of Public Advantage pursuant to the Hospital Cooperation Act of 1993, T.C.A. §§ 68-11-1301 through 68-11-1309.

Pursuant to the Act, the Department is responsible for active state supervision to protect the public interest and to assure that the reduction in competition of health care and related services continues to be outweighed by clear and convincing evidence of the likely benefits of the Cooperative Agreement, including but not limited to improvements to population health, access to services and economic advantages to the public. The COPA will be denied or terminated if the likely benefits of the Cooperative Agreement fail to outweigh any disadvantages attributable to a potential reduction in competition resulting from the Cooperative Agreement by clear and convincing evidence.

(1) "Advisory Group" means the group of stakeholders from Applicants geographic service area, as specified in the Application, appointed by the Commissioner, in consultation with appropriate constituencies and government agencies, to recommend Measures to be considered for inclusion in an Index to objectively track Public Advantage of a single Cooperative Agreement.

(2) "Applicant" means the parties to a Cooperative Agreement who submit an Application to the Department in accordance with 1200-38-01.02.

(3) "Application" means the written materials submitted to the Department in accordance with 1200-38-01.02, by entities who desire to apply for a Certificate of Public Advantage.

(4) "Attorney General" means the Attorney General and Reporter for the State of Tennessee.

(5) "Certificate of Public Advantage ("COPA" or the "Certificate")" means the written approval by the Department which governs the Cooperative Agreement.

(6) "Certificate Holder" means the entity holding the Certificate of Public Advantage issued by the Department.

(7) "Commissioner" means the Commissioner of the Department of Health.

(8) "Cooperative Agreement" means an agreement among two (2) or more hospitals for the consolidation by merger or other combination of assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other

(Rule 1200-38-01-.01, continued)

services traditionally offered by hospitals, including any parent or subsidiary at the time the transaction occurs or at any time thereafter.

(9) "Department" means the Department of Health.

(10) "Hospital" means an institution required to be licensed as a hospital pursuant to § 68-11-201, or defined as a psychiatric hospital in § 68-11-102; or any parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically-related diagnostic and laboratory services or engages in ancillary activities supporting those services.

(11) "Independent Provider" means a licensed provider in private practice and not employed by any Applicant providing medical services to patients residing or working in the Applicants' geographic service area.

(12)~~(11)~~ "Index" means a set of Measures used to objectively track the progress of a Cooperative Agreement over time to ensure Public Advantage. The components of the Index may be assigned differential weightings and modified from time to time as determined by the Department.

(13)~~(12)~~ "Intervenor" means any hospital, physician, allied health professional, healthcare provider or other person furnishing goods or services to, or in competition with, hospitals, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization or any employer or association that directly or indirectly provides health care benefits to its employees or members.

(14)~~(13)~~ "Measure" means some number of factors or benchmarks, which may be binary, a range or continuous factors.

(15)~~(14)~~ "Plan of Separation" means the written proposal submitted with an Application to return the parties to a Cooperative Agreement to a pre-consolidation state, which includes a plan for separation of any combined assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or any combined sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals, including any parent or subsidiary at the time the consolidation occurs or thereafter.

(16)~~(15)~~ "Population" means the entirety of the human population residing or domiciled in the geographic service area set out in the proposed Cooperative Agreement unless otherwise defined.

(17)~~(16)~~ Public Advantage" means the likely benefits accruing from a Cooperative Agreement which outweigh, by clear and convincing evidence, the likely disadvantages attributable to a reduction in competition likely to result from the Cooperative Agreement.

Authority: *T.C.A. §§ 68-11-1301 through 68-11-1309.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.02 APPLICATION PROCESS.

(1) Letter of Intent. At least forty-five (45) days prior to filing an Application, the parties to the proposed Cooperative Agreement shall file a letter of intent.

(a) Contents. A letter of intent shall contain the following:

(Rule 1200-38-01-.02, continued)

1. A brief description of the proposed Cooperative Agreement, including the location of the entities and parties to the Cooperative Agreement;

2. A list that includes all assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or in part, by any party to the Cooperative Agreement that the parties propose to be included in the COPA or any assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or part, by any party to the Cooperative Agreement that will be divested, sold or affected as a result of the Cooperative Agreement;

3. A list of all business interests or units for which each party to the Cooperative Agreement has any ownership interest or a management contract that is not proposed to be included in the Cooperative Agreement;

4. The name, address and contact information of the parties to the proposed Cooperative Agreement including the executive officers, each party's respective board members and each party's general counsel;

5. A description of the entities' governing structure under the Cooperative Agreement;

6. The anticipated date of submission of the Application; and the anticipated effective date of the proposed Cooperative Agreement; and

7. The geographic service area and Population covered by the Cooperative Agreement.

(b) Amendment. The parties shall amend the letter of intent if material changes occur prior to submission of the parties' Application.

(c) Expiration. A letter of intent expires six (6) months after the date of receipt by the Department, if no Application was timely filed with the Department.

(d) Public Record. The Department shall post letters of intent on the Department's website until an Application is filed or until the letter of intent expires.

(2) Application.

(a) Parties seeking a COPA shall apply to the Department in writing. Parties shall submit the following information in the Application:

1. A descriptive title;

2. A table of contents;

3. An executive summary which includes:

(i) Goals for change to be achieved by the Cooperative Agreement;

(ii) Benefits and advantages to parties and the public including but not limited to:

(I) Population health;

(II) Access to health care and prevention services; and

(Rule 1200-38-01-.02, continued)

~~(III) Healthcare operating costs, including avoidance of capital expenditures, reduction in operating expenditures and improvements in patient outcomes.~~

(III) Healthcare operating costs, including avoidance of capital expenditures, and reduction in operating expenditures that will result in lower costs for the parties and to the public; and

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(IV) Improvements in patient outcomes.

(iii) Description of how the Cooperative Agreement better prepares and positions the parties to address anticipated future changes in health care financing, organization and accountability initiatives; and

~~(iv) Potential disadvantages of the Cooperative Agreement.~~

(iv) Potential disadvantages of the Cooperative Agreement, including but not limited to:

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(I) Closure or consolidation of programs and facilities and the potential impact on access to services;

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(II) Reducing selected administrative and clinical functions and loss of jobs;

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(III) Narrowing of traditional payer networks leading to reduction of patient choice in choosing physicians and other services; and

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(IV) Negative impact on Independent Providers due to the anticipated increased market concentration in physician and health care services controlled by the Applicants.

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4. The names of each party to the Application and the address of the principal business office of each party;

5. A verified statement signed by the Chairperson of the Board of Directors and Chief Executive Officer of each party to the Application; or, if one or more of the Applicants is an individual, signed by the individual Applicant; attesting to the accuracy and completeness of the enclosed information;

~~6. A description of the prior history of dealings between the parties to the Application, including, but not limited to, their relationship as competitors and any prior joint ventures or other collaborative arrangements between the parties;~~

6. A description of the prior history of dealings between the parties to the Application, including, but not limited to, their relationship as competitors and any prior joint ventures or other collaborative arrangements between the parties. If the parties have engaged in prior joint ventures, the parties should describe why they believe such efforts would not be successful in achieving the goals they seek through a Cooperative Agreement. If the parties have not engaged in any joint ventures or collaborative arrangements, the parties should describe why alternative arrangements were not attempted to achieve the goals they seek through a Cooperative Agreement;

(Rule 1200-38-01-.02, continued)

~~7. A detailed description of the proposed geographic service area, not limited to the boundaries of the State of Tennessee. If the proposed geographic service area differs from the service areas where the parties have conducted business over the five (5) years preceding the Application, a description of how and why the proposed geographic service area differs and why changes are proposed;~~

7. A detailed description of the proposed geographic service area, not limited to the boundaries of the State of Tennessee. If the proposed geographic service area differs from the geographic service areas where the parties have conducted business over the five (5) years preceding the Application, a description of how and why the proposed geographic service area differs and why changes are proposed;

8. Identification of whether any services or products of the proposed Cooperative Agreement are currently being offered or capable of being offered by other providers or purchasers in the geographic service area described in the Application;

~~9. Explanation of how the Cooperative Agreement will assure continued competitive and independent operation of the services or products of entities not a party to the Cooperative Agreement;~~

9. Explanation of how the Cooperative Agreement will assure continued competitive and independent operation of the services or products of entities not a party to the Cooperative Agreement, including the potential for new entry;

10. A statement of whether there will be a Public Advantage or adverse impact on population health, quality, access, availability or cost of health care to patients and payers as a result of the Cooperative Agreement;

11. A statement of whether the projected levels of cost, access to health care or quality of health care could be achieved in the existing market without the granting of a COPA; and, for each of the above, an explanation of why or why not;

12. A report used for public information and education that is documented to have been disseminated prior to submission of the Application and submitted as part of the Application. The report must include the following:

    (i) A description of the proposed geographic service area, services and facilities to be included in the Cooperative Agreement;

    (ii) A description of how health services will change if the Application is accepted;

    ~~(iii) A description of improvements in patient access to health care including prevention services for all categories of payers and advantages patients will experience across the entire service area regarding costs, availability or accessibility upon initiation of the Cooperative Agreement and/or findings from studies conducted by hospitals and other external entities, including health economists, clinical services and population health experts, that describe how proposed Cooperative Agreement plans are: effective with respect to resource allocation implications; efficient with respect to fostering cost containment, including, but not limited to, eliminating duplicate services and future plans; and equitable with respect to maintaining quality and competition in health services within the service~~

(Rule 1200-38-01-.02, continued)

~~area, assuring patient access to and choice of insurers and providers within the health care system;~~

(iii) A description of improvements in patient access to health care including prevention services for all categories of payers and advantages patients will experience across the entire geographic service area regarding costs, availability or accessibility upon initiation of the Cooperative Agreement and/or findings from studies conducted by hospitals and other external entities, including health economists, clinical services and population health experts, that describe how proposed Cooperative Agreement plans are: effective with respect to resource allocation implications; efficient with respect to fostering cost containment, including, but not limited to, eliminating duplicate services and future service and facility plans; and equitable with respect to maintaining quality and competition in health services within the geographic service area, assuring patient access to and choice of insurers and providers within the health care system;

~~(iv) Findings from service area assessments that describe major health issues and trends, specific population health disparities and comparisons to state and other similar regional areas proposed to be addressed;~~

(iv) Findings from geographic service area assessments that describe major health issues and trends, specific population health disparities and comparisons to state and other similar regional areas proposed to be addressed;

(v) Impact on the health professions workforce including long-term employment and wage levels and recruitment and retention of health professionals; and

~~(vi) A record of community stakeholder and consumer views of the proposed Cooperative Agreement collected through a public participatory process including meetings and correspondence in which this report or its components were used.~~

(vi) A record of community stakeholder and consumer views of the proposed Cooperative Agreement collected through a public participatory process including meetings and correspondence in which this report or its components were used. Applicants should also provide a summary of the number and location of events organized by the Applicants; number of speakers; the name, title, and affiliated organization of the speakers and whether the speaker is speaking on behalf of the organization or in the speaker's personal capacity; and communications used by the Applicants to maximize public involvement in the process. Transcripts or minutes of any meetings held during these public forums shall be included in the report.

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13. A signed copy of the Cooperative Agreement, including:

(i) A description of any consideration passing to any person under the Cooperative Agreement including the amount, nature, source and recipient;

(ii) A detailed description of any merger, lease, change of control or other acquisition or change in ownership of the assets of any party to the

(Rule 1200-38-01-.02, continued)

Cooperative Agreement;

(iii) A list of all services and products and all service locations that are the subject of the Cooperative Agreement, including those not occurring within the boundaries of the State of Tennessee, and including, but not limited to, hospitals or other inpatient facilities, insurance products, physician practices, pharmacies, accountable care organizations, psychiatric facilities, nursing homes, physical therapy and rehabilitation units, home care agencies, wellness centers or services, surgical centers or services, dialysis centers or services, cancer centers or services, imaging centers or services, support services or any other product, facility or service;

(iv) A description of each party's contribution of capital, equipment, labor, services or other value to the transaction;

(v) A description of the competitive environment in the parties' geographic service area, including:

(I) Identification of all services and products likely to be affected by the Cooperative Agreement and the locations of the affected services and products;

(II) The parties' estimate of their current market shares for services and products and the projected market shares if the COPA is granted;

(III) A statement of how competition among health care providers or health care facilities will be reduced for the services and products included in the Cooperative Agreement; and

(IV) A statement regarding the requirement(s) for any Certificate(s) of Need resulting from the Cooperative Agreement.

~~(vi) Impact on the service area's health care industry workforce, including long-term employment and wage levels and recruitment and retention of health professionals;~~

(vi) Impact on the geographic service area's health care industry workforce, including long-term employment and wage levels and recruitment and retention of health professionals;

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(vii) Description of financial performance, including:

(I) A description and summary of all aspects of the financial performance of each party to the transaction for the preceding five (5) years including debt, bond rating and debt service and copies of external certified public accountants annual reports;

(II) A copy of the current annual budget for each party to the Cooperative Agreement and a three (3) year projected budget for all parties after the initiation of the Cooperative Agreement. The budgets must be in sufficient detail so as to determine the fiscal impact of the Cooperative Agreement on each party. The budgets must be prepared in conformity with generally accepted accounting principles (GAAP) and all assumptions used must be documented;

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(III) A detailed explanation of the projected effects including expected change in volume, price and revenue as a result of the Cooperative Agreement, including;

I. Identification of all insurance contracts and payer agreements in place at the time of the Application and description of pending or anticipated changes that would require or enable the parties to amend their current insurance and payer agreements;

~~II. A description of how pricing for provider insurance contracts are calculated and the financial advantages accruing to insurers, insured consumers and the parties of the Cooperative Agreement if the COPA is granted including changes in percentage of risk-bearing contracts;~~

II. A description of how pricing for provider insurance contracts are calculated and the financial advantages or disadvantages impacting insurers, insured consumers and the parties of the Cooperative Agreement (including the Applicants' employed and contracted physicians, if any) if the COPA is granted including changes in percentage of risk-bearing contracts;

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III. The following policies:

A. Policy that assures no restrictions to Medicare and/or Medicaid patients,

B. Policies for free or reduced fee care for uninsured and indigent,

C. Policies for bad debt write-off; and

D. Policies that assure parties to the Cooperative Agreement will maintain or exceed existing level of charitable programs and services.

(IV) Identification of existing or future business plans, reports, studies or other documents of each party that:

I. Discuss each party's projected performance in the market, business strategies, capital investment plans, competitive analyses and financial projections including any documents prepared in anticipation of the Cooperative Agreement; and

II. Identification of plans that will be altered, eliminated or combined under the Cooperative Agreement or subsequent COPA

(viii) A description of the plan to systematically integrate health care and preventive services among the parties of the Cooperative Agreement, in the proposed geographic service area, to address the following:

(Rule 1200-38-01-.02, continued)

(I) A streamlined management structure to include a description of a single board of directors, centralized leadership and operating structure;

(II) Alignment of the care delivery decisions of the system with the interest of the community;

(III) Clinical standardization;

~~(IV) Alignment of cultural identities of the parties to the Cooperative Agreement; and~~

(IV) Alignment of cultural identities of the parties to the Cooperative Agreement;

~~(V) Implementation of risk-based payment models to include risk, a schedule of risk assumption and proposed performance metrics to demonstrate movement toward risk assumption and a proposed global spending cap for hospital services.~~

(V) Implementation of risk-based payment models to include risk, a schedule of risk assumption and proposed performance metrics to demonstrate movement toward risk assumption and a proposed global spending cap for hospital services; and

(VI) Collaboration with Independent Providers in the geographic service area.

(ix) A detailed description of each of the benefits the Applicants propose will be achieved through the Cooperative Agreement, and for each benefit described provide:

(I) A description specifically describing how the Applicants intend to achieve the benefit;

(II) A description of what the parties have done in the past with respect to achieving or attempting to achieve the benefits independently or through collaboration;

(III) An explanation of why the benefit can best be achieved through a Cooperative Agreement and not through other less anticompetitive arrangements;

(IV) A description of how the Applicants propose that the Commissioner measure and monitor achievement of the proposed benefit including:

I. Proposed measures and suggested baseline values with rationale for each measure to be considered by the Commissioner in developing a plan to monitor achievement of the benefit;

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(Rule 1200-38-01-.02, continued)

II. The projected levels and trajectory for each measure that would be achieved over the next five (5) years in the absence of the Cooperative Agreement.

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III. The basis for the metrics proposed to measure the benefits; and

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IV. A plan for how the requisite data for assessing the benefit will be identified and obtained.

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(x)~~(ix)~~ A description of the plan, including economic metrics, that details anticipated efficiencies in operational costs and shared services to be gained through the Cooperative Agreement including:

(I) Proposed use of any cost savings to reduce prices borne by insurers and consumers;

(II) Proposed use of cost savings to fund low or no-cost services such as immunizations, mammograms, chronic disease management and drug and alcohol abuse services to achieve long-term population health improvements; and

(III) Other proposed uses of savings to benefit advancement of health and quality of care and outcomes.

~~(x) Proposed Measures and suggested baseline values with rationale for each Measure to be considered by the Department in development of an Index. Proposed Measures are to be used to continuously evaluate the Public Advantage of the results of actions approved in the COPA through the Cooperative Agreements under active supervision of the Department. Measures should include source and projected trajectory over each of the first five (5) years of the Cooperative Agreement and the trajectory if the COPA was not granted; Proposed Measures may include:~~

(xi) Proposed Measures and suggested baseline values with rationale for each Measure to be considered by the Department in development of an Index. Proposed Measures are to be used to continuously evaluate the Public Advantage of the results of actions approved in the COPA through the Cooperative Agreements under active supervision of the Department. Measures should include elements that reflect both the anticipated benefits and potential disadvantages if the COPA is approved, including measures detailed in item (2)(a)13(ix)(IV) of this rule. They should include source and projected trajectory over each of the first five (5) years of the Cooperative Agreement and the trajectory if the COPA is not granted. Proposed Measures may include:

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~~(I) Improvements in the service area population's health that exceed Measures of national and state improvement;~~

(I) Improvements in the geographic service area population's health that exceed Measures of national and state improvement;

~~(II) Continuity in availability of services throughout the service area;~~

(II) Continuity in availability of services throughout the geographic service area;

(Rule 1200-38-01-.02, continued)

~~(III) Access and use of preventive and treatment health care services throughout the service area;~~

(III) Access and use of preventive and treatment health care services throughout the geographic service area;

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(IV) Operational savings projected to lower health care costs to payers and consumers; and

(V) Improvements in quality of services as defined by surveys of the Joint Commission.

14. An explanation of the reasons for the exclusion of any information set forth in section 1200-38-01-.02, the Application Process, including an explanation of why the item is not applicable to the Cooperative Agreement or to the parties;

15. A detailed description of the total cost resulting from the Cooperative Agreement, including, but not limited to, new costs for consultants, capital costs and management costs. The description should identify costs associated with the implementation of the Cooperative Agreement, including documentation of the availability of the necessary funds. The description should identify which costs are borne by each party;

16. A timetable for implementing all components of the Cooperative Agreement;

17. The Department shall require a Plan of Separation be submitted with the Application. The Plan of Separation shall be updated annually by the parties to the Cooperative Agreement. The parties shall provide an independent opinion from a qualified organization verifying the Plan of Separation can be operationally implemented without undue disruption to essential health services provided by the parties; and

18. The name, address and telephone number of the person(s) authorized to receive notices, reports and communications with respect to the Application.

(3) Additional Department Requirements.

(a) The Department may request additional information from the parties prior to deeming the Application complete or issuing a final decision. The Application shall not be deemed complete nor shall the one hundred twenty (120) day review period commence until all information is received by the Department.

(b) The Department shall notify the parties in writing when the Application is deemed complete.

(c) The parties shall submit simultaneously a copy of the Application and copies of all additional related materials to the Attorney General and to the Department. The Department is entrusted with the active and continuing oversight of all Cooperative Agreements.

(d) The Department may waive any of the requirements or timeframes that it finds, at its sole discretion, due to the nature of a particular Cooperative Agreement, are inapplicable to its analysis of the Cooperative Agreement.

(e) The Application and accompanying documents are public records pursuant to T.C.A. § 10-7-503 and are subject to public inspection in accordance with § 10-7-503, except for

(Rule 1200-38-01-.02, continued)

records which are confidential pursuant to state or federal law. The parties shall specify any portion of the Application which the parties contend is exempt from the Public Records Act. The parties shall include the specific authority for said exemption. Applicants shall submit two (2) copies of the Application. The first copy shall include all requested information. The second copy shall contain all requested information; however, the parties shall redact confidential information wherever possible. Nothing in this subsection shall limit or deny access to otherwise public information because an Application or accompanying document contains confidential information.

Authority: *T.C.A. § 68-11-1303.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.03 TERMS OF CERTIFICATION. All COPAs shall be governed by terms of certification. The terms of certification shall include:

(1) Charges.

(a) Parties to a Cooperative Agreement who have applied to the Department for a COPA shall pay all charges incurred in the examination of the Application and, in the event the COPA is approved, all charges incurred for the review and ongoing supervision of the Cooperative Agreement, including all expenses of the Department, including, but not limited to, experts and examiners employed in the review and ongoing supervision of the Application and COPA.

(b) The compensation of the Department, experts and examiners designated by the Commissioner for examining the Cooperative Agreement and all records shall be fixed by the Commissioner at an amount commensurate with usual compensation for like services.

(c) The Department shall develop a formula to include charges incurred in the examination of the Application and charges incurred for review and ongoing supervision and invoice COPA Applicants and holders Department's costs at a regular interval.

~~(2) Evaluation by the Department that demonstrates Public Advantage in accordance with the standards set forth in these rules.~~

(2) Evaluation of the Application by the Department that demonstrates Public Advantage in accordance with the standards set forth in these rules.

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(a) Benefits to include:

1. Enhancement of the quality of Hospital and hospital-related care provided to Tennessee citizens;

2. Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;

3. Gains in the cost containment and cost-efficiency of services provided by the Hospitals involved;

4. Improvements in the utilization of Hospital resources and equipment;

5. Avoidance of duplication of Hospital resources;

(Rule 1200-38-01-.03, continued)

6. Demonstration of population health improvement of the region served according to criteria set forth in the Cooperative Agreement and approved by the Department;

7. The extent to which medically underserved populations have access to and are projected to utilize the proposed services; and

8. Any other benefits that may be identified.

(b) Disadvantages to include:

1. The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other healthcare payers to negotiate appropriate payment and service arrangements with Hospitals, physicians, allied healthcare professionals or other healthcare providers;

2. The extent of any reduction in competition among physicians, allied health professionals, other healthcare providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the Cooperative Agreement;

3. The extent of any likely adverse impact on (i) patients in the quality and availability of healthcare services and (ii) patients and payers in the price of healthcare services; and

4. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the Cooperative Agreement.

(3) Ongoing Supervision through the use of an Index tracking demonstration of Public Advantage.

(a) An Index will be created and used for the Department to evaluate the proposed and continuing Public Advantage of the COPA,

~~(b) The Index will include measures of the cognizable benefits in the following categories:~~

(b) The Index will include measures of the cognizable benefits and disadvantages in the following categories:

1. Population Health;

2. Access to Health Services;

3. Economic; and

4. Other Cognizable Benefits.

(c) Each category may be comprised of Measures for subcategories of the Index which shall be recommended separately by the Advisory Group and the parties to the Cooperative Agreement for the COPA. The Department retains exclusive authority to add to, modify, or to accept or reject recommendations when creating the Index.

(Rule 1200-38-01-.03, continued)

(d) The Department shall establish a baseline score at the outset of the Index composition to allow for the future demonstration of a Public Advantage. Subsequently, established ranges for the score should demonstrate whether:

1. Advantage is clear and convincing; the COPA continues in effect,

2. Advantage is not clear and convincing; a modification to the Cooperative Agreement under the terms of certification will be necessary,

3. Advantage is not evident; COPA is terminated.

(e) Advisory Group

1. Recommendations. The Advisory Group shall recommend to the Commissioner Measures to be considered for inclusion in an Index to objectively track the Public Advantage of a Cooperative Agreement.

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2. Meetings. The Advisory Group shall hold at least four (4) meetings with stakeholders to obtain community input and comment, with guidance from the Department.

(i) All meetings shall be open in accordance with T.C.A. §§ 8-44-101 through 8-44-111.

(ii) One (1) meeting shall provide for comment from internal stakeholders, such as persons employed by or agents of the parties to the Cooperative Agreement, its affiliates, contractors or vendors, staff clinicians or other persons deriving income from their activities with any of the parties to the Cooperative Agreement.

(iii) One (1) meeting shall provide for comment from external stakeholders, such as competing health care providers, non-staff clinicians, payers including self-insured employers, governmental agencies, non-governmental agencies, and other parties who derive income from health or health care services or are who are not employed or affiliated with and do not derive income from the parties to the Cooperative Agreement.

(iv) One (1) meeting shall provide for comment from other members of the community not represented in the internal or external stakeholder groups, including, current or potential patients, customers or other entities who are not affiliated, competing with or otherwise contracting with the parties to the Cooperative Agreement.

(v) The final meeting shall be open to all persons expressing an interest in the Cooperative Agreement and shall be held following the completion of the Advisory Group's recommendation of Measures to be considered for inclusion in the Index.

(vi) The Advisory Group, in consultation and with the approval of the Department, may elect to alter the number and composition of the meetings previously described.

(vii) The Department may provide guidance to the Advisory Group.

3. Completion of Duties.

(Rule 1200-38-01-.03, continued)

(i) The Advisory Group's service shall conclude when the Department receives the Advisory Group's recommendation of Measures proposed for inclusion in the Index.

~~(ii) The Commissioner shall have the authority to reconvene the Advisory Group if necessary.~~

(ii) The Commissioner shall have the authority to convene, change the composition of, dismiss and reconvene the Advisory Group if necessary.

(4) A commitment to pass on or reinvest a portion of cost savings and efficiencies gained through the Cooperative Agreement to the citizens in the affected geographic service area.

(5)~~(4)~~ Additional conditions of reporting and operations determined by the Department to demonstrate Public Advantage.

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Authority: *T.C.A. §§ 68-11-1303 and 68-11-1307.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.04 NOTICE AND HEARING.

(1) Prior to acting on an Application for a Certificate, the Department shall hold at least one (1) public hearing which will afford the right to any interested parties to express their views regarding an Application, and may gather additional feedback through other means from the community as needed.

(2) The Department shall give notice of the completed Application to interested parties by publishing a notice in the Tennessee administrative register in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, title 4, chapter 5. The notice shall include a brief summary of the requested action, how to access the Application and information concerning the time and place of the public hearing. The notice shall be published at least fifty (50) days prior to the date set for the public hearing.

Authority: *T.C.A. § 68-11-1303.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.05 ISSUANCE AND MAINTENANCE OF COPA.

(1) After consultation with and agreement from the Attorney General, the Department shall issue a Certificate for a Cooperative Agreement if it determines the Applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the Cooperative Agreement outweigh any disadvantages attributable to a reduction in competition that may result from the Cooperative Agreement.

(2) The Department shall grant or deny the Application within one hundred twenty (120) days of the date of filing of the Application. An Application shall not be deemed filed until the Application is complete. The Department shall act promptly to determine whether the Application is complete and may request additional documents or information from the Applicants necessary to make the Application complete. The Department's decision as to whether the Application should be granted or denied shall be in writing and set forth the basis for the decision. The Department shall furnish a copy of the decision to the Applicants, the Attorney General and any Intervenor. Prior to granting the COPA, the parties and Department will agree upon terms of certification and specific conditions that assure Public Advantage.

(3) The Department shall maintain on file all effective COPAs.

Authority: *T.C.A. § 68-11-1301 and 68-11-1303.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.06 ACTIVE SUPERVISION BY TERMS OF CERTIFICATION.

(1) The Department shall maintain active supervision in accordance with the terms of certification described in 1200-38-01-.03. The Department shall not be bound by measures, indices or other conditions found outside of the COPA.

(2) Periodic Reports. The Department shall maintain active supervision in addition to requesting COPA holders to submit periodic reports to the Department in a format determined by the Department. The periodic reports shall be filed with the Department on January 1 and July 1 (or the following business day) each year. The reports should include the name, address, telephone number and other contact information for the party responsible for completing future reports who may be contacted by the Department to monitor the implementation of the Cooperative Agreement.

(3) Update Plan of Separation. The parties to the Cooperative Agreement shall update the parties' Plan of Separation annually and submit the updated Plan of Separation to the Department. The parties shall provide an independent opinion from a qualified organization which states the Plan of Separation can be operationally implemented without undue disruption to essential health services provided by the parties.

(4) Modification of Index. The Department retains the right to modify any Measure, Index or condition under the COPA at any time.

~~(5) The Department shall conduct a public hearing in the geographic service area where a COPA is in effect at least once every three (3) years.~~

(5) The Department shall conduct a public hearing in the geographic service area where a COPA is in effect at least once every three (3) years to afford the public the opportunity to express their views regarding the operation of the Cooperative Agreement.

(6) Departmental Review. At least annually, the Department shall review such documents necessary to determine compliance with the terms of the COPA and calculate the Index. In addition to any required documents, the parties shall provide the Department with the most recent verifiable values available for those Measures that are included in the Index (except any Measures or factors which the Department itself regularly generates, receives or holds). The Department reserves the right to request supplemental information when needed, as determined by the Department.

(7) A Department representative may make periodic onsite inspections of the Certificate Holder's locations as necessary in regard to compliance with COPA.

(8)~~(7)~~ Parties to the COPA must timely pay all applicable fees and invoices for initiation and maintenance of the COPA.

~~(8) The Department shall make public its determinations of compliance, and the Index score and trends.~~

(Rule 1200-38-01-.06, continued).

(9) The Department shall make public and in writing its determinations of compliance, and the Index score and trends.

(10)~~(9)~~ Failure to meet any of the terms of the COPA shall result in termination or modification of the COPA.

Authority: *T.C.A. § 68-11-1303.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

~~1200-38-01-.07 MODIFICATION/TERMINATION.~~

1200-38-01-.07 Modification/Termination/Enforcement.

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(1) If the Department determines that the benefits no longer outweigh the disadvantages by clear and convincing evidence, the Department may first seek modification of the Cooperative Agreement with the consent of the parties.

(2) If modification is not obtained, the Department may terminate the COPA by written notice to the Certificate Holder and the Certificate Holder may appeal in the same manner as if the COPA were denied.

(3) The COPA shall remain in effect until such time as the Certificate Holder has submitted, the Department has approved and the Certificate Holder has completed the Plan of Separation.

(4) Voluntary Termination. The Certificate Holder shall notify the Department forty-five (45) days prior to voluntary termination of the Cooperative Agreement.

Authority: *T.C.A. §§ 68-11-1303 and 68-11-1306.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

1200-38-01-.08 HEARING AND APPEALS.

(1) Applicant or Certificate Holder. Any Applicant or Certificate Holder aggrieved by a decision of the Department denying an Application, refusing to act on an Application or terminating a Certificate is entitled to judicial review of the Department's decision by the chancery court of Davidson County, as specified in T.C.A. 68-11-1303.

(2) Intervenor. An Intervenor aggrieved by a decision of the Department to grant or deny the Application shall have the right to appeal the Department's decision, except that there shall be no stay of the Department's decision granting an Application unless the chancery court of Davidson County shall have issued a stay of the Department's decision in accordance with § 68-11-1304, which shall be accompanied by an appeal bond from the Intervenor. If the Intervenor shall appeal the Department's decision and the appeal is unsuccessful, the Intervenor shall be responsible for the costs of the appeal and attorneys' fees of the Applicants.

Authority: *T.C.A. § 68-11-1303.* ***Administrative History:*** *Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.*

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health, Office of Health Planning (board/commission/ other authority) on 10/16/2018 (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: *08/09/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/16/18 (mm/dd/yy)*

Date: 11/7/18

Signature: Jane Young

Name of Officer: Jane Young

Title of Officer: General Counsel
Department of Health

Subscribed and sworn to before me on: 11/7/18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Agency/Board/Commission: Tennessee Department of Health, Office of Health Planning

Rule Chapter Number(s): 1200-38-01

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

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/10/18

Effective on: 3/10/19

Tre Hargett
Secretary of State

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PUBLIC INFORMATION

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Funeral Directors and Embalmers
DIVISION:	Regulatory Boards
SUBJECT:	General Provisions, Examinations, Fee Reduction, Apprentices, Funeral Directors and Embalmers, Funeral Establishments, Requirement for a Crematory, Continuing Education, Standards of Services and Practice, Removal Service
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-5-313, Tennessee Code Annotated, Section 62-5-601(c), Tennessee Code Annotated, Section 62-5-709
EFFECTIVE DATES:	March 12, 2019 through June 30, 2019
FISCAL IMPACT:	These rules are expected to have an overall minimal fiscal impact. The program's annual budget is five hundred fifty five thousand and eight hundred dollars ($555,800.00), so materiality would be established at 2% of this budget in the amount of eleven thousand one hundred and sixteen dollars ($11,116.00). Based on the average number of initial applications from fiscal years 2016 and 2017, the estimated reduction in annual revenue is four thousand and eighty dollars ($4,080.00) for the fee reductions applicable to apprentice funeral directors, apprentice embalmers, student registrations, and the initial licensing fees of both funeral directors and embalmers. The fiscal impact of the fee for submission of cremation forms for review and approval would not be material. There are currently only sixty eight (68) licensed crematoriums, which means the greatest amount of additional revenue that could result from this fee for initial submissions is six thousand and eight hundred dollars ($6,800). It is expected that almost all licensees will continue using the preapproved form on the website, which will remain at no cost to the establishment.

STAFF RULE ABSTRACT:

These rules clarify the examination and grading procedures, adjust the fees for a number of licensees, create a submission fee for specialty forms to be reviewed, establish parameters on re-registering for apprenticeships, establish ninety (90) day time limits for completing various applications for registration and/or licensure, specify indicators regarding fixed places of business devoted to the care and preparation of dead human bodies, specify new requirements related to the care and preparation of non-human remains, clarify the new in-person and/or virtual continuing education requirement, and add the option of obtaining continuing education credit by attending a regularly scheduled board meeting.

These rules are expected to result in the following changes:

- The Board and existing establishments will be able to receive prompt notification of the permanent closure of other establishments.
- Prospective licensees will have more clarity regarding the examination process. Students, apprentices, funeral directors, and embalmers will pay lower fees for their respective registrations and licenses.
- Establishments will have better forms to provide consumers as a result of the requirements to more closely review these documents.
- More individuals will be eligible to work as funeral directors and embalmers due to additional restrictions related to perpetual apprenticeships as well as incomplete applications.
- More businesses will be able to diversify into the business of non-human remains due to additional clarity provided by these rules regarding the requirements for such.
- More businesses will be able to enter the continuing education market due to the additional clarity provided by these rules as it relates to "in person" attendance for five (5) of the ten (10) required hours.
- More licensees will become involved in the regulatory process because these rules authorize continuing education credit for attendance of a regularly scheduled board meeting.
- The conduct of licensees shall improve as it relates to the reasonable treatment of the public.

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.

Only one comment was received at the public hearing. The comment was by Steve Spann, President of John A. Gupton College. Mr. Spann complimented the Board on these rules and expressed his satisfaction with the positive impact the fee reductions will have on his students. The Board responded to Mr. Spann's statements with a general statement of appreciation.

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;**

   These rules affect funeral establishments, most of which are defined as small businesses under Tenn. Code Ann. § 4-5-102(13). There are approximately five hundred and eighty four (584) licensed funeral establishments in the state of Tennessee. Many funeral establishments pay the fees for their employees. Therefore, small businesses would benefit from the fee reductions for apprentice funeral directors, apprentice embalmers, student registrations, and the initial licensing fees of both funeral directors and embalmers.

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;**

   These rules require a submission fee for crematories to have any cremation authorization form not furnished by the Board reviewed and approved. These rules further require that such forms include a version that identifies and cites those provisions within the form that relate to an applicable law and/or rule. The submission fee is one hundred dollars ($100.00). If the form is determined to not be in compliance with the law, the resubmission fee is one hundred dollars ($100.00). No additional professional skills are necessary for preparation of the report or record as such forms were already being submitted by crematories.

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

   These rules will have a positive effect on impacted small businesses and consumers. These rules provide clarification on a number of substantive issues such as the examination process, continuing education requirements, and provision of services involving non-human remains. These rules incentivize licensees to become more involved in the regulatory process. These rules also reduce the fees for students, apprentices, funeral directors, and embalmers. These rules will result in a potential increase in the number of individuals employable as funeral directors and embalmers.

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

   There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

   These rules are required promulgated in part to effectuate 2017 Public Chapter Nos. 144, 154, and 158 and are comparable to other states. There are no known federal counterparts to these rules.

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

   Exemption of small businesses from all or any of the requirements of proposed rule would be unfeasible as the majority of funeral establishments are defined as small businesses under Tenn. Code Ann. § 4-5-102(13).

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 rules will not have an impact on local government.

Additional Information Required by Joint Government Operations Committee

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

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

These rules clarify the examination and grading procedures, adjust the fees for a number of licensees, create a submission fee for specialty forms to be reviewed, establish parameters on re-registering for apprenticeships, establish ninety (90) day time limits for completing various applications for registration and/or licensure, specify indicators regarding fixed places of business devoted to the care and preparation of dead human bodies, specify new requirements related to the care and preparation of non-human remains, clarify the new in-person and/or virtual continuing education requirement, and add the option of obtaining continuing education credit by attending a regularly scheduled board meeting. These rules are expected to result in the following changes: • The Board and existing establishments will be able to receive prompt notification of the permanent closure of other establishments. • Prospective licensees will have more clarity regarding the examination process. • Students, apprentices, funeral directors, and embalmers will pay lower fees for their respective registrations and licenses. • Establishments will have better forms to provide consumers as a result of the requirements to more closely review these documents. • More individuals will be eligible to work as funeral directors and embalmers due to additional restrictions related to perpetual apprenticeships as well as incomplete applications. • More businesses will be able to diversify into the business of non-human remains due to additional clarity provided by these rules regarding the requirements for such. • More businesses will be able to enter the continuing education market due to the additional clarity provided by these rules as it relates to "in person" attendance for five (5) of the ten (10) required hours. • More licensees will become involved in the regulatory process because these rules authorize continuing education credit for attendance of a regularly scheduled board meeting. • The conduct of licensees shall improve as it relates to the reasonable treatment of the public.

(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 P.C. 144 (T.C.A. § 62-5-313)- In relevant part, this law broadens the scope of services that may be performed by funeral establishments by expanding from the current restriction of preparation for disposition of dead human bodies only to the remains of any previously living thing. This bill also allows a funeral establishment to perform commemorative services, which is defined as any ceremony for the dead prior to final disposition. The commemorative service also expands the current restriction of the usage of funeral establishments from the current restriction of dead human bodies to that of any previously-living thing.
2017 P.C. 154 (T.C.A. § 62-5-601(c))- This bill requires that the ten (10) hours of continuing education coursework include five (5) hours that are attended in person or via a virtual format that requires a periodic attendance confirmation.
2017 P.C. 158 (T.C.A. § 62-5-709)- In relevant part, this law provides that if a second funeral establishment receives remains from a funeral establishment that has provided merchandise or services, that both the second funeral establishment and the responsible party are responsible for any costs incurred by the initial establishment. Though payable, there is no requirement that the initial funeral home be paid prior to the release of the remains to the receiving funeral home.

(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;

Many funeral establishments in the state of Tennessee are members of either the Tennessee Funeral Directors Association or the Tennessee State Funeral Directors & Morticians Association. These entities would be most affected by this rule. Board staff held in person meetings with both of these groups

regarding these rules prior to adoption. Many of their comments and suggestions were taken into consideration by the Board in the drafting of these rules. These two organizations will likely either defer to any determination of the Board to adopt these rules or urge adoption of these rules.

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

There are no known attorney general and reporter opinions or judicial rulings that directly relate to these rules or the necessity to promulgate these rules.

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

These rules are expected to have an overall minimal fiscal impact. The program's annual budget is five hundred fifty five thousand and eight hundred dollars ($555,800.00), so materiality would be established at 2% of this budget in the amount of eleven thousand one hundred and sixteen dollars ($11,116.00).

Based on the average number of initial applications from fiscal years 2016 and 2017, the estimated reduction in annual revenue is four thousand and eighty dollars ($4,080.00) for the fee reductions applicable to apprentice funeral directors, apprentice embalmers, student registrations, and the initial licensing fees of both funeral directors and embalmers.

The fiscal impact of the fee for submission of cremation forms for review and approval would not be material. There are currently only sixty eight (68) licensed crematoriums, which means the greatest amount of additional revenue that could result from this fee for initial submissions is six thousand and eight hundred dollars ($6,800). It is expected that almost all licensees will continue using the pre-approved form on the website, which will remain at no cost to the establishment.

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

Cherrelle Hooper, Assistant General Counsel

Robert Gribble, Executive Director, State Board of Funeral Directors and Embalmers

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

Cherrelle Hooper, Assistant General Counsel

Robert Gribble, Executive Director, State Board of Funeral Directors and Embalmers

(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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None Known.

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 12-19-18
Rule ID(s): 7845-7854
File Date: 12/12/18
Effective Date: 3/12/19

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 Funeral Directors and Embalmers
Division:	Regulatory Boards
Contact Person:	Cherrelle Hooper, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	cherrelle.hooper@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**
0660-01	General Provisions
Rule Number	**Rule Title**
0660-01-.03	Changes

Chapter Number	**Chapter Title**
0660-02	Examinations
Rule Number	**Rule Title**
0660-02-.01	Examination Procedures
0660-02-.02	Grading Procedures

Chapter Number	**Chapter Title**
0660-03	Fees
Rule Number	**Rule Title**
0660-03-.01	Student and Apprentice Registration
0660-03-.03	Licenses
0660-03-.12	Document Review

Chapter Number	Chapter Title
0660-04	Apprentices
Rule Number	**Rule Title**
0660-04-.01	Registration

Chapter Number	Chapter Title
0660-05	Funeral Directors and Embalmers
Rule Number	**Rule Title**
0660-05-.01	Application

Chapter Number	Chapter Title
0660-06	Funeral Establishments
Rule Number	**Rule Title**
0660-06-.01	Application
0660-06-.02	Fixed Place of Business
0660-06-.04	Inspection Required

Chapter Number	Chapter Title
0660-09	Requirements for a Crematory
Rule Number	**Rule Title**
0660-09-.01	Requirements for a Crematory

Chapter Number	Chapter Title
0660-10	Continuing Education
Rule Number	**Rule Title**
0660-10-.03	Continuing Education Requirements
0660-10-.04	Qualifying Continuing Education Programs
0660-10-.05	Duties of Program Sponsors

Chapter Number	Chapter Title
0660-11	Standards of Service and Practice
Rule Number	**Rule Title**
0660-11-.02	Preparation Rooms
0660-11-.05	Professional Conduct
0660-11-.07	Records

Chapter Number	Chapter Title
0660-12	Removal Service
Rule Number	**Rule Title**
0660-12-.01	Removal Service

Chapter 0660-01
General Provisions
Amendments

Rule 0660-01-.03 Changes is amended by deleting paragraph (1) in its entirety and substituting, instead, the following:

(1) In addition to any other requirement of the Board's rules or any statute pertaining to the profession of funeral directing or embalming, the following shall be reported in writing to the Board by the licensee within ten (10) days of the effective date of the change:

(a) change in ownership of a funeral establishment;

(b) change of location of a funeral establishment;

(c) permanent closure of a funeral establishment;

(d) ~~(c)~~ change in the identity of the licensed funeral director managing, supervising, and responsible for a funeral establishment;

(e) ~~(d)~~ change in mailing address of any funeral director, embalmer, or apprentice;

(f) ~~(e)~~ change in the identity of the individual sponsoring an apprentice;

(g) ~~(f)~~ change in the licensed funeral establishment employing an apprentice;

(h) ~~(g)~~ change in any other information required to be submitted on an application or registration form; and

(i) ~~(h)~~ a conviction of a misdemeanor involving fraud, dishonesty, or moral turpitude or a conviction of any felony.

Authority: T.C.A. §§ 62-5-203, 62-5-312, 62-5-315~~(c)~~, and 62-5-317.

Chapter 0660-02
Examinations
Amendments

Rule 0660-02-.01 Examination Procedures is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) Tennessee State Board Exam (SBE).

(a) Examinations shall be given by a testing agency approved ~~given~~ by the ~~Tennessee~~ Board ~~of Funeral Directors and Embalmers~~ for the purpose of ~~testing applicants for license to practice~~ determining the applicant's knowledge and fitness for the practice of funeral directing or embalming ~~shall be supervised by the Director of Regulatory Boards of the Department of Commerce and Insurance~~.

(b) All examinations shall be fairly and equitably administered by an approved testing agency.~~, and no~~ No assistance shall be provided to any examinee unless otherwise authorized by law.

~~(c) At the end of each examination given by the Board, the papers shall be collected by the Director of Regulatory Boards, or his designee, and shall be mailed immediately to the private testing agency which prepared the examination for grading.~~

(2) National Board Exam (NBE). ~~National Conference.~~

(a) In lieu of a funeral-director examination given by a testing agency approved by the Board, the Board will accept the results of examinations (or parts thereof) covering Funeral Service ~~Acts~~ Arts ~~which are~~ devised by the International Conference of Funeral Service Examining Boards or other approved testing agency.

(b) In lieu of an embalmer examination given by a testing agency approved by the Board, the Board will accept the results of examinations (or parts thereof) covering Funeral Service Sciences ~~which are~~ devised by the International Conference of Funeral Service Examining Boards or other approved testing agency.

(3) ~~Each examination shall include, but not be limited to, questions relating to the laws and rules governing the practice (funeral directing or embalming) in which the applicant wishes to engage.~~ All applicants shall successfully pass, prior to the issuance of a license, either the Tennessee State Board Exam (SBE) or National Board Exam (NBE). All applicants shall also pass, prior to the issuance of a license, the Laws, Rules, and Regulations Examination (LRR), given by a testing agency approved by the Board. There shall be a minimum thirty (30) day waiting period between unsuccessful exam attempts for each examination.

(4) Examination results for the Laws, Rules, and Regulations Examination (LRR) shall only be valid for one (1) year. The requirements for licensure cannot be satisfied unless the completed application and all required supporting documents for licensure are filed with the Board within one (1) year following the date of successful completion of the LRR.

Authority: T.C.A. §§ 62-5-203, ~~62-5-204 and~~ 62-5-301, and 62-5-306.

Rule 0660-02-.02 Grading Procedures is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) Examinations shall ~~will~~ be graded by the ~~private~~ testing agency ~~which prepared~~ that administered them. Such agency shall send the examination grades ~~on examinations given by the Board~~ directly to the Executive Director ~~of Regulatory Boards~~ of the Board in a format prescribed by the Board.

~~(2) The examination results shall be presented to the Board of Funeral Directors and Embalmers by the Director of Regulatory Boards at the first meeting of the Board following receipt of the grades by the Director.~~

(2) ~~(3)~~ The passing grade for ~~both~~ the funeral director examination, ~~and~~ embalmer examination~~s~~, and Laws, Rules, and Regulations Examination (LRR) shall be no less than seventy-five (75.0~~%~~) for each examination.

(3) ~~(4) An examination may be regarded upon the examinee's written request, accompanied by payment of any cost incurred by the Board for providing such service.~~ Any examinee who disputes the results of any examination shall be wholly responsible for resolving the dispute directly with the testing agency and any additional costs incurred as a result of the dispute.

Authority: T.C.A. §§ 62-5-203~~, 62-5-204~~ and 62-5-301.

Chapter 0660-03
Fees
Amendments

Rule 0660-03-.01 Student and Apprentice Registration is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) ~~Funeral Director s~~Student ~~or apprentice~~. The non-refundable fee for registration as a ~~funeral director~~ student ~~or apprentice~~ shall be ~~seventy dollars ($70.00)~~ fifty dollars ($50.00). Any student dually enrolled in a funeral directing and embalming program shall only be required to pay one (1) registration fee in the amount of fifty dollars ($50.00).

(2) Apprentice funeral director ~~Embalmer student or apprentice~~. The non-refundable fee for registration as an apprentice funeral director ~~embalmer apprentice~~ shall be ~~seventy dollars ($70.00)~~ fifty dollars ($50.00).

(3) Apprentice embalmer. The non-refundable fee for registration as an apprentice embalmer shall be fifty dollars ($50.00).

Authority: T.C.A. §§ 62-5-203, ~~62-5-204,~~ 62-5-207, 62-5-305~~(b)~~, and 62-5-307~~, and 62-5-307(d)~~.

Rule 0660-03-.03 Licenses is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) Funeral Director. The fee for a funeral director's license shall be two hundred ~~seventy-five dollars ($275.00).~~ thirty-five dollars ($235.00).

(2) Embalmer. The fee for an embalmer's license shall be two hundred ~~seventy-five dollars ($275.00).~~ thirty-five dollars ($235.00).

Authority: T.C.A. §§ 62-5-203, ~~62-5-204,~~ 62-5-207, 62-5-306~~(c)~~, and 62-5-308~~(c)~~.

Chapter 0660-03
Fees
New Rules

Table of Contents Chapter 0660-03 Fees is amended by adding a new rule, Rule 0660-03-.12, entitled "Document Review" so that, as amended, the Table of Contents shall read:

Table of Contents

0660-03-.01 Student and Apprentice Registration
0660-03-.02 Applicants for Licenses
0660-03-.03 Licenses
0660-03-.04 Renewals
0660-03-.05 Reciprocal Licenses
0660-03-.06 License Certificates
0660-03-.07 Reinspections
0660-03-.08 Change of Ownership
0660-03-.09 Change of Location
0660-03-.10 Database Update
0660-03-.11 Removal Service Fees
0660-03-.12 Document Review

Chapter 0660-03 Fees is amended by adding the following new appropriately numbered rule as Rule 0660-03-.12 Document Review, which shall read:

The submission fee for any cremation authorization form not furnished by the Board shall be one hundred dollars ($100.00). Such forms submitted for review shall include two versions: a final version of the document and a version which shall include footnotes or endnotes that identify those provisions that are required by law and cite the applicable statute and/or rule. An additional one hundred dollar ($100.00) fee shall be assessed for each resubmission of the form due to non-conformance with the applicable laws and rules.

Authority: T.C.A. §§ 62-5-107, 62-5-203, and 62-5-207.

Chapter 0660-04
Apprentices
Amendments

Rule 0660-04-.01 Registration is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) A person beginning a required course of study or a required apprenticeship shall submit to the Board, in the format required by the Board, a completed registration form and payment of the registration fee as set forth in Chapter 0660-03 of these rules along with the following documentation:

(a~~1~~) ~~a~~ A copy of an official photo identification issued by a governmental agency, such as a valid (permanent, current, unexpired, and legible) driver's license, U.S. passport, or federal, state, county, or city employee I.D. card showing the individual's date of birth and address; and

(b~~2~~) ~~a~~An official transcript or diploma certified by an educational institution showing the applicant has graduated from a high school or has earned a GED recognized by a state department of education.

(2) A person shall not re-register for an apprenticeship if the person previously completed an apprenticeship or less than twelve (12) months have passed since substantial completion (over 51%) of an apprenticeship. Upon a showing of good cause, the waiting period of twelve (12) months may be waived by the Board.

(3) An application for apprenticeship registration shall be fully completed by a registrant within ninety (90) days of the receipt of the application in the Board's office. After ninety (90) days have passed, any incomplete registration application shall be closed.

Authority: T.C.A.~~,~~ §§ 62-5-203 and 62-5-312.

Chapter 0660-05
Funeral Directors And Embalmers
Amendments

Rule 0660-05-.01 Application is amended by adding the following as newly designated paragraph (3):

(3) An application for licensure as a funeral director or embalmer shall be fully completed by the applicant within ninety (90) days of the Board's receipt of the application. After ninety (90) days have passed, any incomplete licensure application shall be closed.

Authority: T.C.A.~~,~~ §§ 62-5-203, 62-5-305, 62-5-306, 62-5-307, 62-5-308, and 62-5-312.

Chapter 0660-06
Funeral Establishments
Amendments

Rule 0660-06-.01 Application is amended by adding the following as newly designated paragraph (2):

(2) An application for an establishment license shall be fully completed by applicant within ninety (90) days. After ninety (90) days have passed, any incomplete licensure application shall be closed.

Authority: T.C.A. §§ 62-5-203 and 62-5-304.

Rule 0660-06-.02 Fixed Place of Business is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) An establishment shall not be operated, and no establishment license shall be granted or renewed, unless the applicant has a fixed place of business or establishment that is devoted to the care and preparation of dead human bodies.

(2) The Board, in determining whether an applicant's proposed fixed place of business or establishment is devoted to the care and preparation of dead human bodies, may consider factors including, but not limited to, the following:

(a) Any indication in the proposed establishment's name that suggests the establishment will be engaged in any activity other than the care and preparation of dead human bodies;

(b) Any evidence at the proposed place of business that suggests activity other than that incidental to the care and preparation of dead human bodies;

(c) ~~If the establishment is located within a business complex, whether the establishment is clearly separated from any other entity located within the complex and clearly distinguished by professional signage.~~ The type of professional signage displayed in connection with any goods or services provided within the establishment;

(d) If the establishment is located within a business complex, whether the establishment is clearly separated from any other entity located within the complex and clearly distinguished by professional signage;

(e) The volume of preparation services or commemorative services provided for non-human remains; and

(f) The type and/or volume of advertising materials that offer preparation services or commemorative services for non-human remains.

Authority: T.C.A. §§ 62-5-203, 62-5-313~~(a)~~, and 62-5-317.

Rule 0660-06-.04 Inspection Required is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) The Board, in addition to routine annual inspections, shall require an inspection of an establishment prior to approving an application for the following:

(~~1~~a) ~~a~~ A change of ownership;

(~~2~~b) ~~a~~ A change of location;

(~~3~~c) ~~a~~An initial establishment license.

(2) The Board shall require a reinspection of an establishment prior to the establishment offering services involving the preparation of non-human remains.

Authority: T.C.A. §§ 62-5-203 and 62-5-315(c).

Chapter 0660-09
Requirements For A Crematory
Amendments

Rule 0660-09-.01 Requirements for a Crematory is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) No person, partnership, firm, association, or corporation shall conduct, maintain, manage, or operate a crematory facility unless a license as a funeral establishment for such facility has been issued by the Board ~~of Funeral Directors and Embalmers~~.

(2) Application for licensure of crematory facility shall be on a form furnished and prescribed by the Board ~~of Funeral Directors and Embalmers~~ and shall be accompanied by an application fee set by the Board ~~for funeral establishment~~. No license shall be issued unless the crematory facility has been inspected and approved as meeting all requirements as set forth by the Board, the Department of Health, Department of Environment regulation, or any local ordinance regulating the same.

(3) In the event the urn or other container is insufficient to accommodate all of the cremated remains, the excess will be placed by the crematory operator in a secondary container. This secondary container shall be kept with the urn or other container and handled according to the final disposition instructions set forth by the Authorizing Agent(s).

(4) No more than one cremated remains may be placed in any container, unless written permission has been received from the personal representative responsible for the remains.

(5) Cremated remains may not be commingled for storage or disposition. Each individual cremated remains must be kept separate and properly identified on the container, unless otherwise authorized by personal representatives.

(6) The entire cremated remains shall be returned to the family and/or responsible party.

(7) (a) All cremations of human remains in this state shall be arranged through the holder of a valid~~,~~ and current funeral establishment license issued by the Board;

(b) All cremations of human remains in this state shall be directly supervised by a licensed funeral director during the cremation process~~;~~, including, but not limited to, the placement of remains in cremation chamber, repositioning of remains, removal of cremated remains from chamber, processing of cremated remains, and placement of cremated remains in an urn or other container.

(8) Each crematory shall submit its cremation authorization form to the Board for approval, prior to using said form. Every funeral establishment shall use the cremation authorization form approved by the Board and provided by the crematory where the human remains are to be cremated.

(9) Acceptance of a license issued by the Board gives a Board representative the right to inspect the crematory and the records of the crematory at any time.

(10) ~~At no time shall any crematory be used for any purpose other than the cremation of dead human bodies.~~ At no time shall any cremation chamber, retort, refrigerator, urn, container, tool, or implement be used to prepare or store both dead human bodies and dead non-human bodies. Each cremation chamber, refrigerator, urn, container, tool, or implement shall be utilized exclusively for either dead human bodies or dead non-human bodies.

(11) At no time shall any cremation chamber or retort designed or manufactured for cremation of dead human bodies be utilized for any other purpose.

(12) All cremation chambers, retorts, refrigerators, and containers shall be labeled to designate usage for the preparation or storage of either dead human bodies or dead non-human bodies if the establishment offers such services for dead non-human bodies.

~~(11)~~ (13) Any funeral director, embalmer, or crematory operator who obtains specific instructions or authorization, as required in T.C.A. § 62-5-507(f), to remove any prosthetic devices, pacemakers, implants, metal hinges, latches, nails, screws, staples, plates, or any other artificial device or structure from a dead human body prior to the cremation or from the cremated remains after cremation shall dispose of the prosthetic devices, pacemakers, implants, metal hinges, latches, nails, screws, staples, plates, or other artificial devices or structures in a lawful non-recoverable manner, so that only human bone fragments remain. While the funeral director, embalmer, or crematory operator may receive compensation from a recycling company for retrieving these materials and shipping them to the recycling company, the funeral director, embalmer, or crematory operator shall not receive a fee for doing so that exceeds the actual cost to the crematory facility for performing or assisting in the removal and shipping costs of those materials.

Authority: T.C.A. §§ ~~62-5-203, 62-5-101,~~ 62-5-101, 62-5-303, 62-5-304, 62-5-309, 62-5-313, 62-5-507, and 62-5-508.

Chapter 0660-10
Continuing Education
Amendments

Rule 0660-10-.03 Continuing Education Requirements is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) As a prerequisite to license renewal, each licensee shall submit with the license renewal application satisfactory proof of having completed a minimum of ten (10) hours of continuing

education coursework during the licensing period. Of the ten (10) hours of continuing education coursework, five (5) hours must be attended in person, which means it shall be completed in the physical presence of the provider of the coursework or through an interactive virtual program that requires participants to confirm their presence during the program. All coursework must be approved by the Board for credit to be awarded. A licensee may receive one (1) hour of continuing education credit per renewal period for in-person attendance of a regularly scheduled meeting of the Board.

(2) Continuing education credit may be obtained by licensees through attendance at only those continuing education courses which have been approved by the Board. A licensee may not repeat the same continuing education course within consecutive renewal periods.

(3) Licensees may not carry-over continuing education hours from one licensing period to the next.

(4) Except as provided in subsection (5), the requirements of this chapter do not apply to new ~~licenses~~ licensees during the first licensing period.

(5) A person required to reapply as for initial licensure by T.C.A. § 62-5-316(b), shall as a prerequisite to issuance of a new license, ~~shall~~ submit with the application satisfactory proof of having completed a minimum of ten (10) hours of continuing education coursework within ninety (90) days of the date of application. Of the ten (10) hours of continuing education coursework, five (5) hours must be attended in person, which means it shall be completed in the physical presence of the provider of the coursework or through an interactive virtual program that requires participants to confirm their presence during the program.

Authority: T.C.A. §§ 62-5-203~~, 62-5-601(c), 62-5-601(e), 62-5-601(f),~~ and 62-5-601~~(g)~~.

Rule 0660-10-.04 Qualifying Continuing Education Programs is amended by deleting the phrase "(1 credit hour = 50 minutes)" wherever it appears in subparagraph (2)(c) so that, as amended, subparagraph (2)(c) shall read:

(2)

(c) The program is at least one (1) hour ~~(1 credit hour = 50 minutes)~~ in length;

Authority: T.C.A. §§ 62-5-203, 62-5-603, 62-5-604, 62-5-605, and 62-5-606.

Rule 0660-10-.04 Qualifying Continuing Education Programs is amended by adding the following as a new, appropriately designated paragraph:

(9) A program shall be deemed an interactive virtual program that requires participants to confirm their attendance during the program if it meets at least one (1) of the following qualifications:

(a) A real-time, streamed presentation that permits the submission of questions, facilitates group chat, or solicits responses from licensees through surveys, multiple-choice questions, or similar means;

(b) Requires a unique login and disables the ability to skip through content; or

(c) Monitors licensees' participation and includes a testing component that requires a passing grade in order to complete the program.

Authority: T.C.A. §§ 62-5-203, 62-5-601, 62-5-603, 62-5-604, 62-5-605, and 62-5-606.

Rule 0660-10-.05 Duties of Program Sponsors is amended by deleting paragraph (1) in its entirety and substituting, instead, the following:

(1) The sponsor shall keep detailed records of each continuing education program. The records to be maintained shall include:

(a) The date and location of the program presented;

(b) The name and qualifications of each instructor or presenter;

(c) A registration form showing the printed names, signatures, and license numbers for all licensees in attendance; ~~and~~

(d) A written outline of the program agenda~~.~~; and

(e) A statement indicating whether the program qualifies as an interactive virtual program that requires participants to confirm their attendance during the program and, if so, the specific qualifications met as identified within Rule 0660-10-.04(9).

Authority: T.C.A. §§ 62-5-203, 62-5-601, 62-5-605~~(3)~~, 62-5-609, and 62-5-611.

Chapter 0660-11
Standards of Service and Practice
Amendments

Rule 0660-11-.02 Preparation Rooms is amended by deleting the text of paragraph (6) and substituting instead the following language so that, as amended, paragraphs (6)-(8) shall read:

(6) ~~The preparation room shall be used for no purpose other than the preparation of dead human bodies.~~ Each preparation room shall be dedicated exclusively to the preparation of either dead human bodies or dead non-human bodies and signage shall be posted on or immediately adjacent to the entry door of the respective preparation room indicating the designated purpose.

(7) At no time shall any refrigerator, container, tool, or implement be used to prepare, hold or store both dead human bodies and dead non-human bodies. Each refrigerator, container, tool, or implement shall be utilized exclusively for either dead human bodies or dead non-human bodies.

(8) All refrigerators and containers shall be labeled to designate usage for the preparation or storage of either dead human bodies or dead non-human bodies if the establishment offers services for dead non-human bodies.

Authority: T.C.A. §§ 62-5-203, 62-5-313~~(b)(2)~~, and 62-5-317.

Rule 0660-11-.05 Professional Conduct is amended by deleting the text of the rule in its entirety and substituting, instead, the following:

(1) All persons engaged in the profession of funeral directing, embalming or operation of a funeral establishment shall at all times act in a professional manner including, but not limited to, the following:

(a) Members of the public shall be treated in a ~~respectful~~ reasonable manner. Unreasonable treatment is conduct that falls below the standard of professional conduct including, but not limited to:

1. Abusive, aggressive, hostile, or disrespectful conduct; or

2. Being unresponsive to a member of the public for an unreasonable period of time without justification, such as: not returning phone calls, not answering inquiries, or leaving a member of the public unattended.

(b) Establishments shall honor financial obligations to suppliers, distributors or other persons with whom they conduct business in a timely manner.

(c) If a particular funeral establishment has custody of a decedent's remains, but is not selected by a person(s) with a vested right under T.C.A. § 62-5-703 to control the disposition of the remains, the funeral establishment must release the remains to the

establishment that is properly selected, regardless of whether the costs of any merchandise or service provided by the initial funeral establishment are paid at the time of release. Such costs shall remain payable by the selected funeral establishment; failure to pay upon lawful demand may result in disciplinary action imposed by the Board. Nothing herein shall be construed to affect the civil liability of the responsible party or other persons under relevant law.

(d) ~~(c)~~ Any person who has been assessed a fee pursuant to statute or rules of the Board, and which fee is currently due, shall submit payment within the time provided by written notice.

(e) ~~(d)~~ Any licensee, upon receiving any notice from the Board requesting a response, including but not limited to, notice that a complaint has been opened against the licensee, shall respond within the time specified in the notice. Provided, the director may grant a request for extension submitted within the period of time stated in the original notice.

(f) ~~(e)~~ ~~An~~ A funeral director, embalmer, or establishment shall not unreasonably delay the filing of a certificate of death.

(g) ~~(f)~~ An embalmer shall make every reasonable effort to return viscera to the body cavity for final disposition. In the event the embalmer is unable to return the viscera to the body cavity, the viscera shall be placed in a non-porous container, labeled as such, and disposed of in an identical manner to the remains.

(h) The license of any licensee whom the Board finds has engaged in sexual misconduct with a dead human body may be revoked by the Board. If the Board determines disciplinary action that does not include revocation is appropriate in any case involving sexual misconduct, the Board shall issue a finding of no good cause for revocation and thoroughly explain the mitigating circumstances in any Order, whether by consent or otherwise.

(i) ~~(g)~~ Licensees shall obey any lawful order entered by the Board.

(j) A licensee or registrant shall not engage in any conduct that may mislead or deceive the public as to the physical location of any funeral establishment.

(k) Funeral directors, embalmers, and establishments shall conduct themselves in a way that does not offend the reasonable sensibilities of the public and reflects respect for dead human bodies.

Authority: T.C.A. §§ 62-5-203, 62-5-313, and 62-5-317.

Rule 0660-11-.07 Records is amended by adding the following language as newly designated paragraphs (3)-(5):

(3) Each establishment shall provide written notification to the Board on a form designated by the Board no less than thirty (30) days prior to the preparation of non-human remains at the establishment. An establishment shall obtain a reinspection prior to offering such services to ensure compliance with the applicable laws, rules, and regulations. Each establishment shall promptly provide written notification to the Board if it ceases to offer such services.

(4) Each establishment shall ensure that its price lists and any other documents required by the FTC Funeral Rule or T.C.A. Title 62, Chapter 5 and the accompanying rules and regulations do not include any services or merchandise for non-human remains.

(5) Each establishment shall ensure that any trust accounts required by the FTC Funeral Rule or T.C.A. Title 62, Chapter 5 and the accompanying rules and regulations do not include any funds derived from services or merchandise provided for non-human remains.

Authority: T.C.A. §§ 62-5-203 and 62-5-313.

Rule 0660-12-.01 Removal Service is amended by adding paragraph (4), which shall read:

(4) At no time shall a dead human body be transported in any manner with a dead non-human body unless prior written consent is obtained from the responsible party for the dead human body.

Authority: T.C.A. §§ 62-5-203, 62-5-313, and 62-5-318.

* 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)
Dennis A. Bridges	x				
Mark Cochran	x				
Robert M. Davis	x				
Jeff L. Duffer	x				
W. Clark McKinney	x				
Charles A. Rahm	x				
Robert P. Shackelford, III	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the **Board of Funeral Directors and Embalmers** (board/commission/ other authority) on **10/09/2018** (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: *07/27/2018*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/09/2018*

Date: 11/7/18

Signature: Cherelle Hooper

Name of Officer: Cherrelle Hooper

Title of Officer: Assistant General Counsel

CAROL L. McGLYNN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires NOV. 5, 2019

Subscribed and sworn to before me on: November 7, 2018

Notary Public Signature: Carol L. McGlynn

My commission expires on: Nov. 5, 2019

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.

Board of Funeral Directors and Embalmers

Chapter Number	**Chapter Title**
0660-01	General Provisions
Rule Number	**Rule Title**
0660-01-.03	Changes

Chapter Number	**Chapter Title**
0660-02	Examinations
Rule Number	**Rule Title**
0660-02-.01	Examination Procedures
0660-02-.02	Grading Procedures

Chapter Number	**Chapter Title**
0660-03	Fees

Rule Number	Rule Title
0660-03-.01	Student and Apprentice Registration
0660-03-.03	Licenses
0660-03-.12	Document Review

Chapter Number	Chapter Title
0660-04	Apprentices
Rule Number	**Rule Title**
0660-04-.01	Registration

Chapter Number	Chapter Title
0660-05	Funeral Directors and Embalmers
Rule Number	**Rule Title**
0660-05-.01	Application

Chapter Number	Chapter Title
0660-06	Funeral Establishments
Rule Number	**Rule Title**
0660-06-.01	Application
0660-06-.02	Fixed Place of Business
0660-06-.04	Inspection Required

Chapter Number	Chapter Title
0660-09	Requirements for a Crematory
Rule Number	**Rule Title**
0660-09-.01	Requirements for a Crematory

Chapter Number	Chapter Title
0660-10	Continuing Education
Rule Number	**Rule Title**
0660-10-.03	Continuing Education Requirements
0660-10-.04	Qualifying Continuing Education Programs
0660-10-.05	Duties of Program Sponsors

Chapter Number	Chapter Title
0660-11	Standards of Service and Practice
Rule Number	**Rule Title**
0660-11-.02	Preparation Rooms
0660-11-.05	Professional Conduct
0660-11-.07	Records

Chapter Number	Chapter Title
0660-12	Removal Service
Rule Number	**Rule Title**
0660-12-.01	Removal Service

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/12/18

Effective on: 3/12/19

Tre Hargett
Secretary of State

2018 DEC 12 AM 11:31
SECRETARY OF STATE
CORPORATIONS DIV.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Parole
DIVISION:	Legal
SUBJECT:	Conduct of Parole Proceedings
STATUTORY AUTHORITY:	Public Chapter No. 712 of the 110th General Assembly, Public Chapter No. 727 of the 107th General Assembly, and Public Chapter No. 162 of the 110th General Assembly.
EFFECTIVE DATES:	March 14, 2019 through June 30, 2019
FISCAL IMPACT:	There is no estimated impact on state and local government revenues or expenditures resulting from the promulgation of this rule. The rule being promulgated is reflective of current policy and practices of the Board.
STAFF RULE ABSTRACT:	Pursuant to Public Chapter No. 727 of the 107th General Assembly, community supervision of adult offenders on probation or parole was transferred to the Department of Correction, and the name of the agency was changed to the Board of Parole. This update to the Rules of the Board of Parole deletes and/or changes references to community supervision of adult offenders, as well as corrects the name of the agency, in order to reflect current law. Pursuant to Public Chapter No. 712 of the 110th General Assembly, each state agency and department is required to promulgate rules that reflect current Public Records law and policy, as contained in the Model Public Records Policy published by the Office of Open Records Counsel. This update to Board of Parole Rules is being done to comply with this requirement. Pursuant to Public Chapter No. 162 of the 110th General Assembly, a new appeal process was mandated for the review of revocation and rescission cases under certain circumstances. This change to Board of Parole rules reflects the statutory mandate as well as current policy and practices.

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.

(Insert statement here)

To the best of this Agency's knowledge and belief, none of these proposed rule changes will affect small businesses.

Impact on Local Governments

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

(Insert statement here)

To the best of this Agency's knowledge and belief, none of these proposed rule changes will affect 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;

Pursuant to Public Chapter 727 of the 107th General Assembly, community supervision of adult offenders on probation or parole was transferred to the Department of Correction, and the name of the agency was changed to the Board of Parole. This update to the Rules of the Board of Parole deletes and/or changes references to community supervision of adult offenders, as well as corrects the name of the agency, in order to reflect current law.

Pursuant to Public Chapter 712 of the 110th General Assembly, each state agency and department is required to promulgate rules that reflect current Public Records law and policy, as contained in the Model Public Records Policy published by the Office of Open Records Counsel. This update to Board of Parole Rules is being done to comply with this requirement.

Pursuant to Public Chapter 162 of the 110th General Assembly, a new appeal process was mandated for the review of revocation and rescission cases under certain circumstances. This change to Board of Parole rules reflects the statutory mandate as well as current policy and practices.

(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 712 of the 110th General Assembly, Public Chapter 727 of the 107th General Assembly, and Public Chapter 162 of the 110th General Assembly.

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

The Tennessee Board of Parole, the Tennessee Department of Correction, the Tennessee Office of Open Records Counsel, adult offenders in the custody of the Tennessee Department of Correction eligible for parole consideration, adult offenders in the custody of the Tennessee Department of Correction currently on parole release status, and members of the public requesting to inspect and/or copy public records in the custody of the Board of Parole. The Board of Parole has received no indication of the position of any of these entities with regard to these rule changes.

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

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

There is no estimated impact on state and local government revenues or expenditures resulting from promulgation of this rule. The rule being promulgated is reflective of current policy and practices of the Board.

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

Jim Purviance: Executive Director of the Tennessee Board of Parole, Rob Clark: General Counsel

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

Jim Purviance: Executive Director of the Tennessee Board of Parole, Rob Clark: 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

Jim Purviance, Executive Director: 404 James Robertson Parkway, Suite 1300, Nashville, Tennessee 37219 615-741-9941 Rob Clark, General Counsel: 404 James Robertson Parkway, Suite 1300, Nashville, Tennessee 37219 615-253-1211

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

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

For Department of State Use Only

Sequence Number: 12-22-18
Rule ID(s): 7871
File Date: 12/14/18
Effective Date: 3/14/19

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 Parole
Division:	Legal
Contact Person:	Rob Clark
Address:	404 James Robertson Parkway, Suite 1300
Zip:	37243
Phone:	615-253-1211
Email:	rob.clark@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**
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.01	Short Title

Chapter Number	**Chapter Title**
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.02	Statements of Intent

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.03	Definitions

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.04	Administration of the Board of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.05	General Board Policy

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.06	Parole Hearings

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.07	Board Criteria for Granting or Denying Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.08	The Parole Hearing Process

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.09	Release on Parole Date

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.10	Psychological Evaluations

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.11	Detainers

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.12	Rescission of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.13	Discharge of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.14	Revocation of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.15	Confidentiality of Parole and Clemency Records; Confidentiality of Employee Personnel Records

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.16	Duties and Procedures of the Board in Executive Clemency

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.

1100-01-01-.01 Short Title is being changed to reflect the correct name of the agency from "the Board of Probation and Parole" to "the Board of Parole." T.C.A. 40-28-104.

1100-01-01-.02 Statements of Intent is being changed to reflect that the Board no longer handles supervision of offenders or overseeing Probation/Parole officers. T.C.A. 40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-501, 40-35-503 .

1100-01-01-.03 Definitions is being changed to reflect the changes due to the Board no longer handling supervision of offenders or overseeing Probation/Parole officers and reflecting that such authority resides with the Department of Correction. T.C.A. 40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 4-28-117, 40-28-121, and 40-28-122.

1100-01-01-.04 Administration of the Board of Parole is being changed to reflect the changes due to the Board no longer handling supervision of offenders or overseeing of Probation/Parole officers. T.C.A. 40-28-101,40-28-103 through 40-28-107, and 40-28-119.

1100-01-01-.05 General Board Policy is being changed to comply with the new Public Records Requests laws and incorporate current agency policy for responding to Public Record Requests. T.C.A. 10-7-101 et seq, 10-7-503, 40-28-104, 40-28-105, 40-28-119, and 40-28-502.

1100-01-01-.06 Parole Hearings is being changed to reflect that the Board no longer oversees Probation/Parole officers. T.C.A. 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505.

1100-01-01-.07 Board Criteria for Granting or Denying Parole is being changed to reflect appropriate citations to statutory authority. T.C.A. 40-28-104, 40-28-105, 40-28-106, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503.

1100-01-01-.08 The Parole Hearing Process is being changed to include a process for review under TCA 40-28-122(g), a new law that was passed in 2017. T.C.A. 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, and 40-35-503.

1100-01-01-.09 Release on Parole Date is not being changed.

1100-01-01-.10 Psychological Evaluations is not being changed.

1100-01-01-.11 Detainers is not being changed.

1100-01-01-.12 Rescission of Parole is not being changed.

1100-01-01-.13 Discharge of Parole is being changed to reflect appropriate citations to statutory authority. T.C.A. 40-28-104.

1100-01-01-.14 Revocation of Parole is being changed to clarify the process of appointing an attorney to ensure that the considerations and process are consistent in both preliminary hearings and final revocation hearings. It is also being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. It is also being edited under subsection (6) (o) to be clearer in meaning. T.C.A. 40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-121through 40-28-123 and 40-35-504.

1100-01-01-.15 Confidentiality of Records is being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. It is also being changed in (1) (a) (7) in the interest of public safety for private citizens. T.C.A. 40-28-104, 40-28-106, 40-28-119, and 40-28-504.

1100-01-01-.16 Duties and Procedures of the Board in Executive Clemency Matters is being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. T.C.A. 40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114 and 40-28-126.

Proposed Rules

of the

Tennessee Board of ~~Probation and~~ Parole

Chapter 1100-01-01

Conduct of ~~Probation and~~ Parole Proceedings

The Administrative History following each rule gives the date on which the rule was filed and its effective date. The Administrative History also shows the date of any amendments or repeals:

Original chapter 1100-01-01 filed December 6, 1979; effective January 20, 1980.

Amendments to rules 1100-01-01-.02 through 1100-01-01-.07, 1100-01-01-.09, 1100-01-01-.11 through 1100-01-01-.13, and 1100-01-01-.15 filed March 11, 1985; effective April 10, 1985.

Amendments to rules 1100-01-01-.06, 1100-01-01-.07, 1100-01-01-.10, 1100-01-01-.11, and 1100-01-01-.13, filed April 18, 1986; effective July 14, 1986.

Repeal of and new chapter 1100-01-01 filed August 31, 1990; effective November 28, 1990.

Repeal of and new chapter 1100-01-01 filed May 5, 2009; effective September 28, 2009.

Repeal of and new chapter 1100-01-01 filed _____; effective _____.

Presented herein are proposed rules of the Tennessee Board of ~~Probation and~~ Parole submitted pursuant to T.C.A. Chapter 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Board of ~~Probation and~~ Parole to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rule is published. Such petition to be effective must be filed with the Board of ~~Probation and~~ Parole, in Room 1300 of the James Robertson Parkway Towers located at 404 James Robertson Parkway, Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: ~~Columba A. McHale~~Rob Clark, General Counsel, Board of ~~Probation and~~ Parole, Suite 1300, James Robertson Parkway Towers, 404 James Robertson Parkway, Nashville, TN 37243, telephone 615.741.~~1673~~1150.

Chapter 1100-01-01 is repealed in its entirety and substituting in its place the following new rules; The text of the proposed rules are as follows:

New Rules

Table of Contents

1100-01-01-.01	Short Title	1100-01-01-.10	Psychological Evaluations
1100-01-01-.02	Statements of Intent	1100-01-01-.11	Detainers
1100-01-01-.03	Definitions	1100-01-01-.12	Rescission of Parole
1100-01-01-.04	Administration of the Board of ~~Probation and~~ Parole	1100-01-01-.13	Discharge of Parole
1100-01-01-.05	General Board Policy	1100-01-01-.14	Revocation of Parole
1100-01-01-.06	Parole Hearings	1100-01-01-.15	Confidentiality of ~~Probation,~~ Parole and Clemency Records; Confidentiality of Employee Personnel Records
1100-01-01-.07	Board Criteria for Granting or Denying Parole	1100-01-01-.16	Duties and Procedures of Board in Executive Clemency
1100-01-01-.08	The Parole Hearing Process		
1100-01-01-.09	Release on Parole Date		

1100-01-01-.01 Short Title.

(1) These rules shall be known and may be cited as the "Rules and Regulations of the Tennessee Board of ~~Probation and~~ Parole."

Authority: T.C.A. § 40-28-104. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.02 Statements of Intent.

(1) It was the intent of the General Assembly in creating the Tennessee Board of ~~Probation and~~ Parole that it be autonomous and in all respects functionally and administratively separate from any other state agency.

(2) Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.

(3) Although eligibility for parole is set by statute, whether an inmate is actually released on parole is discretionary with the Board.

(4) To avoid even the appearance of impropriety, all decisions of the Board regarding policy, procedures, and rules shall be determined by a majority vote of the members of the Board. Votes taken shall be public.

~~(5) Regarding probation, the Board recognizes that trial judges have jurisdiction over individuals that are placed on probation. However, Probation/Parole Officers shall supervise probationers in~~

~~accordance with the supervision policies of the Board of Probation and Parole, as well as the conditions of probation established by the trial Judge.~~

Authority: T.C.A. §§40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-~~303, 40-35-~~501, 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.03 —Definitions.

As used in these rules, unless the context otherwise requires:

(1) "Board" means the Tennessee Board of ~~Probation and~~ Parole or a member thereof.

(2) "Chair" means the Board member appointed by the Governor for a two (2) year term to direct the operations of the Board and to fulfill the functions established by law for such position.

(3) "Executive Director" means the person appointed by the Board to serve as chief administrative officer of the agency.

(4) "Director" means the Director of Probation and Parole ~~Field Services~~ employed by the ~~Board~~Tennessee Department of Correction (TDOC) to perform the duties established by law for such position.

(5) "District Director" means ~~an~~a TDOC employee responsible for management of one of several districts within the ~~Division of Field Services~~Department.

(6) "Hearing Officer" means an employee appointed by the Chair to conduct parole hearings.

(7) "Probation and Parole Officer" means ~~an~~a TDOC employee who supervises and investigates the conduct, behavior, and progress of offenders assigned to such person.

(8) "Declaration of Delinquency" means a declaration made by the Director of Probation and Parole ~~Field Services,~~or designee which prevents an offender's sentence from continuing to expire when such offender is alleged to be in violation of the conditions of his or her parole.

(9) "Detainer" means a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(10) "Executive Clemency" means broadly, an act of leniency or an instance of mercy, which may be exercised by the Governor in all criminal cases after conviction, except in cases of impeachment. Included within the Governor's clemency powers are:

(a) "Commutation" means a discretionary act of the Governor, which reduces a prisoner's sentence from a greater to a lesser degree with the extent of such reduction being totally within the discretion of the Governor.

(b) "Conditional Pardon" means a pardon granted upon such conditions and with such restrictions and limitations as the Governor deems proper.

"(c) "Exoneration" means the discretionary act of the Governor of abolishing a conviction and restoring all rights of a person based upon innocence in the case at issue under T.C.A. §40-27-109.

(d) "Pardon" means a discretionary act of the Governor which forgives the defendant or extinguishes his crime thereby granting such defendant full relief from all or any portion of his or her sentence remaining at the time of pardon.

"(e) "Reprieve" or "Respite" means a discretionary act of the Governor which withholds a sentence for an interval of time or a sentence of death for a stated specific period of time, thus having the effect of suspending the execution of the sentence for the duration of the reprieve or respite.

(11) "Inmate" means a felony offender who is in the custody of the Tennessee Department of Correction, a jail or workhouse, or is serving a Tennessee ~~felony~~sentence in another jurisdiction.

(12) "Mandatory Parole" means a parole, which the Board is required to grant to certain inmates who have never been paroled or granted parole of any type prior to the expiration of their sentence. All sex offenders must meet the requirements of T.C.A. §40-28-116 before being released on mandatory parole.

~~(Rule 1100-01-01-.03, continued)~~

13) "Offender" means an inmate who has been placed on parole~~, or a convicted felon who has been placed on probation~~.

(14) "Parole" means the release of an inmate to the community by the Board prior to the expiration of his or her term, subject to conditions imposed by the Board and subject to ~~its~~TDOC supervision; or where a court or other authority has issued a warrant against the offender, and the Board, in its discretion, releases him or her to answer the warrant of such court or authority.

(15) "Parole Hearing" means the process by which a decision is made to grant, deny, revoke, or rescind parole. Such hearing may or may not be in person. This determination is made subject to the classification of offense for which the inmate stands convicted.

(16) "Pre-Parole Rescission" means the procedure by which the Board may terminate an inmate's grant of parole, before the inmate is actually released on parole, due to conduct, violations or omissions committed by such inmate prior to his or her release, or pertinent information that was not available at the time of the hearing.

(17) "Parole Revocation" means the formal procedure by which the Board may terminate or revoke an offender's release on parole for conduct or omissions which violate the conditions of such offender's parole after his or her release.

(18) "Post-Parole Rescission Hearing" means the procedure by which the Board may terminate an offender's grant of parole, after such offender is actually released on parole, due to conduct, violations or omissions committed by such offender, significant information fraudulently given or withheld by the offender or on behalf of the offender, or other information the Board was unaware of at the time of the parole grant.

(19) "Preliminary Hearing" means the initial hearing conducted by a Hearings Officer, to determine whether probable cause exists to believe an offender has violated the conditions of his or her parole in an important respect.

~~(20) "Probation" means the release by a court, determinate release, or release from special alternative incarceration, of a person found guilty of a crime, upon verdict or plea, without~~

~~imprisonment, subject to conditions imposed by the court and subject to the supervision of the Board of Probation and Parole.~~

~~(21) "Probation Revocation" means the formal procedure, by which a Judge may terminate or revoke an offender's probation for conduct or omissions which violate the conditions of such offender's probation.~~

Authority: T.C.A. §§40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 40-28-~~108, 40-28-111, 40-28-~~117, 40-28-121 and 40-28-122. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.04 ~~—~~Administration of the Board of ~~Probation and~~ Parole.

(1) Board Structure.

(a) Composition of the Board shall be as provided by law. The appointment of members of the Board, the selection of its Chair, and the quorum requirements shall be those specified by law. (T.C.A. Title 40, Chapter 28).

(b) These regulations are promulgated under the authority of T.C.A. §40-28-101 et seq. and in accordance with the Uniform Administrative Procedures Act. (T.C.A. Title 4, Chapter 5).

~~(Rule 1100-01-01-.04, continued)~~

(c) The Board shall keep or cause to be kept appropriate records of all of its official actions. Such records shall be made accessible to the public and interested parties in accordance with law and these rules and regulations.

(2) Administrative Structure.

(a) The administrative structure of the Tennessee Board of ~~Probation and~~ Parole is as follows:

1. The Executive Director of the Board is the chief administrative officer of the Board, who shall be appointed by the Board.

~~2. There shall be a division of Probation and Parole Field Services. This division is headed by the Director of Probation and Parole Field Services, who shall be appointed by the Board.~~

~~3~~2. There shall be other divisions of the Board as established by the Executive Director and the Board. These divisions shall be represented on the organizational chart maintained and updated by the Executive Director.

Authority: T.C.A. §§40-28-101, 40-28-103 through 40-28-~~108,~~107 and 40-28-119. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.05 ~~—~~General Board Policy.

(1) Board Administrative Meetings.

(a) Administrative meetings of the Board are open to the public and to the news media.

(b) Although administrative meetings and hearings are open to the public, the Board reserves the right to make such internal adjustments, rules, and regulations as are necessary to insure that the proceedings remain orderly at all times.

(c) Notices of the Board's administrative meetings will be provided in accordance with the Open Meetings Act.

(2) Information concerning the Board.

(a) The Board shall maintain and will disseminate written information concerning its organization, functions, policies, procedures, rules, regulations, parole criteria, and/or supervision guidelines to any party requesting such information.

(3) ~~All~~ Public Records Requests

(a) Personnel of the Tennessee Board of Parole shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these Rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Board of Parole shall be protected as provided by current law. Information generated or held by the Board of Parole that is deemed confidential pursuant to Statute and/or Board of Parole Rules and Policies shall not be released to the public.

(b) Public record requests shall be ~~responded to~~ made to the Public Records Request Coordinator ("PRRC") in order to ensure public record requests are routed to the Records Custodian and fulfilled in a timely manner.

(c) Requests for inspection only are not required to be made in writing. Requests for copies shall be made in writing via email or mail.

(d) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternate acceptable form of identification is required as a condition to inspect or receive copies of public records, unless the requestor is a former offender requesting his/her official record or a victim of a crime requesting the record of the offender who committed the crime against him or her.

(e) The PRRC shall cause a record to be kept of all public record requests, and the date the request was received by the agency. The PRRC shall acknowledge receipt of the request within seven (7) business days and determine the appropriate action(s) to take.

(f) The PRRC shall forward appropriate requests for public records to the records custodian(s) for the requested records.

1. The Records Custodian shall make the requested public records available to the PRRC in accordance with ~~the Tennessee Public Records Act and~~ T.C.A. ~~§40-28-119. The Board may charge a reasonable~~ 10-7-503 and agency policy as practicable. If 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; to redact records, or for other similar reasons, the records custodian shall promptly communicate this to the PRRC who shall notify the records requestor within seven (7) business days of receipt of the request.

2. If a record contains confidential information or information that is not open to public inspection, the Records Custodian shall prepare a redacted copy prior to providing the record to the PRRC. If questions arise concerning redaction, the records custodian shall coordinate with the General Counsel and other appropriate parties regarding review and redaction of records.

(g) Fees and charges for copies of public records shall be charged in accordance with Tennessee Board of Parole policies. Cost for copies shall be $.15 per page. Cost for a CD of a parole hearing shall be $10.00. No charges will be assessed for copies and duplicates unless the total fee for ~~processing requests for public records~~the request exceeds $5.00. Costs for labor shall be assessed where time to prepare records exceeds one (1) hour.

Authority: T.C.A. §§ 10-7-101 et. seq., 10-7-503, 40-28-104, 40-28-105, 40-28-119, and 40-28-502. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.06 Parole Hearings.

(1) The Board will conduct hearings concerning matters of parole release and parole violations. The times, locations, and dockets of such hearings will be announced to the appropriate institutional and parole staff, the inmates or offenders, Judges, Sheriffs, and District Attorney Generals of the county in which the person was convicted, and any other interested parties who have requested to be notified.

~~(Rule 1100-01-01-.06, continued)~~

(2) At least thirty (30) days prior to a scheduled parole hearing and three (3) days prior to a parole revocation hearing, the Board shall send notice of the date and place of the hearing to the following individuals:

(a) The trial Judge for the Court in which the conviction occurred, or the trial Judge's successor;

(b) The District Attorney General in the county in which the crime was prosecuted;

(c) The Sheriff of the county in which the crime was committed; and

(d) The victim or the victim's representative, who has requested notification of the date and place of the scheduled hearing and/or notice of the Board's final decision. However, at any time, the victim or victim's representative may withdraw the request for notice by sending the Board a written statement that the request for notice is withdrawn.

(3) A victim of a crime or a victim's representative may submit a victim impact statement.

(4) No later than thirty (30) days after a parole hearing decision has been finalized, the Board shall send notice of its decision to those required to receive notice under subsection (2), together with notice that any victim whom the Board failed to notify as required in subsection (2) has the opportunity to have a written impact statement considered by the Board.

(5) Subject to applicable provisions of law, it is the sole duty of the Board to determine which inmates serving a sentence in state prisons, county workhouses, and/or jails may be released on parole, when they may be released, and under what conditions.

(6) In granting parole, the Board may impose any conditions and limitations that the Board deems necessary, including consent by the offender to submit to search _by ~~probation and parole~~TDOC staff or law enforcement.

Authority: T.C.A. §§40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505. Administrative History: Original rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.07 Board Criteria for Granting or Denying Parole.

(1) Before granting or denying parole, the Board may apply the following factors to each eligible inmate to assist in determining whether such inmate will live and remain at liberty without violating the law or the conditions of his or her parole:

(a) The nature of the crime and its severity;

(b) The inmate's previous criminal record, if any;

(c) The inmate's institutional record;

(d) The views of the appropriate trial Judge and the District Attorney General, who prosecuted the case;

(e) The inmate's circumstances if returned to the community;

(f) Any mitigating or aggravating circumstances surrounding the offense;

(g) The views of the community, victims of the crime or their family, institutional staff, probation and parole officers, or other interested parties;

(h) The inmate's training, including vocational and educational achievements;

(i) The inmate's employment history, his or her occupational skills, including any military experience, and the stability of his or her past employment;

(j) The inmate's past use of narcotics, or past habitual and excessive use of alcohol;

~~(Rule 1100-01-01-.07, continued)~~

(k) The inmate's behavior and attitude during any previous experience on probation or parole and the recentness of such experience;

(l) An objective advisory parole predication guideline system to adequately assess the risk an inmate poses to society and his or her potential for parole success;

(m) Any other factors required by law to be considered or the Board determines to be relevant.

(2) In applying the above factors to a particular inmate, the Board may consider the following sources of information:

(a) Reports prepared by institutional staff relative to the inmate's social history and institutional record, including any recommendations the institutional staff may wish to make;

(b) All relevant Department of Correction or other prison, jail, or workhouse reports;

(c) Observations concerning the suitability of releasing the inmate on parole from court officials, law enforcement officials, and other interested community members;

(d) Reports or recommendations resulting from any physical, psychological, or psychiatric examination or evaluation of the inmate;

(e) Any relevant information submitted by the inmate, his or her attorney, representatives on his or her behalf, or other interested parties;

(f) The parole plan, which the inmate has submitted; and

(g) Any other relevant information concerning the inmate.

(3) The Board shall consider written impact statements or other information submitted by the victim or the victim's family.

(4) After applying the various factors for consideration to the individual inmate, the Board shall deny the inmate's release on parole if it determines that:

(a) There is a substantial indication that the inmate will not conform to the conditions of his or her parole;

(b) Release from custody at this time would depreciate the seriousness of the crime of which the person stands convicted or promote disrespect for the law;

(c) Release at this time would have a substantially adverse effect on institutional discipline; or

(d) The person's continued correctional treatment, medical care, or vocational or other training in the institution, will substantially enhance the person's capacity to lead a law-abiding life when given release at a later time.

(5) The Board may revise or modify its parole criteria and factors for consideration, as it deems appropriate.

Authority: T.C.A. ~~§§.~~ §§40-28-104, 40-28-105, 40-28-106~~, 40-28-108~~, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.08 The Parole Hearing Process.

(1) Parole Eligibility.

(a) Although the decision to release an inmate on parole is discretionary with the Board, parole eligibility is, by law, based upon the completion of a statutorily specified portion of a sentence, less any applicable credits.

(b) The Department of Correction shall notify the Board of an inmate's parole eligibility date.

(c) The Board's staff shall then compile and distribute dockets or lists of the cases to be heard by the Board.

(d) Subject to later alteration, the Board's schedule of dates and locations of hearings shall be available to those requesting it prior to the hearing.

(e) Inmates classified as close custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction, as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody.

(f) This de-certification of inmates classified as close custody shall continue for the duration of the classification and for a period of one (1) year thereafter.

(g) Inmates classified as maximum custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody.

(h) This de-certification of inmates classified as maximum custody shall continue for the duration of the classification and for a period of two (2) years thereafter.

(2) The Parole Hearing Process.

(a) The Board is empowered to employ Hearing Officers to review inmates for any matter concerning a parole. The Hearing Officer's recommendations are advisory only and the Board shall accept, modify, or reject any recommendation made by a Hearing Officer.

(b) If the Board determines that it does not have necessary reports or sufficient information, upon which to base an objective decision in a particular case, it may continue such hearing to a later date. The Board may also continue a hearing to await the disposition of untried indictments, disciplinary proceedings, or to investigate the status of an outstanding detainer. Such continued hearings will subsequently be processed as scheduled, unless new commitments or the loss of good and honor time credits, alters the inmate's parole eligibility dates.

(c) Any eligible inmate may request that his or her scheduled parole grant hearing be deferred until a later specific month or year by signing a waiver to that effect, witnessed by correction or probation and parole personnel. The Board or a designated Hearing Officer may accept or reject the waiver and agree to defer the case or proceed to conduct the hearing. An inmate is to sign a waiver asking that his or her parole hearing be continued until a later date.

(3) Findings and Notice of Decision.

(a) The Board shall notify the inmate, in written form, of its final decision and reasons for the decision. Upon receipt of notice of the decision, the inmate shall sign and date a copy of the decision notification.

(b) (As soon as practicable after the Board's action, it shall cause to be forwarded to the appropriate standing committee of the General Assembly, a written list of the names of all inmates released on parole.

(4) Appellate Procedure.

(a) An inmate whose parole has been revoked, rescinded, or denied may request an appellate review by the Board. Requests for an appellate review must be received by the Board within forty-five (45) days from the date the inmate signed

the decision notification indicating that he or she has received notice of the decision.

(b) If the request for an appeal is not received within forty-five (45) days from the date the inmate signed the decision notification, it will be denied.

(c) The request will be screened by Board Members, or their designee, to decide if it will be forwarded to the Board Members for their review.

(d) Reviews by the Board will be conducted for the following reasons:

1. If there is significant new evidence that was not available at the time of the hearing;

2. If there are allegations of misconduct by the hearing official that are substantiated by the record; or

3. If there were significant procedural errors by the hearing official.

(e) All requests that will be sent to the Board Members for review must be based on one or more of the above stated reasons.

(f) Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural error(s).

(g) If a case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. An appearance appeal hearing may be conducted if there were significant errors on the part of the hearing official or if misconduct on the part of the hearing official occurred in the initial hearing, and another hearing is necessary in order to correct the misconduct or significant errors from the first hearing.

(h) If the appeal reviewer believes that a review by the Board is warranted, the file shall be forwarded to Board Members not voting on the original case and not a party to the original decision. If there are not sufficient non-voting members to finalize the appeal, the appeal document shall be circulated randomly to Board Members until a final decision is reached.

(i) A decision to hold an appeal hearing requires three concurring votes of the Board Members. The Board may also vote to grant the appeal without holding a new hearing if the significant new information is sufficient. This decision also requires the concurrence of three (3) Board Members.

(5) Parole Revocation/Rescission Review Pursuant to TCA § 40-28-122(g)

(a) This type of hearing may be requested by an offender if that offender's parole has been revoked or rescinded by the Board of Parole based solely upon the filing of new criminal charges, and those charges are later:

1. Dismissed or retired on the merits;

2. A no true bill is returned by a grand jury;

3. A verdict of not guilty is returned by a judge or jury; or

4. The offender was arrested and released without being charged.

(b) A written or emailed notice of the foregoing must be submitted to the Executive Director of the Board by:

1. The district attorney general (or designee thereof) from the judicial district in which the charges were brought;

2. The judge in the court where the charges were brought;

3. An Assistant Commissioner from the Department of Correction;

4. The offender's attorney, provided that the notification is also signed by one of the first three officials listed herein; or

5. The offender, provided that the notification is also signed by one of the first three officials listed herein.

(c) This written or emailed notice must include documentation of the alleged event and will be verified within ten (10) business days.

(d) If verified and the offender is eligible pursuant to statute, the Board or the Board's designee will conduct a hearing on the record to determine if the criteria have been met, as outlined in T.C.A. § 40-28-122(g), after which the Board may vote, based on the entirety of the record, to release and reinstate parole in accordance with applicable law. This hearing shall be scheduled for the next available docket, and shall be conducted no later than thirty-five (35) days from verification of eligibility.

(e) If released and reinstated, the Board shall notify TDOC so that any sentence credits that may have been lost while the offender was incarcerated shall also be reinstated.

Authority: T.C.A. §§40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.09 Release on Parole Date.

(1) Grant of Parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the inmate, by a Board designee, and the inmate has voluntarily signed the certificate.

~~(Rule 1100-01-01-.09, continued)~~

(b) If the Board Members have voted to establish a release date, release on that date shall be conditioned upon the continued good conduct of the inmate while remaining incarcerated prior to the effective date, and the approval of a satisfactory release plan.

(c) If the Board has specified in their decision, that the inmate is to complete a program as a pre-parole condition prior to their effective date, the inmate must complete the program prior to that effective date. If the inmate has not

completed the program prior to the effective date, a rescission hearing may be scheduled.

(d) Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay a parole date.

Authority: T.C.A. §§ 40-28-104 and 40-28-116. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.10 Psychological Evaluations.

(1) The Board may order a psychological evaluation of any inmate, where they believe it appropriate.

(2) Psychological evaluations for sex offenders must meet the standards cited in T.C.A. §40-28-116 or the standard that was in effect at the time such inmate committed the sex offense for which they are currently serving their sentence. Such certification is required before any inmate convicted of a sex crime is released on parole.

(3) Such evaluations are not required prior to a sex offender's parole hearing but only prior to a sex offender's release on parole.

(4) Prisoners who have been convicted of a sex offense shall not be released on mandatory parole unless they have been evaluated and meet the statutory requirement described in T.C.A. §40-28-116.

Authority: T.C.A. §§40-28-104, 40-28-106, 40-28-116, 40-28-117, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.11 Detainers.

(1) A Detainer is a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(2) The presence of a detainer shall not, in and of itself, constitute a valid reason for the denial of parole.

(3) Parole to Detainers.

(a) As used in this rule, unless the context otherwise requires, 'parole to a detainer' means the release of the inmate to the physical custody of the authority who has lodged the detainer.

(b) Where the detainer is not lifted, the Board may grant parole to such detainer within their discretion.

(c) The Board will cooperate in establishing and maintaining arrangements for concurrent supervision with other jurisdictions, where such arrangements are feasible and where release on parole appears, to the Board, to be justified.

~~(Rule 1100-01-01-.11, continued)~~

(d) If the Board has granted parole to "detainer only" and the jurisdiction placing the detainer, lifts it or fails to take custody of the inmate, a rescission hearing will be scheduled.

Authority: T.C.A. §§40-28-104 and 40-28-401. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.12 —Rescission of Parole.

(1) Pre-parole Rescission.

(a) If an inmate has been granted parole and has subsequently been charged with institutional misconduct, escape, or has been served with a warrant or received a new felony sentence or had the certification of parole eligibility withdrawn by the Department of Correction or has other changes in circumstances sufficient to become a matter of record, the Board shall be promptly notified and advised of such new circumstances.

(b) No inmate about whom notification has been made pursuant to subparagraph (a) of this subsection shall be released on parole until such time as the institution has been properly informed that no change has been made in the Board's order to parole.

(c) Upon receiving notification as required by subparagraph (a) of this subsection, the Board may schedule a parole rescission hearing or notify the institution that the grant of parole remains.

(2) The Pre-Parole Rescission Procedure.

(a) The rescission hearing may be scheduled, if possible, for the next docket of parole hearings at the institution where the inmate is being held.

(b) The inmate shall be given adequate notice of the reason(s) such rescission hearing is being conducted. Such notice shall be given at least three (3) days prior to the scheduled date of the rescission hearing. The reason(s) for the rescission hearing shall be stated in the notice, with the exception of information that is considered confidential by the Board.

(c) A rescission hearing may be held in order to determine if the inmate's misconduct or other change in circumstances is sufficient to warrant rescission of such inmate's parole grant.

(d) The inmate may appear at his or her rescission hearing and may present documentary evidence and witnesses in his or her behalf at the rescission hearing.

(e) The inmate's presence is not necessary at the rescission hearing if:

1. The institutional misconduct has been established by the institution's disciplinary committee by a finding that the inmate has violated the rules of his or her confinement; or

2. If the misconduct has resulted in a conviction in a court of law.

(f) The Board may delay the parole grant for up to one hundred and twenty (120) days if, in its opinion, it has insufficient information before it to reach an informed and fair decision at the rescission hearing. Awaiting the disposition of institution discipline committees, new charges or indictments, or investigating new

detainers shall also be sufficient grounds to continue a rescission hearing under this subparagraph.

(g) If the result of the process is that the inmate's grant of parole is rescinded, he or she shall be given written notice evidencing the reasons for the rescission of the parole grant.

(h) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

~~(Rule 1100-01-01-.12, continued)~~

~~(~~3) Post-parole Grant Rescission Procedure.

(a) If, after a parole has become effective and the inmate is released on parole, evidence comes to the attention of the Board that significant information was fraudulently given or withheld by the inmate, or on behalf of the inmate, or that the inmate violated the law while on any furlough or other release program prior to being released on parole and such information was not known by the Board, or that the parolee has been arrested, indicted or convicted for an offense that was committed prior to parole, or that the parolee has an unexpired prison term of which the Board was unaware at the time of the hearing, or that a calculation of the parolee's sentence structure would render him or her ineligible for parole, the Director may issue a warrant for the retaking of such parolee.

(b) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

(c) Upon the execution of the warrant, the offender shall be notified of the reasons for the post parole grant rescission hearing. The provisions of Rule 1100-01-01-.14 with regard to notice and hearings procedures shall be followed.

(d) At such rescission hearing, the Board may declare that the grant of parole is void and the inmate shall thereupon resume his or her sentence in custody, or the Board may declare that grant of parole void, but decide to re-parole on both the old and new cases if eligibility has been certified by the Department of Correction, or the Board may decide to leave the subject on parole.

(4) Appeal Procedure.

(a) An inmate whose parole has been rescinded may request an appellate review by the Board. Such review shall be in accordance with the procedure outlined in rule 1100-01-01-.08 (4).

Authority: T.C.A. §§40-28-104 and 40-28-105. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.13 Discharge of Parole.

(1) When the Board is satisfied that a parolee has complied with the conditions of his or her parole in a satisfactory manner, the Board shall cause to be issued to such parolee a certificate of final discharge. Final discharge from parole will be granted only after a

parolee has reached the expiration date of his or her sentence(s). This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

Authority: T.C.A. §§ 40-28-104 ~~and 40-28-125.~~. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.14 —Revocation of Parole.

(1) Parole Revocation

(a) If a Probation/Parole Officer having charge of an offender, has reasonable cause to believe that the offender has violated one or more of the conditions of parole in an important respect, such officer shall present such evidence to the Director or designee.

(b) This report shall be in written form, and shall contain a listing of the violations alleged and the facts and circumstances surrounding each violation.

~~(Rule 1100-01-01-.14, continued)~~

(c) Upon receipt of a Probation/Parole Officer's report alleging violation of parole, the Director or designee, may issue a warrant for the retaking of the offender and his or her return to a correctional institution in the State of Tennessee, if the Director or designee determines parole has been violated in an important respect.

(d) Any officer authorized to serve criminal process, or any peace officer to whom such warrant is delivered, shall execute the warrant by taking the offender into custody.

(e) In those cases where the offender is confined in another state pending new criminal charges, or is serving a sentence in another state, the warrant may be placed there as a detainer. If it becomes apparent that the Board cannot obtain physical custody of the offender detained in another state, the Director or designee shall withdraw the warrant and issue a letter of notification. The letter of notification shall consist of a letter sent to the custodian of the offender being held in another jurisdiction and shall inform such custodian that the named individual is an alleged parole violator in the State of Tennessee.

(f) Such notification shall request that the out-of-state custodian inform the Tennessee Director or designee of the release of the named offender at least ninety (90) days prior to such release from the out-of-state or foreign jurisdiction.

(g) Upon receipt of notification by the custodian that an offender will be released, the Director or designee shall reissue the warrant so that the offender may be returned to Tennessee by execution of such warrant unless parole has expired.

(h) When an offender is returned to the custody of Tennessee authorities from his or her confinement by an out-of-state custodian, such offender shall be afforded prompt parole revocation proceedings.

(i) Nothing in this rule shall be construed to prevent the Director or designee from issuing a letter of notification to the custodian of the offender in the first instance in lieu of placing a warrant as a detainer.

(2) Preliminary Hearing.

(a) Upon execution of a warrant by the Director, the offender shall be given adequate notice of the preliminary hearing or revocation hearing. If a revocation hearing is held within fourteen (14) days after the service of the warrant, a preliminary hearing is not required.

(b) The notice shall state the time and place of the hearing and shall inform the offender that at the hearing he or she will be given the opportunity to present witnesses and documentary evidence in his or her behalf, shall be allowed to cross-examine any adverse witnesses in attendance, and that he or she has a limited right to request legal representation.

(c) Unless waived in writing or a revocation hearing is held within fourteen (14) days of service of the warrant, the offender shall be afforded a preliminary hearing.

(d) The preliminary hearing shall be conducted as scheduled unless the offender voluntarily waives such hearing in writing. For such a waiver to be effective, it must contain the following:

1. A clear statement that the offender is entitled to a preliminary parole revocation hearing; and

2. A clear statement that the offender has the right to present documentary evidence, as well as individual testimony which may give relevant information to the Hearing Officer, and a limited right to request legal representation.

~~(Rule 1100-01-01.14, continued)~~

(e) If the offender expresses his or her desire to waive such hearing, a Probation/Parole Officer shall explain the contents of the waiver to the offender and shall not accept such waiver unless he or she is reasonably certain that the offender fully understands the contents and consequences of such a waiver and that the offender knowingly and voluntarily still desires to waive his or her preliminary hearing.

~~(f)~~(f) A request to appoint an attorney for an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If a preliminary hearing is held and the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board~~,~~ that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

~~(g)~~ 2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (g) 1-3.

(g) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. The offender is incapable of speaking effectively for himself or herself.

(h) In every case in which a request for counsel at a preliminary hearing is denied, the grounds for such refusal shall be stated succinctly, in writing, by the Hearing Officer.

(i) In every case in which a request for counsel at a preliminary hearing is not made, the Hearing Officer or a Parole Officer shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(j) Nothing in this rule shall be construed to prevent the waiver of the right to a preliminary hearing and the decision not to request counsel at the preliminary hearing from appearing on the same document.

(k) At the preliminary hearing, the offender shall have the right to:

1. Appear at the hearing and speak in his or her own behalf;

2. Produce documents, letters, and individuals relevant to the violation(s) alleged;

3. Confront and cross-examine persons who have given adverse information upon which his or her parole revocation is to be based, unless the Hearing Officer finds good cause exists to disallow such cross-examination and confrontation; and

4. Be represented by retained counsel or an attorney appointed under the conditions noted above.

(l) The Hearing Officer shall conduct the hearing informally, including the presentation of the documents or evidence in support of parole violation and the offender's responses to such evidence. Based on the information presented at the hearing, such Officer shall determine whether probable cause exists to believe that the offender violated the conditions of his or her parole in an important respect.

(m) If the Hearing Officer determines it is necessary or the offender requests that any witnesses be subpoenaed, such Officer shall employ the following procedure:

~~(Rule 1100-01-01.14, continued)~~

1. If the witnesses are requested by the offender, such offender or his or her attorney shall submit a written statement to the Probation and Parole Officer, as well in advance of the scheduled hearing as possible, of the names of the persons requested as well as a brief statement of why their testimony is relevant. The statement requesting witnesses shall be forwarded to the ~~District Director who~~Board of Parole which shall review the request(s) and issue subpoenas for necessary witnesses.

2. If the witnesses are requested by the state, the person representing the state shall comply with the same procedure set out in subpart (1) above, but the request shall be sent directly to the ~~District Director.~~Board of Parole.

3. Failure to comply with this procedure by the parties shall be sufficient grounds for denial of a subpoena request. If the offender is not represented by an attorney the subpoenas may be served by a Probation/Parole Officer or sent by certified mail.

(n) At the preliminary hearing, the Hearing Officer shall select one of the following alternative decisions:

1. No probable cause found, and the offender shall be returned to supervision and the violation warrant withdrawn; or

2. Probable cause found and the offender shall remain in custody under the violation warrant to await a final parole revocation hearing before the Board.

(3) Declaration of Delinquency.

(a) A declaration of delinquency may be issued by the Director of Probation and Parole~~, Field Services or designee,~~ in revocation proceedings to suspend such credit toward the service of the offender's sentence. Such declaration shall be made by the Director or designee in any case when a parole violation warrant is issued, and the parolee is not in custody.

(b) Except when an offender is declared to be in a delinquent status, the time he or she is on parole is credited toward the service of his or her sentence unless it is taken by the Board after a revocation of parole.

(c) If delinquency is declared, the offender stops earning credit for the service of his or her sentence from the date of declaration, until the parole violation warrant is served and the offender is housed in a correctional facility in Tennessee. Offenders taken into custody in another state will remain in delinquent status from the declaration of delinquency until they are returned to a Tennessee correctional facility or until delinquency is removed by the Board.

(d) During the revocation process, the Board may consider an alleged violation and determine either that parole should not be revoked or that mitigating or compelling circumstances exist for the violation. The Board may then "take" or "grant" the delinquent time. Taking delinquent time requires that the offender lose credit toward service of sentence. The Board may take all of the delinquent time or some lesser amount of time, which is set by the Board. Granting the delinquent time restores all of the offender's credit toward service of sentence as though delinquency had never been declared.

(4) Notice of Final Parole Revocation Hearing.

(a) Prior to the revocation hearing, the offender shall be notified in writing of the following:

1. The date, time, and location of the hearing;

2. That the offender has the right to appear in person and present such evidence as he or she desires;

3. That he or she has the right to confront and cross-examine any adverse witnesses, unless good cause can be shown for refusing confrontation

and cross-examination, such as a significant potential for harm if identities are revealed; and

4. That the offender has a limited right to request that counsel be appointed to represent him or her at the final revocation hearing.

(5) Continuance of Final Revocation Hearing.

(a) Following a finding of probable cause at the preliminary hearing, the Board shall schedule a final revocation hearing as promptly as possible to consider the alleged violation(s) of parole.

(b) On its own motion, the Board may continue the final revocation hearing in order to secure more or necessary evidence or witnesses at the hearing, or to secure counsel to represent the offender.

(6) Final Revocation Hearing.

(a) At the final revocation hearing, the offender shall have the right to appear and be heard in person and to present witnesses and documentary evidence.

(b) The offender shall have the right to confront and cross-examine adverse witnesses, unless the Board specifically finds good cause for not allowing such confrontation and cross-examination.

~~(c)~~(c) A request to appoint an attorney to an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If at a final revocation hearing, the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board, that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the ~~Board,~~Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in ~~its discretion, may provide counsel based on~~(d) 1-3.

(d) The General Counsel may appoint attorneys in accordance with applicable case law or in the following ~~considerations:~~ situations:

1. ~~That the~~The offender has made a timely and colorable claim that he ~~or she~~ has not committed the alleged violation of the conditions upon which he ~~or she~~ is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. ~~In doubtful cases, the Board will consider whether the~~The offender ~~appears to be capable~~is incapable of speaking effectively for himself or herself.

(~~d~~e) In every case in which a request for counsel at a final revocation hearing is refused, the grounds for such refusal shall be stated succinctly in the record, in writing.

(~~e~~f) In every case in which a request for counsel at a final revocation hearing is not made, the Board shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(~~f~~g) At the final revocation hearing, the Board will initially determine whether the alleged violation of parole is supported by a preponderance of the evidence. In all cases, the burden shall be on the State to establish that a violation occurred.

(~~g~~h) If the Board determines that a parole violation occurred, or if the offender admits to a violation, the Board shall next consider whether such grant of parole should be revoked for the violation.

~~(Rule 1100-01-01.14, continued)~~

(~~h~~i) In all cases, including those situations in which the offender has been convicted of a new offense, the Board shall consider any mitigating factors advanced by the offender, which suggest that the violation of parole does not warrant revocation.

(~~i~~j) All parole revocation hearings shall be conducted in a manner as informal as is consistent with due process and the technical rules of evidence shall not apply to such hearings.

(~~j~~k) All evidence upon which the finding of a parole violation may be based, shall be disclosed to the offender at the revocation hearing unless it has been declared confidential by the Board.

(~~k~~l) Nothing in this subsection shall be construed to prevent the Board from disclosing documentary evidence by reading or summarizing the appropriate document for the offender.

(~~l~~m) If the Board sustains the violation and decides to revoke parole, the offender shall be returned to confinement to serve the remaining portion of his or her sentence or such part as the Board directs. The time an inmate spent on parole shall not be considered as service of the sentence unless the Board determines to grant all or part of such "street time" to the inmate.

(~~m~~n) The Board shall set a review date and record it on a Board Action Sheet.

(~~n~~o) If the Board finds that the offender did not commit the alleged violation or, if he or she did, finds that mitigating factors dictate revocation is not appropriate, the offender shall be allowed to resume ~~the conditions of~~ his or her parole status subject to the conditions approved by the Board.

(7) Felony Committed While on Parole.

(a) If a person is convicted in this state of a felony committed while on parole from a prison, workhouse, or jail in this state, he or she shall serve the remainder of his or her sentence under which parole was granted, or such part of that sentence as the Board may determine before he or she commences serving the sentence fixed for the crime committed while on parole.

(b) If a person on parole from a prison, workhouse, or jail in this state is convicted of a crime under the law of another state or county which, if committed in this state, would be a felony, the Director of Probation and Parole in this state, shall seek to return such offender to this state through the terms of the interstate compact. If

such offender is returned, the Board shall require that he or she serve the portion remaining of his or her maximum term of sentence or such part of that term as the Board may determine.

(c) The Board, at its discretion, may recommend to the Commissioner of Correction, the removal of all or any part thereof, of the good and honor time and incentive time such inmate accrued on the sentence under which he or she was paroled. The final decision relative to whether any or all of such time credits will be removed shall be made by the Commissioner of Correction.

Authority: T.C.A. §§40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-~~120~~121 through 40-28-123 and 40-35-504. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.15 Confidentiality of Records.

(1) Confidential Information.

(a) The following information may be contained in the Board's file and is considered confidential by the Board and will not be released unless listed as an exception under rule 1100-01-01-.15(3):

1. Psychological evaluations provided, however, that such may be released to mental health officials who are treating the offender if a release of information form signed by the offender is presented with the request.

2. Offense Report.

3. Medical Records.

4. Contents of probation and parole staff chronological records, contact notes.

5. Probation/Parole Officers' statements accompanying violation reports

6. Written clemency recommendations to the Governor.

7. Statements in opposition of an offender by victims, families of victims, victims' representatives, families of inmates, private citizens ~~who request confidentiality~~, and public officials who request confidentiality.

8. Victim impact statements.

9. Internal Affairs investigative reports.

10 Any reports or information generated by other agencies.

11. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.

(2) Information Available for Release.

(a) The following information may be released:

1. hearing and decision-making policy and procedures;

2. whether an inmate is being considered for parole or clemency;

3. whether parole or clemency has been granted or denied;

4. effective date for parole;

5. statements in support of a parole;

6. clemency applications and supporting documentation;

7. date, time, and location of hearings;

8. parole certificates and determinate release certificates;

9. reasons for the Board decisions listed on the Board Action Sheet;

10. residential and employment records of offenders;

(b) Requests for information from field supervision files shall be directed to the District Director or his or her designee. The District Director or his or her designee will review the records and release information available under rule 1100-01-01-.15(2)(a).

(3) Upon official request, law enforcement, child support officials, or other governmental entities shall be provided information as necessary to assist in their investigations, in their official capacity. Upon verification of the identity of the requesting official the following information may be released:

~~(Rule 1100-01-01.15, continued)~~

(a) offender's aliases;

(b) offender's M.O. (modus operandi or mode of operation);

(c) offender's address;

(d) offender's place of employment;

(e) offender's photographs and fingerprints;

(f) offender's social security number;

(g) offender's telephone number;

(h) offense reports;

(i) whether a ~~Board of Probation and Parole~~ warrant has been issued and whether an offender has been arrested on a ~~Board of Probation and Parole~~ warrant;

(j) violation reports;

(k) information on assets of persons currently or previously on parole who owe court fines.

(4) The Board shall not release employee personal information such as social security numbers, home addresses, or telephone numbers.

Authority: T.C.A. §§40-28-104, 40-28-106, 40-28-119, and 40-28-504. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.16 Duties and Procedures of Board in Executive Clemency Matters.

(1) The Board shall, upon the request of the Governor, consider and make nonbinding recommendations concerning all requests for commutations or pardons. Such recommendations shall be made according to the following procedures:

(a) Beginning Steps of Clemency Procedure.

1. Upon receipt of a request from an offender or his or her attorney for executive clemency consideration, the Board shall respond by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.

(i) If the Board receives a request for clemency on behalf of an individual by a third party who is not the individual's attorney, the Board shall respond and advise the third party that the person for whom clemency is requested must apply directly to the Board unless that person lacks the competency to apply in his or her own behalf.

(ii) Where a request for clemency is referred to the Board from the Governor's office, the Department of Correction, or any other agency, such request shall be handled in the same manner as if the request had been initially addressed to the Board.

(b) Pardon Requests.

1. An application for a pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the Governor's guidelines. If no such information is included in the application or furnished to the Board, the applicant will be advised that the application cannot be processed further until such information is received.

2. The Board shall review the application and supporting information and determine whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for a hearing. If the applicant is determined not to be eligible for consideration, he or she shall be advised of this and of the reasons he or she is not eligible for consideration.

(c) Commutation Requests.

1. The Board shall review the application and any supporting information and determine whether the applicant falls within the Governor's guidelines and the Board's screening factors, and whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.

2. If the applicant does not fall within the Governor's criteria, the applicant shall be advised as to why he or she is not eligible for consideration and will not be scheduled for a hearing. He or she shall be advised of the date on which he or she will be eligible and may reapply for consideration, provided that none of the Board's screening factors are amended by the Governor to prevent such consideration.

(d) General Procedure for Clemency Requests and Hearings.

1. All requests for executive clemency shall be responded to in a timely manner. After the application is received, the applicant and his or her attorney shall be advised as to whether the case is to be scheduled for a hearing and the date, time, and place of any hearing. All hearings shall be held promptly following the notice to the applicant and his or her attorney, unless it is continued at the Board's discretion, upon the request of the applicant or his or her attorney, or pending receipt by the Board of essential information. The notice shall advise the applicant that he or she is entitled to appear at the hearing and to present witnesses and other evidence on his or her behalf. Such notice shall also include a description of the type of evidence considered by the Board.

2. At the same time that notice is sent to an applicant and his or her attorney, the appropriate Judge and District Attorney General shall be notified that the case has been set for hearing and given the date, time, and place. The notice to the Judge and District Attorney shall indicate that the Board solicits and welcomes their views and recommendations concerning clemency for the applicant.

3. The Board's staff may compile any or all of the following information for the Board's consideration at the hearing:

   (i) a reclassification or parole summary completed by the institutional staff, if the applicant is an inmate;

   (ii) information about the facts and circumstances surrounding the offense and conviction. Such information shall be obtained through investigations conducted by a Probation/Parole Officer or other individual designated by the Board;

   (iii) a psychiatric or psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;

   (iv) information about medical, mental and/or family problems or needs obtained through investigation by a Probation/Parole Officer or other individual designated by the Board, if appropriate; and

   (v) the application, original request, supporting evidence, and any correspondence in the Board's file concerning the application.

4. If the applicant is requesting a pardon, the following additional information shall be obtained:

   (i) information obtained for FBI and local records checks;

   (ii) information regarding recent social history and reputation in the community; and

   (iii) information verifying reasons for pardon request.

5. Although the Board's staff obtains the above information so that clemency hearings not be completely ex parte in nature, the burden remains on the applicant to establish that he or she is entitled to clemency.

6. At a clemency hearing the Board shall consider, but is not limited to, the following factors:

(i) the nature of the crime and its severity;

(ii) the applicant's institutional record;

(iii) the applicant's previous criminal record, if any;

(iv) the views of the appropriate trial Judge and the District Attorney General who prosecuted the case;

(v) the sentences, ages, and comparative degree of guilt of co-defendants or others involved in the applicant's offense;

(vi) the applicant's circumstances if returned to the community;

(vii) any mitigating circumstances surrounding the offense;

(viii) the views of the community, victims of the crime or their families, institutional staff, Probation/Parole Officers, or other interested parties; and

(ix) medical and psychiatric evaluations when applicable.

7. The Board will inform the applicant and his or her attorney, if present, of its recommendation at the end of the hearing or, in its discretion, will take the case under advisement. In either event, the Board shall advise the applicant that its recommendation to the Governor is non-binding and that the Governor will review any recommendation by the Board.

8. The Chair shall designate one member of the Board to write a report to the Governor concerning the case. The report shall include:

(i) a brief statement of the reasons for the recommendation;

(ii) the complete file;

(iii) the views of the various Board Members, if the recommendation is not unanimous; and

(iv) the specifics of the recommendation, whether it is a positive or negative one, and if a positive recommendation is made, any terms and conditions recommended by the Board.

(e) Emergency Medical Clemency Requests. In a small percentage of cases, it is necessary and appropriate that the Board consider requests by individuals recommended for clemency by the Department of Correction's medical staff. At times, these individuals may lack competency to apply on their own behalf and the request may be made by the

medical staff. These requests are made in unusual or emergency medical situations and may require immediate action by the Board. In such cases, a complete medical report and a detailed statement of the emergency situation will accompany the Board's report to the Governor.

(f) As soon as practicable after the Board's clemency recommendation, it shall forward or cause to be forwarded to the appropriate standing committees of the General Assembly, designated by the Speaker of the Senate and the Speaker of the House of Representatives, a written list of the names of all persons receiving both favorable and unfavorable recommendations.

(g) The list required by subsection (f) shall also be furnished to the appropriate Attorney General in whose district any such person was convicted.

(h) ~~Board~~ Supervision of Commutees.

1. When the Governor of the State of Tennessee commutes an offender's sentence and makes community supervision ~~by the Board~~ a condition of such commutation, ~~the Board~~TDOC shall assign the commutee a Probation/Parole Officer in the same manner as if the offender had been released on parole.

2. If the Probation/Parole Officer supervising such commutee has reasonable cause to believe such person has violated the conditions of his or her commutation, the Officer shall detail the circumstances of the alleged violation in the form of an affidavit and transmit such affidavit to the Director of Probation and Parole. In no event shall the Probation/Parole Officer arrest, detain, or cause the arrest or detention of a commutee unless done on the basis of a warrant from the Governor.

3. The Director shall review and shall immediately transmit, in appropriate cases, affidavits received pursuant to this subsection, to the office of the Governor.

4. At the request of the Governor, the Board shall conduct a commutation revocation hearing to determine if a commutee has violated the conditions of his or her commutation. The Board will conduct such hearings in the same manner and use the same procedures as parole revocation hearings are conducted pursuant to rule 1100-01-01-.14.

5. At the conclusion of the hearing the Board shall transmit the record of such hearing, together with the Board's non-binding findings and recommendations concerning the alleged commutation violation, to the Governor.

Authority: T.C.A. §§40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114 and 40-28-126. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

* 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)
Richard Montgomery	Aye				
Barrett Rich	Aye				
Gay Gregson	Aye				
Roberta Kustoff	Aye				
Zane Duncan	Aye				
Gary Faulcon	Aye				
Tim Gobble				Absent	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board (*board/commission/other authority*) on 09/27/2018 (*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.

RACHEL A. HITT STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY

Date: 11/8/18

Signature: Jim Purviance

Name of Officer: Jim Purviance

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-2018

Notary Public Signature: Rachel Hitt

My commission expires on: 12-16-18

Agency/Board/Commission: Tennessee Board of Parole

Rule Chapter Number(s): 1100-01-01-.01 to 1100-01-01-.16

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/7/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/14/18

Effective on: 3/14/19

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Safety
DIVISION:	Administrative
SUBJECT:	Access to Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-501 et. seq.
EFFECTIVE DATES:	March 5, 2019 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule adopts the Department's Open Records Policy as a rule, as required by 2018 Public Chapter 712. It incorporates how a person requests rules and where the fees charges, fee waivers, and any statutorily set fees.

Public Hearing Comments

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

On September 24, 2018, the Department of Safety and Homeland Security held a rulemaking hearing regarding the proposed Rules and Regulations for Access to Public Records, Rule 1340-08-01.

At the hearing, one speaker presented comments. The record was held open for an additional two (2) weeks for further written comments to be submitted. No written comments were received during the comment period or the two week additional period.

Comment: The Department's requirement of identification to receive documents overall hinders and thwarts access to public records and can create a chilling effect on accessing public records, and the law does not require someone to be a resident before a state agency can provide access to or provide copies of public records.

Response: In order to ensure records are being released only to Tennessee citizens, who are statutorily allowed to access Tennessee public records [T.C.A. § 10-7-503(a)(2)] the Department requires identification indicating the person is a Tennessee resident. The Department declines to make this change.

Comment: The Department should allow verbal confirmation of residency or a checkbox or simply a statement on the records request to be that verification of Tennessee residency.

Response: The Department does not believe this will be adequate to ensure that records are only being released to Tennessee citizens. The Department declines to make this change.

Comment: The Department should update the rules regarding the requesting and responding records request by stating that custodians are allowed to release records without having to go through the public records request coordinator, or that a public records request coordinator, must deliver the request to the custodian as soon as they receive it.

Response: The Department rules follow the model policy set forth by the Open Records Advisory Council regarding response to records, including duties of public records request coordinators and records custodians. The Department declines to make this change.

Comment: The rules reference T.C.A. § 10-7-503(g) with regard to law enforcement officer files, and that may be an incorrect citation.

Response: That was a typographical error and should be T.C.A. § 10-7-504(g). The Department has made the correction.

Comment: The proposed rules rule omits that the department will include a statement to the requester of the time reasonably necessary to produce the record or information as required by law.

Response: The Department has amended the proposed rules to include that requirement at 1340-08-01-.05(2)(b).

Comment: The 25 page limitation on when a requestor can use a cell phone camera is arbitrary and unreasonable. The Department should allow persons to use their cell phone to take pictures regardless of the number of pages responsive to a request.

Response: The limitation balances the Department's cost of producing records with the ability of the requestor to utilize their own camera equipment. The Department declines to make this change.

Comment: The Department's rule on providing records by e-mail if the total amount of the request is less than $10 is arbitrary, as e-mail is less expensive than postal mail for providing records to a requestor.

Response: The e-mail limitation is tied to the automatic waiver for fees. In addition, the state's email system and some external e-mail servers limit the size of attachments to emails. Without knowing the exact limitations on external servers or the state's servers or how large a response will be when scanned, it is harder to determine a set point for when a response can be sent by e-mail. The limitation will remain tied to the automatic waiver for fees.

Comment: The Department should raise the automatic fee waiver threshold to $50, instead of $10, to reduce the cost in collecting micro fees via check.

Response: Agreed. The Department has raised the fee waiver threshold to $50.

Comment: The Department should consider including language that it will give preference to waiving fees for requests considered for the public interest or for the public good.

Response: The Department evaluates all requests for waivers on their merits and cannot give preference to one request over another. The Department declines to make this change.

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.

(Insert statement here)

This rule will not affect small businesses.

Impact on Local Governments

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

(Insert statement here)

This will have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rule adopts the Department's Open Records Policy as a rule, as required by 2018 Public Chapter 712. It incorporates how a person requests rules and where, the fees charges, fee waivers, and any statutorily set fees.

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

2018 Public Chapter 712; T.C.A. § 10-7-501 et. seq.

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

Tennessee citizens who request public records will be most directly affected. The Tennessee Coalition for Open Government submitted comments requesting changes before adoption of the rules.

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

None.

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

This will have minimal impact on the state revenues and expenditures.

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

Lizabeth Hale, Deputy General Counsel
Kyle Turner, Assistant General Counsel
Elizabeth Stroecker, Assistant General Counsel

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

Lizabeth Hale, Deputy General Counsel
Kyle Turner, Assistant General Counsel
Elizabeth Stroecker, Assistant General Counsel

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

312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;
Lizabeth.Hale@tn.gov, 615-251-5349; Kyle.Turner@tn.gov, 615-251-5123;
Elizabeth.Stroecker@tn.gov, 615-251-5199

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

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

For Department of State Use Only

Sequence Number: 12-09-18
Rule ID(s): 7703
File Date: 12/5/18
Effective Date: 2/5/19

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 Safety
Division:	Administrative
Contact Person:	Kyle Turner
Address:	312 Rosa L. Parks Avenue, 25th Floor, Nashville TN
Zip:	37243
Phone:	615-251-5123
Email:	Safety.OpenRecords@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**
1340-08-01	Rules and Regulations for Access to Public Records
Rule Number	**Rule Title**
1340-08-01-.01	Purpose
1340-08-01-.02	Definitions
1340-08-01-.03	Requesting Access to Public Records
1340-08-01-.05	Responding to Public Records Requests
1340-08-01-.06	Inspection of Records
1340-08-01-.07	Copies of Records
1340-08-01-.08	Fees, Charges, and Procedures for Billing and Payment
1340-08-01-.09	Aggregation of Frequent and Multiple Requests

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.

RULES
OF
THE TENNESSEE DEPARTMENT OF SAFETY
ADMINISTRATATIVE DIVISION

CHAPTER 1340-8-1
RULES AND REGULATIONS FOR ACCESS TO PUBLIC RECORDS

1340-08-01-.01 ~~CHARGES FOR ACCESS TO PUBLIC RECORDS.~~ PURPOSE.

~~Upon a request for records under Tennessee's Public Records Act, Tenn. Code Ann. § 10-7-501 et seq., the Department shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel, available at http://www.comptroller.tn.gov/openrecords/forms.asp.~~

To establish the procedures for requesting access to Public Records of the Tennessee Department of Safety & Homeland Security and for bulk sales of data to authorized persons.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

1340-08-01-.02 ~~WAIVER.~~ DEFINITIONS.

~~Should any charge assessed under Rule 1340-08-01-.01 total ten ($10.00) dollars or less, the Department shall waive the charge and provide the requested documents without payment.~~

(1) Inspection: The visual review of requested records, without the making of copies, whether by the TDOSHS or Requestor, by any means, that does not require a charge to view. An inspection can be converted into copies upon payment of proper charges.

(2) Public Records Request Coordinator (PRRC): The individual, or individuals, designated in 1340-08-01-.03(1)(c) of this rule who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See T.C.A. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.

(3) Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. See T.C.A. § 10-7-503(a)(1)(A).

(4) Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a public record. See T.C.A. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

(5) Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

(6) T.C.A: Tennessee Code Annotated

(6) TDOSHS: The Tennessee Department of Safety & Homeland Security.

(7) TPRA: Tennessee Public Records Act, T.C.A. § 10-7-501 et seq.

(8) Unclaimed Request: Any request which has not been inspected, picked up, or otherwise obtained by the requestor more than thirty (30) days after the date the requestor was notified that the records were available for inspection or copies were ready to be picked up.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

1340-018-01-.03 REQUESTING ACCESS TO PUBLIC RECORDS.

1340-018-01-.03 ~~REDUCTION OF FEES.~~ REQUESTING ACCESS TO PUBLIC RECORDS.

~~The Commissioner, or his or her designee, may reduce any part of the fees calculated under these rules upon a written determination that such reduction would be in the best interests of the public.~~

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

(2) Proof of Tennessee citizenship is required as a condition to inspect or receive copies of public records.

(a) Proof of citizenship can be furnished by:

(i) Presentation of a valid Tennessee driver's license, or other state issued photographic ID that includes the requestor's Tennessee address at the time of the request;

(ii) Submission of a request on business letterhead with the business' address in Tennessee. Records will be sent to the Tennessee address on the letterhead and not to any other address; or

(iii) Presentation of a valid Tennessee driver license or other state issued photographic ID that includes the requestor's Tennessee address prior to the inspection of records or a requestor obtaining the records in person.

(b) The Department reserves the right to request additional ID if the validity of the business address or the identification presented is in question. The Department will notify a requestor in writing, when possible, of the need for additional documentation.

(c) The Department may also ask the person to allow the Department to verify the address through the Department's driver license system if the person does not wish to provide a copy of the driver license or other ID.

(3) Inspections

(a) Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing or email address from the requestor for providing any written communication required under the TPRA.

(b) Requests for inspection may be made orally or in writing using the Public Records Request Form (SF-1565) located at https://www.tn.gov/safety/publicsafety/openrecords.html, by:

(i) mail or in person to 312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;

(ii) phone at 615-251-5166; or

(iii) e-mail to Safety.OpenRecords@tn.gov.

(c)

(i) Requests to inspect personnel files or disciplinary files of law enforcement personnel will require the Tennessee Department of Safety Request for Personnel File Inspection/Copies Form (SF-1079), to be provided prior to inspection in order to comply with T.C.A. §10-7-504(g). The form is located at https://www.tn.gov/safety/publicsafety/openrecords.html

(ii) While requests may be made in person, requested files may not be readily available. The requestor may be asked to schedule an inspection time in order for the TDOSHS to locate, review, and, if necessary, redact any and all requested files.

(iii) The law enforcement officer whose file has been requested will be provided notice of who requested the file as required by T.C.A. § 10-7-504(g).

(4) Requests for copies or for inspection and copies

(a) Requests for copies, or requests for inspection and copies, shall be made in writing using the Public Records Request Form (SF-1565) located at https://www.tn.gov/safety/publicsafety/openrecords.html.

(b)

(i) Requests to inspect or for copies of personnel files or disciplinary files of law enforcement personnel will require the Tennessee Department of Safety Request for Personnel File Inspection/Copies Form (SF-1079), to be provided prior to inspection or production of files in order to comply with T.C.A. §10-7-504(g). The form is located at https://www.tn.gov/safety/publicsafety/openrecords.html

(ii) While requests may be made in person, requested files may not be readily available. The requestor may be asked to schedule an inspection time in order for the TDOSHS to locate, review, and, if necessary, redact any and all requested files.

(iii) The law enforcement officer whose file has been requested will be provided notice of who requested the file as required by T.C.A. § 10-7-504(g).

(c) Requests can be made by:

(i) mail to 312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;

(ii) phone at 615-251-5166; or

(iii) e-mail to Safety.OpenRecords@tn.gov.

(5) Statistical data of the TDOSHS is available online for the categories listed below.

(a) Checkpoint Locations: http://www.tennessee.gov/safety/article/checkpoints

(b) Crash Data: http://www.tennessee.gov/safety/article/crashdata

(c) THP Activity: http://www.tennessee.gov/safety/article/thpactivity

(d) Handgun Carry Permits: http://www.tennessee.gov/safety/article/handgun

(e) Driver License: http://www.tennessee.gov/safety/article/driverlicense

(f) Special Reports: http://www.tennessee.gov/safety/article/specialreports

(g) Historical Data: http://www.tennessee.gov/safety/article/historical

Authority: T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712. **Administrative History:** Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.

1340-08-01-.05 RESPONDING TO PUBLIC RECORDS REQUESTS.

(1) Public Record Request Coordinator (PRCC):

(a) The PRRC shall review public record 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 TDOSHS is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

1. Advise the requestor of this rule and the elections made regarding:

(i) Proof of Tennessee citizenship;

(ii) Form(s) required for copies;

(iii) Fees (and labor threshold and waivers, if applicable); and

(iv) Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing, providing the appropriate ground such as one (1) of the following:

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

(ii) The request lacks specificity. The TDOSHS may work with requestors to clarify the request;

(iii) An exemption makes the record not subject to disclosure under the TPRA, and inform the requestor of the specific exemption;

(iv) The TDOSHS is not the custodian of the requested records; and/or

(v) The records do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed.

4. Forward the records request to the appropriate records custodian in the TDOSHS.

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.

(c) The designated PRRCs are listed online at https://www.tn.gov/safety/publicsafety/openrecords.html.

(d) The PRRC(s) shall report to the Commissioner or the Commissioner's designee on an annual basis about the Governmental Entity's compliance with the TPRA pursuant to this policy and shall make recommendations, if any, for improvement or changes to this policy.

(2) Records Custodian:

(a) Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. §10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, TDOSHS Legal counsel, or the Attorney General's office.

(b) If 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; to redact records; or for other similar reasons, then a records custodian or PRRC shall, within seven (7) business days from the date TDOSHS receives the request, send the requestor a completed Public Records Request Response located at https://www.tn.gov/content/dam/tn/safety/documents/Public_Records_Response.pdf. The response shall include a statement of the time reasonably necessary to produce the records.

(c) If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Rule 1340-08-01-.05(b)(2) using the Public Records Request Response.

(d) If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.

(e) If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Redaction:

(a) If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the Office of Attorney General and Reporter.

(b) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008;*

effective March 30, 2009.

1340-08-01-.06 INSPECTION OF RECORDS.

(1) There shall be no charge for inspection of open public records.

(2) Inspection of records shall take place at the TDOSHS office where the records are normally maintained, unless circumstances require otherwise. The location for inspection of records within the appropriate TDOSHS office shall be determined by either the PRRC or the records custodian.

(3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

(a) Due to staffing and security measures in place, appointments will be needed for inspections at the locations listed below:

(i) Knoxville Legal Office, Strawberry Plains Pike, Knoxville

(ii) Nashville Legal Office, Foster Avenue, Nashville

(iii) Memphis Legal Office, Macon Road, Memphis

(iv) Human Resources, Foster Avenue, Nashville

(v) Any records located in the Tennessee Tower, Rosa L. Parks Avenue, Nashville

(4) The requestor will be informed of the location for inspection and if an appointment is needed at the time the requestor is notified that the records are available for inspection.

(5) If, after viewing the records, a requestor wishes to obtain copies, the TDOSHS shall calculate the cost based on the copy and labor charges for the entire request and, if the requestor does not wish to obtain all records produced, shall pro-rate the charges on a per page basis.

(6)

(a) A requestor will not be allowed to make copies of records with personal equipment, including, but not limited to, personal copier or scanners.

(b) A requestor may use a personal cellphone to take still pictures or video of records when the total amount of pages of the entire request is equal to or less than 25 pages.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

1340-08-01-.07 COPIES OF RECORDS.

(1) A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the records custodian.

(3) Mailing:

(a) Upon advanced payment for postage, or submission of a prepaid envelope, copies will be delivered to the requestor's Tennessee home address by the United States Postal Service.

(b) Copies may also be provided by Federal Express upon submission of a prepaid envelope, prepaid mailing label, or billing account number.

(c) Copies may be provided by UPS upon submission of a prepaid envelope or mailing label.

(4) If the total cost for labor and copying is less than $50.00, the records may be submitted electronically to the requestor's e-mail address, if provided.

(5) Records which include personally identifiable information cannot be sent by email.

(6) Requests which contain allowable personally identifiable information (PII) will only be provided by Secure File Transfer Protocol (SFTP), if provided electronically.

(7)

(a) A requestor will not be allowed to make copies of records with personal equipment, including, but not limited to, personal copier or scanners.

(b) A requestor may use a personal cellphone to take still pictures or video of records when the total amount of pages of the entire request is equal to or less than 25 pages.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

1340-08-01-.08 FEES, CHARGES, AND PROCEDURES FOR BILLING AND PAYMENT.

(1) Fees and charges for copies of public records should not be used to hinder access to public records. Unless otherwise required by statute, no charges will be assessed for copies and duplicates unless total cost of both copying and labor is more than $50.00.

(2) Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

(3) When fees for copies and labor do not exceed $50.00, the fees will be waived. Fees associated with aggregated records requests will not be waived. Fees set by statute cannot be waived.

(4) Fees and charges for copies shall be based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel, available at http://www.comptroller.tn.gov/openrecords/forms.asp.

(5) Other:

(a) $5.00 for each Moving Violation Record/driver history per T.C.A. §55-50-204.

(b) $5.00 for each Affidavit for proof of insurance per T.C.A. §55-50-204.

(c) $4.00 for unredacted crash reports per T.C.A. §55-12-108. Redacted crash reports are fifteen cents ($0.15) per page.

(d) Unredacted Crash Videos/DVDs with photos taken by the Investigating Trooper shall be provided for free, if the requestor is authorized to receive unredacted material under state or federal law.

(e) Crash Videos/DVDs with photos taken by the Investigating Trooper that are required to be redacted per state or federal law will be charged at actual cost, including the cost of any redaction done by a third party vendor.

(f) Paper copies of Crash photos taken by the Investigating Trooper shall be made available at a charge of fifteen cents ($0.15) per page.

(g) Bulk requests for driver license data shall be charged per Rule 1340-08-01-.04

(h) Individual Blood Alcohol Reports shall be provided for free.

(i) Individual Toxicology Reports shall be provided for free.

(j) Paper copies of Vehicular Homicide Reports shall be made available at a charge of fifteen cents ($0.15) per page. There shall be no labor charge for copying these reports.

(k) Unredacted Critical Incident Response Team ("CIRT") Videos/DVDs shall be provided for free if the requestor demonstrates they are authorized to receive unredacted material under state or federal law

(i) Redacted CIRT Videos/DVDs with photos taken by CIRT will be charged at actual cost, including the cost of any redaction done by a third party vendor.

(m) Paper copies of CIRT photos taken by CIRT shall be made available at a charge of fifteen cents ($0.15) per page. There shall be no labor charge for copying these reports.

(n) E-Crime Reports (SF-1496) shall be provided for free.

(o) Incident Reports (SF-1493) shall be provided for free.

(p) Offense Reports (SF-1492) shall be provided for free.

(q) Labor when time exceeds one (1) hour.

(r) If an outside vendor is used, the actual costs assessed by the vendor.

(6) Payment is to be made by personal check, cashier's check, or money order payable to the Department of Safety & Homeland Security and presented to either the PRRC or the records custodian.

(7) Advance payment:

(a) Payment in advance of half of the estimated amount will be required when costs are estimated to exceed $100.00.

(b) Payment in advance of the full estimated amount will be required when the TDOSHS is using an outside vendor to complete the request. The TDOSHS will notify the requestor in advance of preparing the records that an outside vendor is being used and the estimated amount from the vendor.

(8) The Commissioner or the PRRC, as the Commissioner's designee, may, on a case by case basis, reduce any part of the fees calculated under this policy or waive any fee upon a written request for waiver or reduction.

(a) Fees set by statute or charged by an outside vendor shall not be reduced or waived.

(b) The waiver or a reduction of any fees is in the sole discretion of the Commissioner or PRRC, is not subject to judicial review, and does not establish any precedent.

(9) Retention of Requests:

(a) If a request, either for copies or inspection, is unclaimed for thirty (30) days after the TDOSHS notified the requestor, in writing, of the completion of the request and any charges, the TDOSHS shall send a letter to the requestor, in writing, notifying the requestor that:

1. The records are available and the location; and

2. If the records remain unclaimed for an additional thirty (30) days from the date of the letter, the requestor will need to submit a new request for the records, and the new request may result in a new fee being charged.

(b) At the end of the second thirty (30) day period, any original records shall be returned to their location and any copies made shall be destroyed by the TDOSHS. If the original requestor submits a second request prior to the destruction of any copies, the TDOSHS shall charge the original cost for the copying and labor, in addition to any fees that might be required if the second request seeks additional materials.

(c) If the request was to inspect and only a telephone number was provided, the TDOSHS shall telephone the requestor and make notes regarding any conversation, and shall save such notes as part of the request.

(10) Lack of Payment or Lack of Inspection

(a) If a person makes two (2) or more requests to view a public record within a six-month period and, for each request, the person fails to view the public record within fifteen (15) business days of receiving notification that the record is available to view, TDOSHS is not required to comply with any public records request from the person for a period of six (6) months from the date of the second request to view the public record unless the governmental entity determines failure to view the public record was for good cause; and

(b) If a person makes a request for copies of a public record and, after copies have been produced, the person fails to pay to TDOSHS the cost for producing such copies, the TDOSHS is not required to comply with any public records request from the person until the person pays for such copies; provided, that the person was provided with an estimated cost for producing the copies in accordance with state law and these rules prior to producing the copies and the person agreed to pay the estimated cost for such copies.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

1340-08-01-.09 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.

(1) The TDOSHS will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC 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).

(2) Aggregation:

(a) The level at which records requests will be aggregated is at the agency level.

(b) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

Authority: *T.C.A. §§ 4-3-2009 and 10-7-501 et seq.; 2018 Public Chapter 712.* ***Administrative History:*** *Public necessity rule filed November 5, 2008; effective through April 19, 2009. Original rule filed November 5, 2008; effective March 30, 2009.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Safety & Homeland Security on October 19, 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: 08-02-18

Rulemaking Hearing(s) Conducted on: (add more dates). 09-24-18

Date: 11-29-18

Signature: Lizabeth Hale

Name of Officer: Lizabeth Hale

Title of Officer: Deputy General Counsel

JAMIE WRIGHT STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY MY COMMISSION EXPIRES 11-8-2021

Subscribed and sworn to before me on: 11-29-18

Notary Public Signature: Jamie Wright

My commission expires on: 11-08-21

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

Rule Chapter Number(s): 1340-08-01

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/5/18

Effective on: 2/5/19

Tre Hargett
Secretary of State

2018 DEC -5 PM 12:14
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Public Records Commission
DIVISION:	Records Management
SUBJECT:	Rules of Public Records Commission
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-306
EFFECTIVE DATES:	March 7, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rulemaking hearing rules update and expand the old commission rules to provide state agencies with more guidance on their responsibilities relating to records management. Additionally, the amended rules expand upon the process of the submission and approval of a records disposition authorization with the commission. Section 1210-01-.01 Authority, Purpose and Applicability • Updates and expands on the current version (1) Authority and Scope by defining it in three parts. • Current version (2) through (6) entries dealing with governing body, officers, meetings, procedures, and records management division were deleted as these were reprints of what is in the TC.A. • Current version (7) Records officer is updated and moved to 1210-01 -. 06 in the new version. Section 1210-01 -.02 Definitions • Definitions updated but no significant change. Section 1210-01 -.03 Responsibilities of the State Agencies • New section replacing 1210-1-3 Procedures for the Management of Records. • Provides details on the responsibilities of the agencies' records program/officer. • Records Holding Report is listed in this section. • Requires an agency to provide written notice to the Division on the appointment of a new records officer. Section 1210-01-.04 Procedures for Adoption of Records Disposition Authorization.

• Expands on the current version 1210-1 -3(1) Records Disposition Authorizations and current version 1210-1-4 Review Process.
• Provides details on what is required in an RDA (the core data).
• Expands upon the process of submitting and the approval process.
• Updates information in current version 1210-1-5(1) Records Creation and (3) Amending Records Disposition Authorizations.
Section 1210-01 -. 05 Procedures for the Reproduction of Stored Records
• Provides guidance on reproducing records in other formats.
• Provides guidance on security and integrity of agency records.
• Updates information in current version 1210-1-5(2) Records Retention and Disposition.
Section 1210-01 -.06 Procedures for the Disposal of Records
• Replaces and expands on current version 1210-1-5 Retention, Destruction, and other Disposition of Records.
• Updates and expands 1210-1-5(4) Records Destruction.
• Updates and expands 1210-1-5(5) Records Management Division Destruction of Records, and (6) Destruction Procedures.
• Adds information and guidance for the agency records officer.
• Provides more Guidance for the records officer on the records holding report.

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 at the Public Records Commission Rulemaking Hearing on October 30, 2018.

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 newly amended Public Records Commission Rules will not affect small business.

Impact on Local Governments

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

The newly amended Public Records Commission Rules 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 Rules of the Public Record Commission update and expand the old rules to provide state agencies with more guidance on their responsibilities as it relates to records management. Additionally, the amended rules expand upon the process of the submission and approval of a Records Disposition Authorization with the Public Records Commissions.

PRC Rules – Summary of Changes

Section 1210-01-.01 Authority, Purpose and Applicability

- Updates and expands on the current version (1) Authority and Scope by defining it in three parts.
- Current version (2) through (6) entries dealing with governing body, officers, meetings, procedures, and records management division were deleted as these were reprints of what is in the T.C.A.
- Current version (7) Records officer is updated and moved to 1210-01-.06 in the new version.

Section 1210-01-.02 Definitions

- Definitions updated but no significant change.

Section 1210-01-.03 Responsibilities of the State Agencies

- New section replacing 1210-1-3 Procedures for the Management of Records.
- Provides details on the responsibilities of the agencies' records program/officer.
- Records Holding Report is listed in this section.
- Requires an agency to provide written notice to the Division on the appointment of a new records officer.

Section 1210-01-.04 Procedures for Adoption of Records Disposition Authorization.

- Expands on the current version 1210-1-3(1) Records Disposition Authorizations and current version 1210-1-4 Review Process.
- Provides details on what is required in an RDA (the core data).
- Expands upon the process of submitting and the approval process.
- Updates information in current version 1210-1-5(1) Records Creation and (3) Amending Records Disposition Authorizations.

Section 1210-01-.05 Procedures for the Reproduction of Stored Records

- Provides guidance on reproducing records in other formats.
- Provides guidance on security and integrity of agency records.
- Updates information in current version 1210-1-5(2) Records Retention and Disposition.

Section 1210-01-.06 Procedures for the Disposal of Records

- Replaces and expands on current version 1210-1-5 Retention, Destruction, and other Disposition of Records.
- Updates and expands 1210-1-5(4) Records Destruction.
- Updates and expands 1210-1-5(5) Records Management Division Destruction of Records, and (6) Destruction Procedures.
- Adds information and guidance for the agency records officer.
- Provides more guidance for the records officer on the records holding report.

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

The Public Records Commission is authorized to promulgate rules based on Tennessee Code Annotated § 10-7-306 (see below).

(a) The commission shall issue rules and regulations which shall include such procedures as may be necessary to carry out the purposes of this chapter. Such rules and regulations shall provide, but not be limited to:
(1) Procedures for the adoption of any record to be created by any department, board, commission or agency;
(2) Standards and procedures for the reproduction of records for security or for disposal of original records;
(3) Procedures for compiling and submitting to the division lists and schedules or records proposed for disposition; and
(4) Procedures for the physical destruction or other disposition of records.

(b) All rules and regulations must be approved by a majority of the voting members of the commission. The commissioner of general services as the administrative officer and secretary of the commission shall sign all rules and regulations on behalf of the commission.
(c) The rules and regulations shall be issued and promulgated in accordance with title 4. The commission need not formally meet to act under this section, but may adopt any rule, regulation, procedure or disposal with the written approval of all voting members.

(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 Rules of the Public Records Commission apply to the agencies of State government. Per the definition in section 1210-01-.02, "Agency" means any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law, including the legislative branch and the judicial branch; provided, however, that for purposes of this part only, "agency" does not include the legislative branch. This definition is taken directly from Tennessee Code Annotated § 10-7-301.
No agencies, records officer or the like have urged rejection of this rule. It was properly posted and the Records Management Division did not hear any opposition to the rules from the State agencies.

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

No opinions of the Attorney General and reporter or any judicial ruling directly relates to the rules or the necessity to promulgate the rule.

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

There is no fiscal impact in State and local government revenues and expenditure resulting from the promulgation of this rule.

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

Kevin Callaghan, Director of Records Management, Office of Tennessee Secretary of State Tre Hargett, 615-253-4566

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

Kevin Callaghan, Director of Records Management, Office of Tennessee Secretary of State Tre Hargett, 615-253-4566

(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

Kevin F. Callaghan, Director Records Management Division, Office of Tennessee Secretary of State Tre Hargett
312 Rosa L. Parks Avenue, 8th Floor
William R. Snodgrass Tower
Nashville, TN 37243
615-253-4566
Kevin.Callaghan@tn.gov

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

Attached Red Line Comparison.

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: 12-11-18
Rule ID(s): 7744
File Date: 12/7/18
Effective Date: 3/7/19

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: Public Records Commission
Division: Records Management Division
Contact Person: Kevin Callaghan
Address: 312 Rosa L. Parks Ave., 8th Floor, Nashville, TN
Zip: 37243
Phone: 615-253-4566
Email: Kevin.callaghan@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**
1210-01	Rules of Public Records Commission
Rule Number	**Rule Title**
1210-01-.01	Authority, Purpose and Applicability
1210-01-.02	Definitions
1210-01-.03	Responsibilities of the State Agency
1210-01-.04	Procedures for the Adoption of Records Disposition Authorization
1210-01-.05	Procedures for the Reproduction and Storage of Records
1210-01-.06	Procedures for the Disposal of Records

Chapter 1210-01
Public Records Commission

1210-01-.01 Authority, Purpose and Applicability ~~and Scope~~
1210-01-.02 Definitions
1210-01-.03 ~~Procedures for the Management of Records~~Responsibilities of the State Agency
1210-01-.04 ~~Review Process~~Procedures for the Adoption of Records Disposition Authorizations
1210-01-.05 ~~Retention, Destruction or Other Disposition of Records~~Procedures for the Reproduction and Storage of Records
1210-01-.06 Procedures for the Disposal of Records

1210-01-.01 Authority, Purpose and ~~Scope~~Applicability.

(1) Authority. The ~~Public Records~~ Commission ~~was created by statute~~has the authority to determine ~~and order~~the proper disposition of state records. The Commission shall direct the Department of State to initiate, through the Division, any action it may consider necessary to accomplish more efficient control and regulation of records holdings and management in any agency.

~~(2) Governing Body. Permanent voting members of the Public Records Commission are the State Treasurer, the Comptroller of the Treasury, the Secretary of State, the Director of Legal Services for the General Assembly, and the Commissioner of General Services. Each permanent voting member may designate a representative and shall notify the Chairman and the Secretary of the Commission in writing of such designations. The president of the Tennessee Historical Society serves as a nonvoting member.~~

~~When management or disposal of legislative records is under consideration, the Speaker of the Senate, or his representative, the Speaker of the House of Representatives or his representative, and the Secretary of State, or his representative, shall serve as temporary nonvoting members of the Commission.~~

~~When the management or disposition of judicial records is under consideration, the Attorney General, or his representative, and the Chief Justice of the Supreme Court, or his representative, shall serve as temporary nonvoting members.~~

~~(3) Officers. The Public Records Commission shall elect its Chairman by a majority of the voting members of the Commission. The election of Chairman of the Public Records Commission shall be for a two-year term. The Commissioner of General Services shall be the Administrative Officer and Secretary of the Public Records Commission.~~

~~(4) Meetings. The Public Records Commission shall meet at least twice annually. A quorum for conducting business of the Public Records Commission shall be three (3) of the permanent members or their designated representatives in attendance. The Secretary of the Public Records Commission shall give proper notice to the members of the Commission of meetings. Records Management Division shall create an agenda to be given to the members of the Commission before each meeting. The Secretary of the Public Records Commission shall keep adequate written minutes of all Commission meetings. Minutes shall be presented for approval or correction at the next Commission meeting.~~

~~(5) Procedures, Rules and Regulations. The Public Records Commission shall issue rules and regulations which shall include such procedures as may be necessary to carry out the purpose of the Records Management Division. The rules and regulations governing the Records Management Program shall be binding to all State agencies, as well as the Legislative Branch and Judicial Branch of State government to the extent that it is constitutionally permissible.~~

~~(6) Records Management Division. The Records Management Division of the Department of General Services, by direction of the Public Records Commission, shall be the primary records management agency for State government, and as such shall direct the disposition of all records.~~

~~(7) Records Officer. The head of each department, commission, board or agency shall designate a Records Officer, who shall be an employee at the administrative level, and inform the Commission Chairman in writing of such~~

~~designation. The Records Officer shall be the primary facilitator between the agency, the Records Management Division and the Public Records Commission.~~

~~***Authority:*** *T.C.A. §§10-7-301 through 10-7-306.* ***Administrative History:*** *Original rule filed December 4, 1991; effective March 30, 1992.*~~

~~**1210-1-2 DEFINITIONS.** For the purpose of these rules the following definitions shall apply:~~

~~(1) Records. Records shall mean~~(2) Purpose. The purpose of these rules is to assist state agencies in maintaining and disposing of their records to ensure each record's authenticity, integrity, reliability and accessibility. To demonstrate these characteristics, a record must be accurate, complete, unaltered and able to be located and retrieved.

(3) Applicability. These rules are applicable to all agencies contained within the executive, legislative and judicial branches of state government. These rules apply to all records maintained by state agencies, regardless of the type or format of the records, or the type of storage media used.

Authority: Tenn. Code Ann. §§ 10-7-302 and 10-7-306.

1210-01-.02 Definitions.

(1) "Agency" means any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law, including the legislative branch and the judicial branch; provided, however, that for purposes of this part only, "agency" does not include the legislative branch.

(2) "Confidential Public Record" means any public record which has been designated confidential by law and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied.

(3) "Commission" means the Public Records Commission.

(4) "Disposition" means the preservation of the original records in whole or in part, preservation by photographic or other reproduction processes or outright destruction of the records.

(5) "Division" means the Records Management Division.

(6) "Essential Records" means any public records essential to the resumption or continuation of operations, to the recreation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state.

(7) "Permanent Records" means those records which have permanent administrative, fiscal, historical or legal value.

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

~~For the purpose of these rules, records are only those items defined as such by the rules.~~

~~(2) Permanent Records. Those records which have permanent administrative, fiscal, historical or legal value.~~

~~(3) Temporary Records. Those records or materials which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the Public Records Commission utilizing a Records Disposition Authorization.~~

~~(4) Confidential Public Record. Any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied.~~

~~(5)~~ (9) "Records Creation" means the recording of information on paper, printed forms, punched cards, tape, disk or any information transmitting media. It shall include preparation of forms, reports, state publications and correspondence.

(10) "Records of Archival Value~~.~~" means any public record which may promote or contribute toward the preservation and understanding of historical, cultural~~,~~ or natural resources of the State of Tennessee.

~~(6) Essential Records. Any public records essential to the resumption or continuation of operations, to the re-creation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state.~~

~~(7) Agency. Agency shall mean any department, division, board, bureau, commission or other separate unit of government created or established by the constitution, by law or pursuant to law, including the legislative branch and the judicial branch to the extent that it is constitutionally permissible.~~

~~(8)~~ (11) "Records Disposition Authorization" or "RDA" means the official document utilized by an agency head to request authority for the disposition of records. The Commission shall determine and order the proper disposition of state records through the approval of RDAs.

(12) "Records Management~~. Records management shall mean~~" means the application of management techniques to the creation, utilization, maintenance, retention, preservation~~,~~ and disposal of records in order to reduce costs and improve efficiency of record keeping. It shall include records retention schedule development, essential records protection, files management and information retrieval systems, microfilm information systems, correspondence and word processing management, records center, forms management, analysis and design~~,~~ and reports and publications management.

~~(9) Disposition. The preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records.~~

~~(10) Records Disposition Authorization. Records Disposition Authorization (RDA) shall mean the official document utilized by an agency head to request authority for the disposition of records. The Public Records Commission shall determine and order the proper disposition of state records through the approval of Records Disposition Authorizations.~~

~~(11)~~ (13) "Record Series" means a group of identical or related records filed as a unit because they relate to the same or similar subject or function, result from the same activity, document a specific type of transaction, take a particular physical form or have some other relationship arising out of their creation, receipt, maintenance or use.

(14) "Retention Schedule" means the time frame established in the records disposition authorization for the record series indicating the length of time in which a record or record series must be maintained by a state agency before disposition.

(15) "Temporary Records" means those records which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the Commission utilizing a RDA.

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

~~(12) Records Creation. The recording of information on paper, printed forms, punched cards, tape, disk, or any information transmitting media. It shall include preparation of forms, reports, state publications, and correspondence.~~

Authority: ~~*T.C.A. §*~~ Tenn. Code Ann. §§ 10-7-301~~. ***Administrative History:*** *Original rule filed December 4, 1991; effective March 30, 1992.*~~, 10-7-302 and 10-7-306.

1210-~~**1-3 PROCEDURES FOR THE MANAGEMENT OF RECORDS.**~~

~~(1) Records Disposition Authorization. Agencies shall submit to~~ 01-.03 Responsibilities of the ~~Records Management Division a Records Disposition Authorization (RDA), along with a sample of the records being considered. The Records Management Division and Library and Archives shall review all RDAs submitted by agencies. After the review process the RDA shall be submitted for approval to the Public Records Commission.~~State Agency.

~~(2) Records Disposition Authorization Original File. For the purpose of maintaining a file on all RDAs, Records Management Division shall retain the original approved set of RDAs on file and return a copy to the originating agency's Records Officer for agency use and distribution.~~

~~(3) Records Holding Report. Each agency shall prepare and submit annually to the Records Management Division a Records Holding Report. The Records Management Division shall review all Records Holding Reports, and prepare a composite report for the Public Records Commission.~~

Each state agency shall implement an internal, agency-specific records management policy to:

(1) Establish and maintain an internal records management program on a continuing and active basis;

(2) Ensure that records contain proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency;

(3) Identify and protect all confidential and essential records maintained by the agency;

(4) Ensure that records within the agency's public records are individually accessible;

(5) Ensure that retention schedules are properly implemented and followed. All records that do not meet the requirements for temporary records or working papers must be maintained for a minimum of five (5) years unless otherwise indicated by the Commission, rules, or applicable federal and state laws;

(6) Ensure that all of the agency's certificates of records disposal are filed with the Division and the agency shall use these certificates to monitor the agency's records destruction process to ensure compliance with the applicable RDA requirements;

(7) Ensure that records and any software, hardware and/or documentation including maintenance documentation, required to retrieve and read records are retained as long as the approved retention period for the record; or provides for recopying, reformatting and other necessary maintenance to ensure the availability and usability of a record until the expiration of its retention period;

(8) Cooperate with the Commission, the Division, the Comptroller of the Treasury Department of Audit, Tennessee State Library and Archives ("Library & Archives") and any other authorized designee in fulfilling their duties;

(9) Disseminate to agency employees information concerning state laws, administrative rules and internal agency policies and procedures relating to the management of records;

(10) Complete an annual records holding report declaring the volume of all records, regardless of format or location, held by the agency in the manner proscribed by the Division; and

(11) Notify the Division in writing of the appointment of a new records officer. All policies, procedures and documents pertaining to the management of agency records must be provided to the new records officer.

Authority: ~~*T.C.A. §*~~ Tenn. Code Ann. §§ 10-7-302, 10-7-303~~. ***Administrative History:*** *Original rule filed December 4, 1991; effective March 30,*~~ and 10-7-306.
~~*1992.*~~

~~**1210-1-4 REVIEW PROCESS.**~~

1210-01-.04 Procedures for the Adoption of Records Disposition Authorizations.

(1) Each state agency that maintains agency records shall develop an RDA for each record or record series maintained by the agency.

(2) Each RDA submitted for approval by the Commission shall include the following:

(a) The title of the record or records series being maintained;

(b) The type of media;

(c) Applicable federal and state laws and rules related to the retention of the records;

(d) A detailed description of the records;

(e) The retention period for each record or record series;

(f) The disposition requirements for each record or record series; and

(g) A description of the records disposition at the end of the retention period, detailing whether the records will be destroyed, scanned, transferred to the Library & Archives or transferred to the record center for long-term storage.

(3) Once the agency has drafted an RDA, the records officer for the agency shall send the pending RDA to the Division for review and comment by the Division, Library & Archives and the Comptroller of the Treasury's Department of Audit. Each of those agencies' review may contain recommended edits and revisions to the RDA.

(4) The agency shall consider the recommendations of the Division, Library & Archives and the Comptroller of the Treasury's Department of Audit and shall resubmit for final approval.

(5) The agency shall present the completed RDA to the Commission for the Commission's approval.

(6) If the Commission approves the RDA, it becomes effective immediately and it then constitutes authorization to dispose of the records as authorized by the RDA. No further approval by the Commission is required unless the RDA is amended.

(7) Any RDA not approved ~~unanimously~~ by the ~~Public Records~~ Commission shall be returned to the submitting agency. The submitting agency may resubmit the RDA incorporating any recommended changes of the Commission and the Division.

(8) An RDA must be submitted sufficiently in advance to allow reasonable review before the next Commission meeting.

(9) Agencies may request changes to approved RDAs by submitting a proposed revision of the RDA to the Division. The proposed revision is then subject to the same approval process.

(10) Once approved by the Commission, each agency shall ~~re-evaluate the RDA~~maintain the agency's records or record series in accordance with the applicable RDA.

Authority: Tenn. Code Ann. §§ 10-7-302, 10-7-303, 10-7-304 and 10-7-306.

1210-01-.05 Procedures for the Reproduction and Storage of Records.

(1) Once a record has been created, it can be reproduced in a different medium depending on the storage and original medium of the record.

(2) Unless otherwise required by rules, or applicable federal and state laws, if a record has been reproduced in a different medium, and both mediums have been authorized by the applicable RDA, the agency does not have to maintain the original record in its original medium.

(3) In addition to maintaining records in accordance with the amount of time contained in the applicable RDA, agencies shall ensure that records are stored in a secure environment in a manner that ensures accessibility, verifiability and accuracy.

(4) Each agency is responsible for ensuring the integrity of its records. Records must be stored in a format that will ensure that the content of the record is maintained for the required retention period as established by the RDA. Also, agencies must ensure records formats are regularly reviewed and migrated. Agencies must utilize proper secure storage infrastructure, processes and operational practices suitable for records management.

(5) Any media, digital or non-digital, containing records must be protected if transported outside of secured areas to guard against unauthorized access to or manipulation of records.

Authority: Tenn. Code Ann. §§ 10-7-302, 10-7-303, 10-7-306, 10-7-307 and 10-7-308.

1210-01-.06 Procedures for the Disposal of Records.

Once the Commission approves an RDA, it constitutes authorization to dispose of the records as set by the RDA.

(1) That disposal is based on the ~~recommendations of the Commission and the Records Management Division. The agency shall resubmit the RDA to the Public Records Commission incorporating recommended changes.~~RDA's Retention Schedule. Each record or record series is subject to only one retention schedule as set forth in the governing RDA.

~~***Authority:*** *T.C.A. §10-7-303.* ***Administrative History:*** *Original rule filed December 4, 1991; effective March 30, 1992.*~~

~~**1210-1-5 RETENTION, DESTRUCTION OR OTHER DISPOSITION OF RECORDS.**~~

~~(1) Records Creation. Before any agency creates any new category~~Upon expiration of ~~record, a sample of that record category, accompanied by an RDA, shall be submitted to~~ the ~~Public Records Commission for approval.~~

~~(2) Records Retention and Disposition. Records~~ retention ~~and disposition is used as a basis for transferring or destroying~~period, records ~~in a particular records series~~ must be disposed of in accordance with ~~predetermined retention periods. Once an RDA is approved by~~ the ~~Public Records Commission, it constitutes authorization to dispose of the records. No further approval by the Commission is required~~RDA and must not be held for a longer period unless ~~the RDA is amended.~~

(a) ~~(3) Amending Records Disposition Authorizations. Agencies may~~ subject to ongoing investigation, litigation hold, public records request ~~changes in approved RDAs by submitting a revised RDA to the Records Management Division. The Records Management Division~~or audit.

~~may advise any agency to amend its RDA and retain records for longer or shorter periods of time than those proposed by the agency. In such cases, the Records Management Division shall notify the Public Records Commission and the agency by memorandum.~~

(b) ~~(4) Records Destruction.~~ Records authorized for destruction ~~shall~~must be disposed of according to the RDA and ~~shall~~must not be given to any unauthorized person~~,~~ or transferred to another agency~~,~~ or political subdivision~~, private or semi-private institution~~ as a way to avoid destruction in accordance with the applicable RDA.

~~(5) Records Management Division Destruction of Records. The Division shall forward to State Library and Archives a list of records identified as having possible historical value for screening at least thirty (30) days prior to initiation of the destruction process.~~

~~(6) Destruction Procedures. No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the Public Records Commission. Approval for the destruction scheduling from the Commission is received through the RDA process. All agencies shall destroy records using state approved procedures.~~

(c) When transferring and archiving records to Library & Archives for preservation, the agency must contact Library & Archives for guidance.

(2) The agency records officer shall:

(a) Annually review the agency's records and determine which ones are due for disposition.

(b) Submit a records destruction form to the Division, in the event that individual records or a record series can be destroyed in accordance with the applicable RDA. This form documents the destruction date, record series, RDA number, date range for the records, volume destroyed and destruction method.

(c) Annually complete a records holding report that:

1. Reflects a full inventory of all the records stored by the agency; and

2. Details how many cubic feet have accumulated for each record series and should list the associated RDAs.

Authority: ~~*T.C.A. §§*~~ Tenn. Code Ann. §§ 10-7-302, 10-7-303, 10-7-304 and 10-7-306. ~~***Administrative History:*** *Original rule filed December 4,*~~

~~*1991; effective March 30, 1992.*~~

* 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)
Robert Oglesby, Secretary, Commissioner of the Department of General Services	x				
Eddie Weeks, Legislative Librarian of Legal Services	x				
Rick DuBray, Representative of the State Treasurer	x				
Tre Hargett, Chairman, Secretary of State	x				
Ann Toplovich, Executive Director of the Tennessee Historical Society	x				
Trent Andrews, Representative of the Comptroller of the Treasury	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Public Records Commission (board/commission/ other authority) on October 30, 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: *(02/06/18)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(10/30/18)*

Date: 11/5/18

Signature: [signature]

Name of Officer: Tre Hargett, Chairman

Title of Officer: Secretary of State

MARY ELIZABETH THOMAS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires September 6, 2022

Subscribed and sworn to before me on: 11/5/18

Notary Public Signature: [signature]

My commission expires on: 9/6/22

Agency/Board/Commission:

Rule Chapter Number(s):

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter
Date 11/20/2018

Department of State Use Only

Filed with the Department of State on: 12/7/18

Effective on: 3/7/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Housing Development Agency
DIVISION:	Executive
SUBJECT:	Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section T.C.A. § 10-7-503(g)(2) requires state entities to adopt their public records policies pursuant to rulemaking.
EFFECTIVE DATES:	March 5, 2019 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule replaces the previously adopted public records policy (revised November 14, 2017, and adopted by THDA's Board of Directors May 23, 2017) all pursuant to statutory directive contained in Tennessee Code Annotated, Section 10-7-503.

Public Hearing Comments

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

A public hearing was held on September 28, 2018 with three attendees from the public. Deborah Fisher, Executive Director, Tennessee Coalition for Open Government, Steven Knapp, owner, Knapptimecreative, LLC, and Jeremy Finley, Chief Investigative Reporter, WSMV-TV Nashville, Tennessee. A copy of the full comments by each commenter is attached. The following are responses by THDA to the major areas identified in the comments.

1. Comment regarding Rule 0770-07-01-.03:

   THDA's requirement of proof of citizenship in Tennessee is overly restrictive of access to public records.

   Response: The Tennessee Public Records Act, TCA 10-7-501 et seq., ("TPRA") provides the right to access to records for citizens of Tennessee. Requiring proof of citizenship is not required, but it is within the authority of THDA to require such proof.

   Concern was expressed that some agencies require a particular type of proof or unduly delay access by using the citizenship requirement to slow the process. THDA's practice has been, and will continue to be, accepting such proof as reasonably demonstrates citizenship. Additionally, THDA's rule would not result in unduly delay as THDA does not deny a request for lack of proof of citizenship without first seeking such proof from a requestor. THDA also informs non-citizen requestors that they may use an agent who is a Tennessee resident to make a request on their behalf.

2. Comment regarding Rule 0770-07-01-.03:

   THDA should accept a request for duplication of records in any written format and not require a particular form.

   Response: The statute clearly provides three forms of writing, any one of which may be selected by THDA to the exclusion of the others if THDA chooses. For uniformity of response and efficiency in assuring all necessary information is consistently provided, THDA has determined it will use the form it has published on its website. If a requestor contacts THDA, the form will be provided via another method as needed to assure access to records.

3. Comment regarding Rule 0770-07-01-.04:

   The Rule does not provide that THDA will satisfy its obligation to provide a reasonable time within which a records request will be fulfilled where THDA is unable to immediately provide access.

   Response: THDA is under a legal obligation to provide that time frame. In its response letter THDA routinely includes all legally required items, including the date by which the records will be made available.

4. Comment regarding Rule 0770-07-01-.06:

   THDA includes charges for costs and fees associated with copies where the requestor is using a personal recording device.

   Response: Charging for copies, fees and costs is clearly permitted under the TPRA. The use of a personal recording device can reduce the costs to THDA by eliminating the per page cost of copying, and decreasing the time staff takes in satisfying the request. However, there are costs associated with providing access to records, and when copies are made the TPRA clearly permits recoupment of those costs.

   A related issue identified in the comment expressed concern that taking personal notes might be considered making a copy. Under THDA's policy taking notes, even writing down quotations out of a public record, would not be the use of a personal recording device.

5. Comment regarding Rule 0770-07-01-.06:

   In section (2)(d) concern was expressed regarding the discretionary language concerning the PRRC's permitting the use of personal recording devices. While THDA can see how this section could be read as permissive, so long as the requirements of prior notice and payment of any costs are satisfied, and the requestor is not seeking to connect to a THDA end-point device or network, and the record is not damaged thereby, the PRRC must permit the use of personal recording devices.

6. Comment regarding Rule 0770-07-01-.07:

   A concern was expressed that this section needs to clearly limit charges to duplication of records.

   Response: This section is clearly about charges for copies of records. Throughout the entire Rule it is made clear that charges may only be imposed where copies are being made.

7. Comment regarding Rule 0770-07-01-.07:

   THDA's provision for a fee waiver does not clearly establish the threshold amount for which fees will be waived.

   Response: THDA agrees with this comment. THDA expects to publish it fee waiver limit on its website.

8. Comment regarding Rule 0770-07-01-.07:

   THDA should include a provision to waive fees when it is in the public interest.

   Response: THDA declines to provide this type of waiver.

9. Comment regarding the Rule in general:

   THDA's limitation on the use of video recording restricts the ability of requestors to capture the moment for some purpose such as emotional impact or to establish credibility in the requestor's subsequent reporting.

   Response: The purpose of the TPRA is to provide access to the public for review and/or copying of public records. There is no requirement that the actual review be memorialized in some way. A public record review is not an open invitation to commence interviews with staff or to record the interior of secured space.

10. Comment regarding the Rule in general:

    Commenters expressed concerns about interference with requestors' First Amendment rights.

    Response: The purpose of the TPRA is not to create a public forum for expression. It is merely intended to provide a method by which citizens of the State of Tennessee can access the records of their government. The limitations provided for in the Rule assure that access while assuring efficiency in the process.

Regulatory Flexibility Addendum

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

This rule does not impact small businesses as it documents the process for access by individuals to public records (for which THDA is the records custodian) pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501 et seq. Small businesses are not considered individuals under this Act.

Impact on Local Governments

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

This rule does not impact local governments as it documents the process for access by individuals to public records (for which THDA is the records custodian) pursuant to the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq. Local governments are not considered individuals under this Act.

Additional Information Required by Joint Government Operations Committee

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

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

This rule replaces the previously adopted Public Records Policy (revised November 14, 2017, and adopted by THDA's Board of Directors May 23, 2017) all pursuant to statutory directive contained in T.C.A § 10-7-503.

(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. § 10-7-503(g)(2) requires state entities to adopt their public records policies pursuant to rulemaking.

(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;

N/A

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

N/A

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

N/A

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

Bruce Balcom, THDA Assistant Chief Legal Counsel.

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

Ralph M. Perrey, THDA Executive Director, and Bruce Balcom, THDA Assistant Chief Legal 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

Ralph M. Perrey, THDA Executive Director, RPerrey@thda.org, 615-815-2015
Bruce Balcom, THDA Assistant Chief Legal Counsel, BBalcom@thda.org, 615-815-2026
Tennessee Housing Development Agency
Andrew Jackson Building, 3rd Floor
502 Deaderick Street
Nashville, TN 37243-0200

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

N/A

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: 12-10-18
Rule ID(s): 7704
File Date: 12/5/18
Effective Date: 3/5/19

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 Housing Development Agency
Division:	Executive
Contact Person:	Bruce Balcom, Assistant Chief Legal Counsel
Address:	502 Deaderick Street, 3rd Floor
Zip:	37243-0200
Phone:	615-815-2026
Email:	BBalcom@thda.org

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**
0770-07-01	Public Records
Rule Number	**Rule Title**
0770-07-01-.01	Purpose and Scope
0770-07-01-.02	Definitions
0770-07-01-.03	Requesting Access to Public Records
0770-07-01-.04	Responding to Public Records Requests
0770-07-01-.05	Redaction
0770-07-01-.06	Access to Records
0770-07-01-.07	Fees and Charges and Procedures for Billing and Payment
0770-07-01-.08	Aggregation of Frequent and Multiple Requests
0770-07-01-.09	Failure to Inspect or to Pay for Copies

RULES OF
TENNESSEE HOUSING DEVELOPMENT AGENCY

CHAPTER 0770-07-01
PUBLIC RECORDS

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Rule Number	Rule Title
0770-07-01-.01	Purpose and Scope
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0770-07-01-.05	Redaction
0770-07-01-.06	Access to Records
0770-07-01-.07	Fees and Charges and Procedures for Billing and Payment
0770-07-01-.08	Aggregation of Frequent and Multiple Requests
0770-07-01-.09	Failure to Inspect or to Pay for Copies

0770-07-01-.01 Purpose and Scope.

(1) Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Rules for Tennessee Housing Development Agency ("THDA") are hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA").

(2) The TPRA provides that all state, county and municipal records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. Accordingly, the public records of THDA are presumed to be open for inspection unless otherwise provided by law.

(3) Personnel of THDA, through the THDA Public Records Request Coordinator identified in this Rule below, shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Rule 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 THDA, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for THDA or to the Tennessee Office of Open Records Counsel ("OORC").

0770-07-01-.02 Definitions

(1) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) Public Records Request Coordinator or PRRC. The individual, or individuals, who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA.

(3) Records Custodian. The 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.

(4) Requestor. A citizen of the State of Tennessee seeking access to a public record, whether for inspection or duplication.

0770-07-01-.03 Requesting Access to Public Records

(1) Public record requests, whether written or oral, shall be made to the PRRC, to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

(2) Public record requests must include the following information clearly and concisely expressed:

(a) Name and Tennessee contact information (in order to provide any communication required under the TPRA);

(b) Detailed description of the records being requested, including type, timeframe, subject matter or key words, and any other information identifying the records;

(c) Statement whether the request is for inspection or receipt of copies or both; and

(d) Delivery preference if requesting copies.

(3) Proof of Tennessee citizenship by presentation of a valid Tennessee driver license is required as a condition to inspect or receive copies of public records and must be presented with the request. To the extent that the requestor cannot provide government-issued photo identification, the PRRC may accept an alternative form of identification. The PRRC may waive the requirement of presentation of a driver license if the requestor has previously provided proof of Tennessee citizenship. Proof of citizenship for offenders currently housed in Tennessee state prisons will be confirmed through the Department of Corrections.

(4) Requests for inspection shall be made:

(a) in person at the office of the PRRC;

(b) by phone to the PRRC; or

(c) in writing sent or delivered to the PRRC.

(5) Requests for copies, or requests for inspection and copies, shall be made in writing. A requestor shall use the THDA Public Records Request form which is available on the THDA website.

(6) Requests not made in the appropriate manner, or not directed to the PRRC as provided herein, will not be accepted. Requests made via any method other than those prescribed herein will not be accepted.

(7) The contact information for the PRRC is as follows:

Bruce Balcom or Charity Miles Williams
Andrew Jackson Building, 3rd Floor
502 Deaderick Street
Nashville, Tennessee 37243-0200
615-815-2200
615-916-5054 (Fax)
publicrecordsrequest@thda.org

(8) Any changes to the contact information for the PRRC shall be posted on the THDA's website. The name of the person(s) currently serving as PRRC shall be posted on the THDA's website.

0770-07-01-.04 Responding to Public Records Requests

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

(a) Proof of Tennessee citizenship;

(b) Sufficiency of description of the records to allow specific identification;

(c) Whether the THDA is the custodian of the records; and

(d) Whether the records qualify as public records under the TPRA or are subject to a legal protection against access.

(2) The PRRC shall acknowledge receipt of the request and take any appropriate actions.

(3) If not practicable to provide the requested records promptly, the PRRC shall, within seven (7) business days from the receipt of the request, respond to the requestor with a completed Public Records Request Response form or email with equivalent information.

(4) If a public record request is denied, the PRRC shall deny the request in writing, providing the basis for the denial.

(5) If the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the PRRC shall notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC will contact the requestor to see if the request can be clarified or narrowed.

(6) If requested records are published by THDA on its website, the PRRC may satisfy a public records request by referring the requestor to THDA's website. If a requestor desires paper copies of the records instead, THDA will provide the copies in compliance with this Rule.

0770-07-01-.05 Redaction

(1) If a record contains confidential information, or information that is not open for public inspection, the PRRC or the records custodian shall prepare a redacted copy prior to providing access.

(2) Whenever a redacted record is provided, the PRRC shall provide the requestor with the basis for redaction, if requested by the requestor, without revealing confidential information.

0770-07-01-.06 Access to Records

(1) Inspection:

(a) There shall be no charge for inspection of public records.

(b) The location for inspection of open public records will be determined by the PRRC and shall occur during times in which THDA is otherwise open for business at the office location of the PRRC in Nashville.

(c) Under reasonable circumstances, the PRRC may require an appointment for inspection or may require inspection of records at an alternate location.

(2) Copies:

(a) Copies will be available for pickup at a location specified by the PRRC.

(b) Upon payment for postage, copies will be delivered to the Requestor's home or business address by the United States Postal Service. Additional permitted means of delivery are UPS and FedEx, pre-paid label require

(c) Electronic records that can be sent in a single transmission will be sent by email.

(d) The PRRC may allow a requestor to make copies of inspected records with personal equipment at the inspection location, upon prior approval by the PRRC and payment in advance of any costs and fees incurred by THDA in preparing the records to be copied. A requestor will not be allowed to connect any personal equipment to any THDA end-point device or the network and will not be allowed to jeopardize the integrity or organization of the records.

(3) Limitations on use of recording devices:

(a) A requestor's use of electronic recording equipment shall be limited to devices which take images of the records requested. Requestor shall not be permitted to capture video of the interior of buildings where copies or inspections are being made. After being informed by staff that attempts to capture such video or images, continued efforts to take video or images of staff or the interior of the buildings will result in termination of the inspection or copying session. If making an inspection only, the use of personal recording devices shall not be permitted unless any costs and fees have been paid in advance as provided in 0770-07-01-.06(2)(d).

0770-07-01-.07 Fees and Charges and Procedures for Billing and Payment

(1) The PRRC will provide requestors with an itemized estimate of the charges prior to producing copies of records. Requestors must pre-pay the estimate before the records will be produced.

(2) When fees for copies and labor do not exceed an amount established by THDA, the fees may be waived by the PRRC. Fees associated with aggregated record requests will not be waived.

(3) Fees and charges for copies are as follows:

(a) Per page for letter and legal sized copies, at the safe-harbor amounts set forth in the OORC's Schedule of Reasonable Charges.

(b) Labor when time exceeds one (1) hour.

(c) If an outside vendor is used, the actual costs assessed by the vendor.

(d) For storage devices, such as flash drives, and other office items, the cost incurred by THDA.

(e) Any additional costs directly related to providing access to public records for the purpose of duplication by THDA or the requestor.

(4) Requestors must pay by personal or cashier's check or money order payable to THDA and delivered as specified by the PRRC. If a requestor's check does not clear, THDA will not comply with any public record requests by that requestor until payment, including any processing fees related to the check, is received in full pursuant to Tenn. Code Ann. § 10-7-503(a)(7)(A)(vii)(b).

0770-07-01-.08 Aggregation of Frequent and Multiple Requests

(1) THDA will aggregate record requests for records of THDA in accordance with the Reasonable Charges for Frequent and Multiple Requests Policy promulgated by the OORC 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).

(2) Routinely released and readily accessible records shall be excluded from aggregation. Such records include materials posted by THDA on its website, or documents kept by THDA for general distribution to the public upon request such as brochures or reports generated for public distribution.

0770-07-01-.09 Failure to Inspect or to Pay for Copies

(1) If a requestor makes two (2) or more requests to view a Public Record within a six-month period and, for each request, the requestor fails to view the Public Record within fifteen (15) business days of receiving notification that the record is available to view, or misses two (2) or more scheduled appointments to view, THDA will not comply with any public records request from the requestor for a period of six (6) months from the date of the second request to view the Public Record unless the THDA determines failure to view the Public Record was for good cause.

(2) If, after agreeing to pay an estimated cost prior to the production of copies, a requestor fails to pay the cost to produce the requested copies, THDA will not comply with any public record requests from the requestor until payment is received.

Authority: T.C.A. § 13-23-104, § 13-23-115(18) and § 10-7-501, et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Kim Grant Brown	x				
Dorothy L. Cleaves				x	
Tre Hargett	x				
Regina Hubbard	x				
David H. Lillard, Jr.	x				
John Krensen	x				
Larry Martin	x				
Austin McMullen				x	
Todd Skelton	x				
John K. Snodderly	x				
Lynn Tully	x				
Pieter J. van Vuuren				x	
Justin Wilson	x				
Mary Mac R. Wilson				x	
Daisy Fields				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Housing Development Agency on November 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: August 3, 2018

Rulemaking Hearing(s) Conducted on: (add more dates). September 28, 2018

Date: November 14, 2018

Signature:

Name of Officer: Bruce Balcom

Title of Officer: Assistant Chief Legal Counsel

Subscribed and sworn to before me on: November 14, 2018

Notary Public Signature: Deborah S. Sanders

My commission expires on: September 20, 2021

DEBORAH S. SANDERS
STATE OF TENNESSEE NOTARY PUBLIC
CHEATHAM COUNTY

Agency/Board/Commission: Tennessee Housing Development Agency

Rule Chapter Number(s): 0770-07-01

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

Herbert H. Slatery III
Attorney General and Reporter

11/30/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/5/18

Effective on: 3/5/19

Tre Hargett
Secretary of State

2018 DEC -5 PM 2:21
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Treasury
DIVISION:	Financial Empowerment
SUBJECT:	Achieving a Better Life Experience Program
STATUTORY AUTHORITY:	State law contained in Tennessee Code Annotated §§71-4-801 through 71 -4-812; Chapter 793 of the 2016 Public Acts; Federal law contained in 26 U.S.C. §529A; Proposed federal regulations contained in REG-102837-15; and Internal Revenue Code Interim Guidance contained in Notice 2015-18.
EFFECTIVE DATES:	March 4, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 1700-08-01-.02 [Definitions] is amended by adding a definition for Individualized Education Account or IEA. The reason for adding this term and definition to the rules is to effectuate Chapter 793 of the 2016 Public Acts which allows IEA money to be deposited into and expended from an Achieving a Better Life Experience ("ABLE") Account. Rule 1700-08-01-.02 [Definitions] is amended by revising the definition of "Excess Contributions" to exclude amounts permitted by the Code. Through the Tax Cuts and Jobs Act of 2017, the Internal Revenue Code was amended to permit certain additional annual contributions to ABLE accounts through wages of the account owner. This amendment is required to permit those additional contributions to the extent they are permitted by federal law. ~~Paragraph 1 of Rule 1700-08-01-.04 [Eligibility and Application Requirements] is amended to remove the requirement that an Eligible Individual must be a resident of the State of Tennessee in order to~~

~~open up an ABLE Account within Tennessee's ABLE Program. When the federal ABLE Act was enacted in 2014, it imposed a residency requirement on all states, meaning that an ABLE Program participant must have been a resident of the state where he or she was opening an ABLE Account. This requirement has been subsequently removed from federal law. Correspondingly, the Tennessee residency requirement is being removed from the ABLE rules. Paragraph 1 has also been amended to provide that an application to participate in the ABLE program may be accomplished through the submission of a hard copy application or an electronic application that may be submitted online.~~

Paragraph 2 of Rule 1700-08-01-.04 [Eligibility and Application Requirements] is amended by removing a provision contained in the current rules indicating that the contract between the Eligible Individual and the State for participation in the ABLE Program is a document separate from the program application. In practice, the contract is contained within the application for participation and not in a separate document. Paragraph (2) is also amended by indicating that the initial minimum contribution amount of twenty-five dollars ($25.00) shall also apply to the Contribution of IEA funds into an ABLE Account.

Paragraph (2) of Rule 1700-08-01-.05 [Contributions] is amended by clarifying that contributions into an ABLE Account will not be accepted in the form of a money order or credit card. While the proposed rules indicate that the State will not accept Contributions in the form of travelers' checks, cashier checks, starter checks, or money orders, the State will accept these forms of payment should they be required by a Court order. The paragraph is also amended to clarify that contributions in a form other than a Rollover or Program-to-Program Transfer are permissible if permitted by the Code. This change is necessary to permit rollovers from a 529 college savings account, a provision of the Tax Cuts and Jobs Act of 2017.

Rule 1700-08-01-.05 [Contributions] is amended by adding a new paragraph providing that an Eligible Individual or Eligible Individual's Legal Representative may deposit IEA money into an

ABLE Account; however, the IEA money may only be used for the Eligible Individual's educational expenses that qualify as Qualified Disability Expenses. This restriction on the use of IEA moneys deposited in an ABLE Account will only be in effect until the Eligible Individual reaches the age of thirty (30). After the Eligible Individual reaches the age of thirty (30), the Eligible Individual or the Eligible Individual's Legal Representative can use the IEA money for the payment of any Qualified Disability Expense.

Paragraph (1) of Rule 1700-08-01-.06 [Distributions] is amended by clarifying that the distributed funds from an ABLE Account will be sent to the Eligible Individual/Designated Beneficiary. The funds may be sent to the Eligible Individual's/Designated Beneficiary's Legal Representative or a third party should payment to someone other than the Eligible Individual/Designated Beneficiary be permitted by the State.

Part (3)(c)1.of Rule 1700-08-01-.06 [Distributions] is amended by clarifying when the State may distribute funds from an ABLE Account upon the Eligible Individual/Designated Beneficiary's death. Applicable federal law provides that upon an Eligible Individual's/Designated Beneficiary's death, all outstanding payments for Qualified
SS-7038 (November 2017) 8 RDA 1693
Disability Expenses will be paid from an ABLE Account. After the payment of outstanding expenses, State Medicaid premiums will be paid back to the state that files a claim for repayment from an ABLE Account. The rule amendment clarifies that if the State of Tennessee does not receive a claim from a state Medicaid plan for reimbursement within thirty (30) days after the Eligible Individual's/Designated Beneficiary's death, the remaining funds will be distributed to the Eligible Individual's/Designated Beneficiary's estate after the expiration of the thirty (30) day period or a time frame established by the Code.

Rule 1700-08-01-.06 (Distribution] is amended to provide that ifthere are any IEA funds remaining in an Eligible Individual's/Designated Beneficiary's ABLE Account after the Eligible Individual/Designated Beneficiary reaches the age of thirty (30), then the Eligible Individual/Designated

Beneficiary or his or her Legal Representative may use the IEA funds to pay for any Qualified Disability Expenses.

Paragraph (1) of Rule 1700-08-01 -.07 (Account Maintenance] is amended by clarifying that any changes in the account maintenance information for an ABLE Account shall be submitted to the State in writing in either hard copy or electronic form.

Regulatory Flexibility Addendum

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

The rule does not affect small business.

Impact on Local Governments

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

The 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;

Rule 1700-08-01-.02 [Definitions] is amended by adding a definition for Individualized Education Account or IEA. The reason for adding this term and definition to the rules is to effectuate Chapter 793 of the 2016 Public Acts which allows IEA money to be deposited into and expended from an Achieving a Better Life Experience ("ABLE") Account.

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Paragraph 1 of Rule 1700-08-01-.04 [Eligibility and Application Requirements] is amended to remove the requirement that an Eligible Individual must be a resident of the State of Tennessee in order to open up an ABLE Account within Tennessee's ABLE Program. When the federal ABLE Act was enacted in 2014, it imposed a residency requirement on all states, meaning that an ABLE Program participant must have been a resident of the state where he or she was opening an ABLE Account. This requirement has been subsequently removed from federal law. Correspondingly, the Tennessee residency requirement is being removed from the ABLE rules. Paragraph 1 has also been amended to provide that an application to participate in the ABLE program may be accomplished through the submission of a hard copy application or an electronic application that may be submitted online.

Paragraph 2 of Rule 1700-08-01-.04 [Eligibility and Application Requirements] is amended by removing a provision contained in the current rules indicating that the contract between the Eligible Individual and the State for participation in the ABLE Program is a document separate from the program application. In practice, the contract is contained within the application for participation and not in a separate document. Paragraph (2) is also amended by indicating that the initial minimum contribution amount of twenty-five dollars ($25.00) shall also apply to the Contribution of IEA funds into an ABLE Account.

Paragraph (2) of Rule 1700-08-01-.05 [Contributions] is amended by clarifying that contributions into an ABLE Account will not be accepted in the form of a money order or credit card. While the proposed rules indicate that the State will not accept Contributions in the form of travelers' checks, cashier checks, starter checks, or money orders, the State will accept these forms of payment should they be required by a Court order. The paragraph is also amended to clarify that contributions in a form other than a Rollover or Program-to-Program Transfer are permissible if permitted by the Code. This change is necessary to permit rollovers from a 529 college savings account, a provision of the Tax Cuts and Jobs Act of 2017.

Rule 1700-08-01-.05 [Contributions] is amended by adding a new paragraph providing that an Eligible Individual or Eligible Individual's Legal Representative may deposit IEA money into an ABLE Account; however, the IEA money may only be used for the Eligible Individual's educational expenses that qualify as Qualified Disability Expenses. This restriction on the use of IEA moneys deposited in an ABLE Account will only be in effect until the Eligible Individual reaches the age of thirty (30). After the Eligible Individual reaches the age of thirty (30), the Eligible Individual or the Eligible Individual's Legal Representative can use the IEA money for the payment of any Qualified Disability Expense.

Paragraph (1) of Rule 1700-08-01-.06 [Distributions] is amended by clarifying that the distributed funds from an ABLE Account will be sent to the Eligible Individual/Designated Beneficiary. The funds may be sent to the Eligible Individual's/Designated Beneficiary's Legal Representative or a third party should payment to someone other than the Eligible Individual/Designated Beneficiary be permitted by the State.

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Disability Expenses will be paid from an ABLE Account. After the payment of outstanding expenses, State Medicaid premiums will be paid back to the state that files a claim for repayment from an ABLE Account. The rule amendment clarifies that if the State of Tennessee does not receive a claim from a state Medicaid plan for reimbursement within thirty (30) days after the Eligible Individual's/Designated Beneficiary's death, the remaining funds will be distributed to the Eligible Individual's/Designated Beneficiary's estate after the expiration of the thirty (30) day period or a time frame established by the Code.

Rule 1700-08-01-.06 [Distribution] is amended to provide that if there are any IEA funds remaining in an Eligible Individual's/Designated Beneficiary's ABLE Account after the Eligible Individual/Designated Beneficiary reaches the age of thirty (30), then the Eligible Individual/Designated Beneficiary or his or her Legal Representative may use the IEA funds to pay for any Qualified Disability Expenses.

Paragraph (1) of Rule 1700-08-01-.07 [Account Maintenance] is amended by clarifying that any changes in the account maintenance information for an ABLE Account shall be submitted to the State in writing in either hard copy or electronic form.

(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;

State law contained in Tenn. Code Ann. §§71-4-801 through 71-4-812; Chapter 793 of the 2016 Public Acts; Federal law contained in 26 U.S.C. §529A; Proposed federal regulations contained in REG-102837-15; and Internal Revenue Code Interim Guidance contained in Notice 2015-18.

(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 proposed rules are those who are individuals with a disability or individuals who have family members who have disabilities and would qualify as Eligible Individuals. The entities most directly affected by these proposed rules are those entities that provide assistance to individuals with a disability, including, but not limited to, the Tennessee Disability Coalition; the ARC of Tennessee; the Department of Human Services; the Department of Intellectual and Developmental Disabilities; the Department of Finance and Administration (TennCare); and the Department of Health.

(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;

To the best of the Department's knowledge, there are no Attorney General opinions or any judicial ruling that directly relates to these rules.

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

It is anticipated that the proposed rules will neither increase nor decrease state revenues or expenditures.

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

LaKesha Page; Director for the Achieving a Better Life Experience Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 532-5888 and Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243; (615) 770-1754.

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

LaKesha Page; Director for the Achieving a Better Life Experience Program; Department of Treasury; 502

Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 532-5888 and Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243; (615) 770-1754.

(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

LaKesha Page; Director for the Achieving a Better Life Experience Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243; (615) 532-5888 and Heather Iverson, Legal Services Director; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243; (615) 770-1754.

(I) 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.

Withdrawal of rule 1700-08-01-.04(1) filed December 21, 2018. See page 23.

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:	12-05-18
Rule ID(s):	7687
File Date:	12/4/18
Effective Date:	3/4/19

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 Treasury
Division:	Financial Empowerment
Contact Person:	Heather Iverson, Legal Services Director
Address:	Andrew Jackson Building, 13th Floor, 502 Deaderick Street, Nashville, Tennessee
Zip:	37243
Phone:	(615) 770-1754
Email:	Heather.iverson@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**
1700-08-01	Achieving a Better Life Experience Program
Rule Number	**Rule Title**
1700-08-01-.02	Definitions
1700-08-01-.04	Eligibility and Application Requirements
1700-08-01-.05	Contributions
1700-08-01-.06	Distributions
1700-08-01-.07	Account Maintenance

RULES
OF
THE TENNESSEE DEPARTMENT OF TREASURY
ADMINISTRATION

CHAPTER 1700-08-01
ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM

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1700-08-01-.01	Purpose	1700-08-01-.06	Distributions
1700-08-01-.02	Definitions	1700-08-01-.07	Account Maintenance
1700-08-01-.03	Prohibitions	1700-08-01-.08	Account Statements
1700-08-01-.04	Eligibility and Application Requirements	1700-08-01-.09	Account and Contract Termination
1700-08-01-.05	Contributions	1700-08-01-.10	Program Termination

1700-08-01-.01 PURPOSE.

The purpose of these rules is to establish and implement the Achieving a Better Life Experience (ABLE) Act and to establish a qualified ABLE program as an agency and instrumentality of the state to assist an Eligible Individual in saving money to meet the Eligible Individual's Qualified Disability Expenses. The intent of the program is to encourage and assist individuals and families to save private funds for the purpose of supporting individuals with disabilities to maintain health, independence and quality of life.

Authority: *T.C.A. § 71-4-802 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.02 DEFINITIONS.

For the purposes of these rules the following definitions shall apply:

(1) "ABLE" means Achieving a Better Life Experience.

(2) "Act" means Chapter 470 of the 2015 Public Acts.

(3) "ABLE Account" means an account established by, owned by, and for the benefit of an Eligible Individual, who is also the Designated Beneficiary on the Account, and maintained under a Qualified ABLE Program for payment of the Eligible Individual's Qualified Disability Expenses, as provided in the Act.

(4) "Code" means § 529A of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 529A, as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.

(5) "Contract" means a contract for an Eligible Individual's participation in the State's Qualified ABLE Program.

(6) "Contracting State" means a State without a Qualified ABLE Program that has entered into a contract with a State with a Qualified ABLE Program to provide residents of the Contracting State access to a Qualified ABLE Program.

(7) "Contribution" or "Contributions" means any payment directly allocated to an ABLE Account for the benefit of a Designated Beneficiary.

(8) "Contributor" means the Person or Persons contributing money to an ABLE Account.

(Rule 1700-08-01-.02, continued)

(9) "Designated Beneficiary" means the Eligible Individual who has established and owns an ABLE Account, and for whose benefit the ABLE Account has been established.

(10) "Disability Certification" means a certification that the Eligible Individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, or is blind within the meaning of § 1614(a)(2) of the Social Security Act; and such blindness or disability occurred before the date on which the individual attained age twenty-six (26); and includes a copy of the Eligible Individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of § 1861(r)(1) of the Social Security Act.

(11) "Distribution" means any payment from an ABLE Account, except for a Program-to-Program Transfer.

(12) "Eligible Individual" means an individual who is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age twenty-six (26), or a Disability Certification with respect to such individual filed with the Secretary of the United States department of the treasury for such taxable year. The Eligible Individual is the ABLE Account owner and the Designated Beneficiary on the ABLE Account.

(13) "Excess Contribution" means the amount contributed to an ABLE Account during the taxable year of the Designated Beneficiary that exceeds the limit in effect under 26 U.S.C. § 2503(b) for the calendar year in which the taxable year of the Designated Beneficiary begins, unless such contribution is otherwise permitted by the Code.

(14) "Excess Aggregate Contribution" means the amount contributed to an ABLE Account during the taxable year of the Designated Beneficiary that causes the total amounts contributed since the establishment of the ABLE Account (or of an ABLE Account for the same Designated Beneficiary that was rolled into the current ABLE Account) to exceed the limit in effect under 26 U.S.C. §529(b)(6).

(15) "Individualized Education Account or IEA" means an account created pursuant to T.C.A. §§ 49-10-1401 through 49-10-1406.

(16) "Legal Representative" means an individual who or entity that may neither have nor acquire any beneficial interest in an ABLE Account during the lifetime of the Designated Beneficiary, but can act on behalf of and for the benefit of a Designated Beneficiary for the purpose of establishing, maintaining, transacting, and terminating an ABLE Account. Not inconsistent with the Code, a legal representative shall include, but not be limited to, an individual or entity with a power of attorney, or parent or legal guardian.

(17) Member of the Family" means a Designated Beneficiary's sibling, whether by blood or by adoption, which includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

(18) "Person" means an individual, association, corporation, trust, charitable organization, or other such entity.

(19) "Program-to-Program Transfer" means the direct transfer of the entire balance of an ABLE Account into an ABLE Account of the same designated beneficiary in which the transferor ABLE Account is closed upon completion of the transfer, or of part or all of the balance to an ABLE Account of another Eligible Individual who is a Member of the Family of the former Designated Beneficiary, without any intervening Distribution or deemed Distribution to the Designated Beneficiary.

(20) "Rollover" means a Contribution to an ABLE Account of a Designated Beneficiary (or of an Eligible Individual who is a Member of the Family of the Designated Beneficiary) of all or a

(Rule 1700-08-01-.02, continued)

portion of an amount withdrawn from the Designated Beneficiary's ABLE Account, provided the Contribution is made within sixty (60) days of the date of the Distribution and, in the case of a Rollover to the Designated Beneficiary's ABLE Account, no rollover has been made to an ABLE Account of the Designated Beneficiary within the prior twelve (12) months.

(21) "Qualified ABLE Program" or "Program" means the ABLE program that is a qualified program pursuant to and in compliance with the Code, and that is created pursuant to the Act.

(22) "Qualified Disability Expenses" means any expenses related to the Eligible Individual's blindness or disability which are made for the benefit of an Eligible Individual who is the Designated Beneficiary. Qualified disability expenses include expenses for the following: education; housing; transportation; employment training and support; assistive technology and personal support services; health; prevention and wellness; financial management and administrative services; legal fees; expenses for oversight and monitoring; funeral and burial expenses; and other expenses approved pursuant to the Code.

(23) "Redemption Value" means the current cash value of an ABLE Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.

(24) "Refund" means the Redemption Value of the ABLE Account at the time the refund is made, minus any applicable fee charged by the State.

(25) "State" means the State of Tennessee.

(26) "Trustees" means state treasurer; the commissioner of finance and administration; the chair of the finance, ways and means committee of the Senate; and the chair of the finance, ways and means committee of the House of Representatives.

Authority: *T.C.A. §§ 71-4-803; 71-4-804(b); 71-4-805; 71-4-806 and Chapter 470 of the 2015 Public Acts.*
Administrative History: *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.03 PROHIBITIONS.

(1) No interest in the Program or a portion of the Program shall be used as security for a loan.

(2) No interest in an ABLE Account may be sold or exchanged.

Authority: *T.C.A. §§ 71-4-805; 71-4-806; and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.04 ELIGIBILITY AND APPLICATION REQUIREMENTS.

~~(1) Eligibility. In order for an Eligible Individual to participate in the Program as the owner of an ABLE Account, the Eligible Individual shall meet the following eligibility requirements by providing the following to the State:~~

~~(a) Proof that the Eligible Individual is a resident of the State or of a Contracting State as of the date of application to participate in the Program;~~

~~(b) Proof that he or she meets the definition of an Eligible Individual by providing:~~

~~1. a completed and signed certification, affidavit, attestation, verification or declaration indicating that he or she is an Eligible Individual;~~

~~2. a completed and signed authorization allowing the State to verify his or her status as an Eligible Individual; or~~

~~3. documentation indicating that he or she is an Eligible Individual.~~

~~(c) A completed and signed application on a form prescribed by the State; and~~

~~(d) Any other documentation or information required by the Code.~~

(1) Eligibility. In order for an Eligible Individual to participate in the Program as the owner of an ABLE Account, the Eligible Individual shall meet the following eligibility requirements by providing the following to the State:

(a) Proof that the that the Eligible Individual or the Eligible Individual's Legal Representative is at least eighteen (18) years of age at the time an ABLE Account is opened. The Eligible Individual must be at least eighteen (18) years of age at the time that the Eligible Individual's ABLE Account is opened, if the Eligible Individual participates in the Program without a Legal Representative. If an Eligible Individual is under the age of eighteen (18) at the time his or her ABLE Account is opened, then the Eligible Individual must participate in the Program through a Legal Representative, and that Legal Representative must be at least eighteen (18) years of age at the time the Account is opened;

(b) A completed and signed certification, affidavit, attestation, verification or declaration, consistent with the Code, signed by the Eligible Individual's Legal Representative under penalty of perjury indicating that he or she is an Eligible Individual;

(c) A completed and signed application on a form prescribed by the State, which may be accomplished through the submission of a hard copy application or through an electronic application submitted online;

(d) An executed Contract indicating the terms and conditions for the Eligible Individual's participation in the Program, which may be included in the Program's application; and

(e) Any other documentation or information requested by the State or required by the Code, applicable federal and state laws and rules, including, but not limited to, the Code.

~~(2) Application. The Eligible Individual shall provide the following to accompany his or her completed and signed application to participate in the Program:~~

~~(a) A completed and signed Contract between the State and the Eligible Individual for participation in the State's Qualified ABLE Program;~~

~~(b) Proof that the Eligible Individual has a Legal Representative who has the authority to administer the Eligible Individual's ABLE Account for the benefit of the Eligible Individual, in the event that the Eligible Individual has a Legal Representative;~~

~~(c) A verification form signed under the penalty of perjury that the Eligible Individual has no other existing ABLE Account, other than an ABLE Account that will terminate with a Rollover or Program-to-Program Transfer into the new ABLE Account;~~

~~(d) Investment selection(s) made by the Eligible Individual or his or her Legal Representative. At least one (1) investment option must be selected. If more than one (1) investment option is chosen either the Eligible Individual or his or her Legal Representative, then the Eligible Individual or Legal Representative must allocate the Contribution among the chosen investment options; and~~

~~(e) An initial Contribution of at least twenty five dollars ($25.00) for each investment option~~

(Rule 1700-08-01-.04, continued)

~~chosen by the Eligible Individual or the Eligible Individual's Legal Representative.~~

(2) Application. The Eligible Individual or the Eligible Individual's Legal Representative shall provide the following to the State accompanying the Eligible Individual's completed and signed application to participate in the Program:

(a) Proof that the Eligible Individual has a Legal Representative who/that has the authority to administer the Eligible Individual's ABLE Account for the benefit of the Eligible Individual, to the extent that the Eligible Individual wishes to participate in the Program through a Legal Representative;

(b) A completed and signed certification, affidavit, attestation, verification or declaration signed under the penalty of perjury indicating that the Eligible Individual has no other existing ABLE Account, other than an ABLE Account that will terminate with a Rollover or Program-to-Program Transfer into the new ABLE Account;

(c) Investment selection(s) made by the Eligible Individual or his or herthe Eligible Individual's Legal Representative. At least one (1) investment option must be selected. If more than one (1) investment option is chosen by the Eligible Individual or the Eligible Individual's Legal Representative, then the Eligible Individual or the Eligible Individual's Legal Representative must allocate the Contribution among the chosen investment options; and

(d) An initial Contribution of at least twenty-five dollars ($25.00). This initial minimum Contribution amount will also apply to the Contribution of IEA funds into an ABLE Account.

(3) Confirmation. If all of the requirements contained in the Code, the Act and this chapter are met to open an ABLE Account, the State shall send a confirmation of acceptance to the Eligible Individual and will credit the Eligible Individual's ABLE Account with the amount of the initial Contribution made.

(4) Rejection. If an Eligible Individual fails to provide all of the information required in this rule within thirty (30) calendar days of the State's receipt of the Eligible Individual's application, the State Treasurer may reject the application and refund to the Eligible Individual or the Eligible Individual's Legal Representative all Contributions made less any applicable fees. Rejection of an application shall not preclude the Eligible Individual from enrolling in the Program in the future.

(5) Fraud. The State Treasurer may terminate an Eligible Individual's Contract if the Eligible Individual or the Eligible Individual's Legal Representative 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 Designated Beneficiary is entitled shall be equal to the Redemption Value of the ABLE Account at the time the refund is made, minus any applicable fee charged by the State.

(6) Inactivity. If a period of ten (10) consecutive years passes with no Contributions having been made to the Designated Beneficiary's ABLE Account, or with no correspondence from the Designated Beneficiary or the Designated Beneficiary's Legal Representative, the State Treasurer shall report and deliver the amount of any refund payable under the Contract to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66,

(Rule 1700-08-01-.04, continued)

chapter 29, part 1. Prior to delivering the refund, the State Treasurer shall make reasonable efforts to locate the Designated Beneficiary or the Designated Beneficiary's Legal Representative. The refund shall be equal to the Redemption Value of the ABLE Account at the time the refund is delivered, minus any applicable fee charged by the State. Upon payment of the refund to the State Treasurer, the State's obligations under the Contract shall cease.

(7) Fees. The State Treasurer may charge fees to the Designated Beneficiary or collect fees from each ABLE Account for the administration of the Program or for transactions under the State's Qualified ABLE Program.

(8) Separate Accounting. The State shall maintain a separate individual ABLE Account for each Contract, showing the name of the Designated Beneficiary and the Redemption Value of the ABLE Account, including any Distributions made from the ABLE Account.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-05 CONTRIBUTIONS.

(1) Who May Make Contributions. One (1) or more Persons may make Contributions for a taxable year into an ABLE Account for the benefit for a Designated Beneficiary who is also an Eligible Individual during that taxable year. The Designated Beneficiary shall be an Eligible Individual at the time the ABLE Account is established, at the time of any Contribution to the ABLE Account, and at the time of a Distribution from the ABLE Account for Qualified Disability Expenses. All Contributions made to a Designated Beneficiary's ABLE Account are pooled and are subject to the terms and conditions of the Designated Beneficiary's Contract.

(2) How Contributions May be Made. All Contributions to an ABLE Account shall be made ~~only~~ in cash and not in property, except for Program-to-Program Transfers. For the purposes of these rules, "cash" means United States dollars in the form of negotiable checks. Cash ~~c~~Contributions may be made in the form of a check, ~~money order, credit card,~~ electronic transfer or similar methods acceptable to the State~~, but shall not include travelers' checks, cashier checks, starter checks and credit card convenience checks~~. The State will only accept Contributions in the form of travelers' checks; starter checks; or money orders if required by a court order. Contributions may also be made through a Rollover; ~~or~~ through a Program-to-Program Transfer; or as otherwise permitted by the Code.

(3) Limit on Amount of Contributions.

(a) Contributions made to a Designated Beneficiary's ABLE Account shall not include Excess Contributions. ~~Contributions made to a Designated Beneficiary's ABLE Account shall not exceed the federal gift limitation contained in annual federal gift tax exclusion pursuant to 26 U.S.C. §2503(b); Contributions made in excess of this limit are referenced as "Excess Contributions".~~ The State shall return the Excess Contributions to the Contributor, including all net income attributable to that Excess Contribution. The State shall return the Excess Contribution to the Contributor on a last-in-first-out basis until the entire Excess Contribution, along with all net income attributable to the Excess Contribution has been returned. The State shall ensure that the returned Excess Contributions are received by the Contributor on or before the due date, including extensions, for the Designated Beneficiary's federal income tax return for the taxable year in which the Excess Contribution was made. If an Excess Contribution and the net income attributable to the Excess Contribution are returned to a Contributor other than the Designated Beneficiary, the State shall notify the Designated Beneficiary of the Excess Contribution return at the same time the Excess Contribution is returned to the Contributor. For the purpose of the Contribution limitation contained in this subparagraph (a), Contributions do not include Rollovers or Program-to-Program Transfers.

(Rule 1700-08-01-.08, continued)

(Rule 1700-08-01-.05, continued)

(b) Contributions made to a Designated Beneficiary's ABLE Account contributed since the establishment of the ABLE Account shall not exceed the limitation in effect under 26 U.S.C. §529(b)(6). The Contributions toward the limitation shall include Contributions to any prior ABLE Account maintained by any State or its agency or instrumentality for the same Designated Beneficiary or any prior Designated Beneficiary. The State shall not accept any Excess Aggregate Contributions, and shall return all Excess Aggregate Contributions to the Contributor on a last-in-first-out basis until the entire Excess Aggregate Contribution, along with the net income attributable to the Excess Aggregate Contribution has been returned. The State shall ensure that the returned Excess Aggregate Contributions are received by the Contributor on or before the due date, including, extensions, for the Designated Beneficiary's federal income tax return for the taxable year in which the Excess Aggregate Contribution was made. If an Excess Aggregate Contribution and the net income attributable to the Excess Aggregate Contribution are returned to a Contributor other than the Designated Beneficiary, the State shall notify the Designated Beneficiary of the Excess Aggregate Contribution return at the same time the Excess Aggregate Contribution is returned to the Contributor.

(4) Individualized Education Account Contributions into an ABLE Account. In the event that an Eligible Individual or an Eligible Individual's Legal Representative contributes funds from the Eligible Individual's IEA to the Eligible Individual's ABLE Account, the contributed IEA funds shall only be used for the Eligible Individual's educational expenses that constitute Qualified Disability Expenses. The limitation on using the Eligible Individual's IEA funds for educational expenses only shall be in effect until the Eligible Individual reaches the age of thirty (30). If the IEA funds in an Eligible Individual's ABLE Account have not been expended for educational expenses by the time the Eligible Individual reaches the age of thirty (30), then the unused IEA funds may be utilized by the Eligible Individual or the Eligible Individual's Legal Representative for any of the Eligible Individual's Qualified Disability Expenses.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.06 DISTRIBUTIONS.

~~(1) Written Request. Any Distribution requests shall be made in writing by the Designated Beneficiary or the Designated Beneficiary's Legal Representative (requestor). Funds shall not be distributed from an ABLE Account until the tenth (10th) day following the State's receipt of the respective funds. The distributed funds will be sent to the requestor unless the Designated Beneficiary or the Designated Beneficiary's Legal Representative request that payment be sent directly to a third party for payment.~~

(1) Request for Distribution. Any Distribution request shall be made through an online form, email, written communication or any similar means by the Designated Beneficiary or the Designated Beneficiary's Legal Representative. Funds shall not be distributed from an ABLE Account until the tenth (10th) calendar day following the State's receipt of the respective funds. The distributed funds will be sent to the Designated Beneficiary. The distributed funds may be sent to the Designated Beneficiary's Legal Representative or directly to a third party should it be permitted by the State.

(2) Amount and Timing of Distributions. The Distribution amount will be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's ABLE Account at the time the Distribution is processed. The Distribution amount will be paid within a maximum of sixty (60) calendar days after the State's receipt of a written Distribution request.

(3) Types of Distributions.

(Rule 1700-08-01-.08, continued)

(a) Distributions for Qualified Disability Expenses. The Designated Beneficiary or the Designated Beneficiary's Legal Representative may direct a Distribution and payment to the Designated Beneficiary, the Designated Beneficiary's Legal Representative or a third party as payment for a Qualified Disability Expense. The Designated Beneficiary or the Designated Beneficiary's Legal Representative shall provide the documentation requested by the State to substantiate that the Distribution will be used for the payment of Qualified Disability Expenses.

(b) Distributions for Non-Qualified Disability Expenses. The Designated Beneficiary or the Designated Beneficiary's Legal Representative may direct a Distribution and payment to a the Designated Beneficiary or the Designated Beneficiary's Legal Representative provided that the funds have been on deposit in the ABLE Account for at least ten (10) calendar days and provided that there is at least one hundred dollars ($100.00) in the ABLE Account once the Distribution is made. The earnings portion of the Distribution made for non-Qualified Disability Expenses may be subject to federal taxation as prescribed under the Code.

(c) Death of a Designated Beneficiary. In the event of a Designated Beneficiary's death, the State shall make any outstanding payments for Qualified Disability Expenses. Subject to the outstanding payments and to the extent permitted by the Code:

1. the funds remaining in an ABLE Account not in excess of the amount equal to the total medical assistance paid for the Designated Beneficiary after the establishment of the ABLE Account, net of any premiums paid from the ABLE Account or paid by or on behalf of the Designated Beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such ~~S~~state upon filing a claim for payment by such ~~S~~state~~; and~~. In the event that the State does not receive a claim from a state Medicaid plan for reimbursement within thirty (30) days after the Designated Beneficiary's death, then the State shall distribute the remaining funds in an ABLE Account after the payment of outstanding Qualified Disability Expenses, and after the expiration of the thirty (30) day period. Should the Code establish a period of time different from the thirty (30) day period established in these rules, in which the State must wait for the filing of a state Medicaid claim, then the State will use the time period established by the Code; and

2. the Designated Beneficiary's Legal Representative, estate administrator, estate executor or next of kin may request a Distribution of any remaining moneys in the Designated Beneficiary's ABLE Account remaining after outstanding payments for Qualified Disability Expenses and payments pursuant to subdivision (i) in this paragraph, or may request an Account and Contract termination. In the event that a Person does not request a Distribution of the remaining funds or request an Account or Contract termination, then the remaining funds shall be payable to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66, chapter 29, part 1.

(d) Rollovers. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may request a Rollover. Any Rollover made pursuant to this rule shall be administered in accordance with the applicable Rollover provisions contained in the Code. Any Rollover made pursuant to this rule shall not exceed the Redemption Value of the Designated Beneficiary's ABLE Account minus any applicable fees charged by the State. The Redemption Value of the ABLE Account shall be determined as of the date that the Rollover is made. The portion of the Rollover amount that constituted an investment into an ABLE Account from which the Distribution was made, shall be added to the investment portion in the recipient ABLE Account, and the earnings from the ABLE Account from which the Distribution was made shall be added the into the earnings of the recipient ABLE Account.

(e) Program-to-Program Transfers. Any Designated Beneficiary or Designated

(Rule 1700-08-01-.08, continued)

Beneficiary's Legal Representative may request a Program-to-Program Transfer. The portion of the Program-to-Program Transfer amount that constituted an investment into an ABLE Account from which the Distribution was made, shall be added to the investment portion in the recipient ABLE Account, and the earnings from the ABLE Account from which the Distribution was made shall be added the into the earnings of the recipient ABLE Account.

(4) Individualized Education Account Distributions from an ABLE Account. An Eligible Individual or Eligible Individual's Legal Representative may withdraw IEA funds from the Eligible Individual's ABLE Account while the Eligible Individual is under the age of thirty (30); however, the Eligible Individual or Eligible Individual's Legal Representative shall use the withdrawn funds only for the Eligible Individual's educational expenses that constitute Qualified Disability Expenses. Either the Eligible Individual or the Eligible Individual's Legal Representative shall indicate through a completed and signed certification, affidavit, attestation, verification or declaration that the withdrawn funds will only be used for the Eligible Individual's educational expenses that constitute Qualified Disability Expenses. The Eligible Individual or Eligible Individual's Legal Representative shall be responsible for maintaining and providing the documentation requested by the Tennessee Department of Education relative to the use of the IEA funds deposited in an ABLE Account, and shall be responsible for complying with the Tennessee Department of Education's rules relative to the use of IEA funds deposited in an ABLE Account, if applicable. Any IEA funds remaining in an Eligible Individual's ABLE Account after the Eligible Individual reaches the age of thirty (30), may be used by the Eligible Individual or the Eligible Individual's Legal Representative for any Qualified Disability Expenses.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.07 ACCOUNT MAINTENANCE.

(1) Update ABLE Account Information. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may make changes and updates to the ABLE Account information as needed. These changes include updates to the following, including, but not limited to, addresses; legal name changes; phone numbers; email addresses and changes in the Designated Beneficiary's Legal Representative. The requested changes shall be provided in writing to the State on a form prescribed by the State, either in hard copy or electronic form.

(2) ABLE Account Limitations.

(a) Except in the case of Rollovers or Program-to-Program Transfers, a Designated Beneficiary is limited to one (1) ABLE Account at a time, regardless of where the account is located. Except in the case of Rollovers and Program-to-Program Transfers, if an ABLE Account is established for a Designated Beneficiary who already has an ABLE Account in existence, the State shall not treat the additional account as an ABLE Account; however, as long as the State returns all Contributions (including all net income attributable to the Contribution) to the Person or Persons who/that made the Contribution, then the additional account will be treated as never having been established.

(b) The funds (contributions, earnings and funds distributed for housing expenses as defined by the Social Security Administration) in a Designated Beneficiary's ABLE Account at any one time shall not exceed one hundred thousand dollars ($100,000.00) should the Designated Beneficiary participate in the Supplement Security Income program under title XVI of the Social Security Act.

(3) Change in Designated Beneficiary. A Designated Beneficiary may be changed on an ABLE Account and the transferred moneys will not be treated as a Distribution subject to federal taxation as long as the new Designated Beneficiary is an Eligible Individual within the taxable

(Rule 1700-08-01-.08, continued)

year that the change occurs and the new Designated Beneficiary is a Member of the Family of the former Designated Beneficiary. A change in the Designated Beneficiary of an ABLE Account shall only occur during the life of the Designated Beneficiary, and at the time of the change, the successor Designated Beneficiary must be an Eligible Individual.

(4) Eligible Individual Recertification. At the request of the State, each Designated Beneficiary shall recertify to the State that he or she meets the definition of an Eligible Individual. Each Designated Beneficiary or Designated Beneficiary's Legal Representative shall promptly report any changes in the Designated Beneficiary's status as an Eligible Individual. Should a Designated Beneficiary no longer meet the definition of an Eligible Individual at any time during which the Designated Beneficiary has an ABLE Account, the Designated Beneficiary shall maintain his or her status as an Eligible Individual until the end of the taxable year in which the change in the Designated Beneficiary's condition occurred. On the first day of the subsequent taxable year in which the Designated Beneficiary does not meet the definition of an Eligible Individual, the State shall not accept additional contributions into the ABLE Account and the existing money in the ABLE Account shall not be used for qualified disability expenses. Should a Designated Beneficiary subsequently meet the definition of an Eligible Individual, the State shall accept contributions into the Designated Beneficiary's ABLE Account and the existing funds in the ABLE Account can be used to pay for qualified disability expenses.

(5) Investment Direction. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may, directly or indirectly, direct the investment of any Contributions to the Program, or any earning thereon, no more than two (2) times in any calendar year.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.08 ACCOUNT STATEMENTS.

(1) The State shall provide Designated Beneficiaries participating in the State's Qualified ABLE Program or the Designated Beneficiary's Legal Representative with periodic ABLE Account statements that include, but are not limited to the following: Contribution amounts; Distribution amounts; investments in the ABLE Account; total ABLE Account balance; and Redemption Value of the ABLE Account. The State shall also provide this information at the request of the Designated Beneficiary or the Designated Beneficiary's Legal Representative.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.09 ACCOUNT AND CONTRACT TERMINATION.

(1) A Designated Beneficiary may terminate his or her ABLE Account and Contract or a Designated Beneficiary's Legal Representative may terminate a Designated Beneficiary's ABLE Account and Contract at any time and for any reason upon a written request submitted to the State. In response to a written request for termination, a Refund will be paid to the Designated Beneficiary, Designated Beneficiary's Legal Representative or any other Person designated to receive a Refund under the Contract. The actual termination of the ABLE Account and Contract will not occur until all funds in the Designated Beneficiary's ABLE Account have been refunded.

Authority: *T.C.A. §§ 71-4-804(b); 71-4-805; 71-4-806; 71-4-807 and Chapter 470 of the 2015 Public Acts.* ***Administrative History:*** *Original rule filed October 8, 2015; effective January 6, 2016.*

1700-08-01-.10 PROGRAM TERMINATION.

(1) If the Trustees determine that the State's Qualified ABLE Program is, for any reason, financially infeasible, or is not beneficial to the citizens of the State of Tennessee or the State

(Rule 1700-08-01-.08, continued)

itself, then the Trustees may suspend or terminate the Program immediately. Termination of the Program will result in a termination of all ABLE Accounts and Contracts, and generate a Refund to the Designated Beneficiary, the Designated Beneficiary's Legal Representative or any other Person designated to receive a Refund under the Contract.

(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 to the credit of the State's Qualified ABLE Program, and that the State, the Tennessee Department of Treasury, the State Treasurer or the State's Qualified ABLE Program shall not be liable for any amount in excess of such sums.

(3) Should the State's Qualified ABLE Program be terminated by the Trustees and the Program assets prove to be less than would be required to fully pay all obligations of the Program in full, the State Treasurer shall first defray all Program administrative expenses. The State Treasurer shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the State's Qualified ABLE Program within the amount of the remaining funds.

Authority: *T.C.A. §§ 71-4-805; 71-4-807; 71-4-811 and Chapter 470 of the 2015 Public Acts.*
Administrative History: *Original rule filed October 8, 2015; effective January 6, 2016.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on _____ (*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: August 21, 2018

Signature:

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer

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

Subscribed and sworn to before me on: August 21, 2018

Notary Public Signature: Heather Szczepczenski

My commission expires on: March 10, 2019

Agency/Board/Commission: Treasury Department

Rule Chapter Number(s): 1700-08-01 Achieving a Better Life Experience Program

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

11/30/2018
Date

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Filed with the Department of State on: 12/4/18

Effective on: 3/4/19

Tre Hargett
Secretary of State

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: 12-25-18 Rule ID(s): NA File Date: 12/21/18 Effective Date: 12/21/18

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Tennessee Department of Treasury
Division:	Financial Empowerment
Contact Person:	Heather Iverson, Legal Services Director
Address:	Andrew Jackson Building, 13th Floor, 502 Deaderick St., Nashville, TN
Zip:	37243
Phone:	615-770-1754
Email:	heather.iverson@tn.gov

Type of Action on Rule:

____ **Stay of Effective Date of Rules**

Rule Filing Date: *(mm/dd/yy)*
Rule Original Effective Date: *(mm/dd/yy)*
Length of Stay (not to exceed 75 days):
New Effective Date of Rule Filing: *(mm/dd/yy)*

____ **Notice of Withdrawal of Stay**

Stay Filing Date: *(mm/dd/yy)*
Stay Effective Date: *(mm/dd/yy)*
New Effective Date of Rule Filing: *(mm/dd/yy)*

X **Notice of Withdrawal of Rules**

Rule Filing Date: *12/4/18*
Rule Effective Date: *03/04/19*

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 enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
1700-08-01	Achieving a Better Life Experience Program
Rule Number	**Rule Title**
1700-08-01-.04(1)	Eligibility (1) Eligibility. In order for an Eligible Individual to participate in the Program as the owner of an ABLE Account, the Eligible Individual shall meet the following eligibility requirements by providing the following to the State:

	(a) Proof that the that the Eligible Individual or the Eligible Individual's Legal Representative is at least eighteen (18) years of age at the time an ABLE Account is opened. The Eligible Individual must be at least eighteen (18) years of age at the time that the Eligible Individual's ABLE Account is opened, if the Eligible Individual participates in the Program without a Legal Representative. If an Eligible Individual is under the age of eighteen (18) at the time his or her ABLE Account is opened, then the Eligible Individual must participate in the Program through a Legal Representative, and that Legal Representative must be at least eighteen (18) years of age at the time the Account is opened; (b) A completed and signed certification, affidavit, attestation, verification or declaration, consistent with the Code, signed by the Eligible Individual's Legal Representative under penalty of perjury indicating that he or she is an Eligible Individual; (c) A completed and signed application on a form prescribed by the State, which may be accomplished through the submission of a hard copy application or through an electronic application submitted online; (d) An executed Contract indicating the terms and conditions for the Eligible Individual's participation in the Program, which may be included in the Program's application; and (e) Any other documentation or information requested by the State or required by applicable federal and state laws and rules, including, but not limited to, the Code.

Date: December 20, 2018

Signature: [signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer

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

Subscribed and sworn to before me on: December 20, 2018

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

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Filed with the Department of State on: 12/21/18

[signature]

Tre Hargett
Secretary of State

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Approved for signature by a c 12/20/18

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Sequence Number: 12-03-18
Rule ID(s): NA
File Date: 12/3/18
Effective Date: 12/3/18

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Tennessee Department of Tourist Development
Division:	Administrative
Contact Person:	Alicia C. B. Widrig, General Counsel
Address:	312 Rosa L. Parks Ave., 13th Floor Tennessee Tower, Nashville, TN
Zip:	37027
Phone:	(615) 741-9065
Email:	Alicia.Widrig@tn.gov

Type of Action on Rule:

____ **Stay of Effective Date of Rules**

Rule Filing Date: *(mm/dd/yy)*
Rule Original Effective Date: *(mm/dd/yy)*
Length of Stay (not to exceed 75 days):
New Effective Date of Rule Filing: *(mm/dd/yy)*

____ **Notice of Withdrawal of Stay**

Stay Filing Date: *(mm/dd/yy)*
Stay Effective Date: *(mm/dd/yy)*
New Effective Date of Rule Filing: *(mm/dd/yy)*

X **Notice of Withdrawal of Rules**

Rule Filing Date: *10/05/18*
Rule Effective Date: *01/03/19*

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 enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
1670-07	Access to the Public Records of the Department of Tourist Development
Rule Number	**Rule Title**
1670-07-01-.01	Pur, ose and Scope of Authority
1670-07-01-.02	Definitions
1670-07-01-.03	Requesting Access to Public Records
1670-07-01-.04	Responding to Public Records Requests
1670-07-01-.05	Inspection and Copies of Records

1670-07-01-.06	Fees, Payment and Waivers
1670-07-01-.07	Aggregation of Frequent and Multiple Requests
1670-07-01-.08	Failure to Inspect Copies or Failure to Pay

SHARON REED
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 9-7-2021

Date: 2018-12-3

Signature:

Name of Officer: Alicia C. B. Widrig

Title of Officer: General Counsel

Subscribed and sworn to before me on: December 3, 2018

Notary Public Signature: Sharon Reed

My commission expires on: 9-7-2021

Department of State Use Only

Filed with the Department of State on: 12/3/18

Tre Hargett
Secretary of State

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