

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Secretary of State

DIVISION: Business Services

SUBJECT: Online Notaries Public

STATUTORY AUTHORITY: The Secretary of State has been granted authority to promulgate rules relating to the Online Notary Public Act by the General Assembly through Public Chapter 931, as codified at Tennessee Code Annotated, Section 8-16-305.

EFFECTIVE DATES: April 15, 2019, through October 12, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These emergency rules are intended to implement the Online Notary Public Act, passed by the 110th General Assembly, and govern the operation and commissioning of online notaries public pursuant to this act. The purpose of the Online Notary Public Act is to establish and provide a framework to allow the online notarization of documents by means of a two-way audio video communication employing both identity proofing and credential analysis components to ensure reliability and eliminate, insofar as is possible, the possibility for the occurrence of fraud.

## **Impact on Local Governments**

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

These proposed rules will have a minimal impact on local governments.

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

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

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

These rules are intended to implement the Online Notary Public Act, passed by the 110<sup>th</sup> General Assembly, and govern the operation and commissioning of online notaries public pursuant to this act. The purpose of the Online Notary Public Act is to establish and provide a framework to allow the online notarization of documents by means of a two-way audio video communication employing both identity proofing and credential analysis components to ensure reliability and eliminate, insofar as is possible, the possibility for the occurrence of fraud.

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

The Secretary of State has been granted authority to promulgate rules relating to the Online Notary Public Act by the General Assembly through Public Chapter 931, as codified at Tennessee Code Annotated § 8-16-305.

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

These rules will relate most directly to notaries public and those who employ notaries public as a part of their business model. Based upon knowledge and belief, this process will most often be utilized by real property and mortgage buyers, sellers, lenders, and titling agencies. The Department of State has received extensive comments, suggestions, and information from industry stakeholders relating to the development of these rules, and to our knowledge, none of these stakeholders have expressed direct opposition to the adoption of these rules.

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

None.

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

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

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

Lauren L. Topping  
Assistant General Counsel  
Department of State  
(615) 532-0824  
Lauren.L.Topping@tn.gov

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

Mary Beth Thomas  
General Counsel

Department of State  
State Capitol, First Floor  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@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

Mary Beth Thomas  
General Counsel  
Department of State  
State Capitol, First Floor  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@tn.gov

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

None.

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

**For Department of State Use Only**

Sequence Number: 04-11-19  
 Rule ID(s): 0093  
 File Date: 4/15/2019  
 Last Effective Day: 10/12/2019

# 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.*

<b>Agency/Board/Commission:</b>	Secretary of State
<b>Division:</b>	Division of Business Services
<b>Contact Person:</b>	Mary Beth Thomas
<b>Address:</b>	State Capitol, First Floor, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-2819
<b>Email:</b>	Mary.Beth.Thomas@tn.gov

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

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Public Chapter 931 of the 110<sup>th</sup> General Assembly created the Online Notary Public Act, which established a remote online notarization process. This process allows the notarization of documents through a remotely conducted online process. This Act also requires that the Department of State establish a process for commissioning Online Notaries Public. Pursuant to this public chapter, the Online Notary Public Act shall take effect for administrative and rule making purposes upon execution and on July 1, 2019 for all other purposes. The Online Notary Public Act represents a new model for notarization, which has been enacted in very few other states, and has required the development of process and security standards, as well as extensive input from outside stakeholders. Because of this, there has not been sufficient time to promulgate non-emergency rules prior to July 1, 2019 and emergency rules are necessary to ensure that the required framework for this process is in place prior to July 1, 2019. The Department of State intends to promulgate (either by publication or by rulemaking) non-emergency rules as soon as is practicable to replace the emergency rules.

**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
1360-07-03	Online Notaries Public
Rule Number	Rule Title
1360-07-03-.01	Online Notarization
1360-07-03-.02	Application for Online Notary Public Commission; Renewal
1360-07-03-.03	Performance of Notarial Acts
1360-07-03-.04	Electronic Signature and Seal
1360-07-03-.05	Standards for Online Notarization
1360-07-03-.06	Fees
1360-07-03-.07	Changes After Commissioning
1360-07-03-.08	Termination of Commission

### **1360-07-03-.01 ONLINE NOTARIZATION**

- (1) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Department of State.
- (2) The terms used herein shall have the same definitions prescribed in Tennessee Code Annotated § 8-16-302. These rules pertain to online notarizations as defined and used throughout T.C.A. § 8-16-301, et. seq. Notarial acts satisfying the requirements of T.C.A. § 8-16-101, et. seq., are not affected by these rules.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.02 APPLICATION FOR ONLINE NOTARY PUBLIC COMMISSION; RENEWAL**

- (1) A person who has been previously commissioned as a notary public by a county legislative body, and who meets the qualification requirements for commissioning as a notary public as outlined in Tennessee Code Annotated Title 8, Chapter 16, may submit an application for commissioning as an online notary public by submitting to the Department of State, Division of Business Services, the prescribed application form including the following information:
  - (a) The applicant's legal name as listed in the records of the county where the applicant is commissioned as a notary public;
  - (b) The applicant's physical address in this state, as is on record with the clerk of the county in which the notary is commissioned, which includes the street address, city, state, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Department of State, but must also provide a physical address;
  - (c) A valid email address for the applicant;
  - (d) A valid telephone number for the applicant;
  - (e) The county in this state where the applicant was commissioned as a notary public;
  - (f) The date the applicant was commissioned as a notary public;
  - (g) The date the applicant's commission is set to expire;
  - (h) The name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;
  - (i) The name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis;
  - (j) A copy of the applicant's unique electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper-evident;
  - (k) A copy of the applicant's unique electronic seal, in a file format acceptable to the department;
  - (l) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;
  - (m) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;
  - (n) An explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with Rule 1360-07-03-.03(8);
  - (o) A certification confirming that the applicant will comply with the following standards prescribed by the Secretary of State; and
  - (p) An application fee of \$75.00.
- (2) The Secretary of State shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these rules, has submitted a properly completed and executed application, and has submitted the required application fee.
- (3) When the Secretary of State determines that the applicant has met the qualifications for an online notary public commission, the Secretary of State will issue to the applicant an online notary public identification

number, which must be provided to all principals for whom the online notary public performs a notarial act and shall be used for reference in all communications between the online notary public and the Department of State.

- (4) An online notary public may renew his or her online notary public commission by filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The renewal must be received by the Secretary of State no later than the expiration date of the online notary public's current commission. The Secretary of State shall determine eligibility for renewals according to the same standards as initial applications, and shall not be bound by prior determinations of eligibility.

Online notary public commissions will terminate on the same date on which the county notary public commission terminates, unless both the county notary public commission is extended and the online notary public submits an application for renewal which is approved.

- (5) Applications may be submitted online to the Department of State, Division of Business Services via the online portal established by the Department at sos.tn.gov.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.03 PERFORMANCE OF NOTARIAL ACTS**

- (1) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.
- (2) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within this state, without regard to whether the principal is physically located in this state at the time of the online notarization.
- (3) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.
- (4) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:
  - (a) Remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with Rule 1360-07-03-.05.
  - (b) Credential analysis of the credential provided by the principal as set forth in Rule 1360-07-03-.05; and
  - (c) Identity proofing of the principal as set forth in Rule 1360-07-03-.05.
- (5) Under no circumstances shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.
- (6) The online notary public shall refuse to complete the performance of a notarial act where:
  - (a) The online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

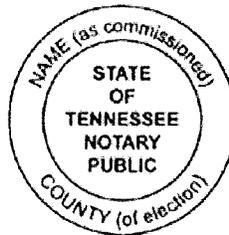
- (b) The online notary public is unable to verify the identity of the principal using the means and the standards identified in these rules;
  - (c) The online notary public becomes aware that the security of the two-way audio visual transmission is not secure;
  - (d) The signature of the principal cannot be attached to the electronic document; or
  - (e) The online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.
- (7) The online notary public shall complete and attach a unique electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's unique electronic notarial certificate, unique electronic signature, and electronic seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (8) An online notary public performing authorized notarial acts must also satisfy the following requirements:
- An online notary public, or his or her properly designated custodian or repository, must keep, for at least 5 years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:
- (a) The date and time of the notarization;
  - (b) The type of notarial act;
  - (c) The type, the title, or a description of the electronic document or proceeding;
  - (d) The printed name and address of each principal involved in the transaction or proceeding;
  - (e) Evidence of the identity of each principal involved in the transaction or proceeding in the form of:
    1. A statement that the principal(s) is personally known to the online notary public; or both
    2. A notation of the type of identification document provided to the online notary public for each principal; and
    3. A notation that the principal(s) completed identity proofing and credential analysis procedures described by Rule 1360-07-03-.05 and both were satisfactory to verify the identity of the principal(s);
  - (f) A recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and
  - (g) The fee, if any, charged for the notarization.
- (9) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.
- (10) The online notary public shall not disclose any access information used to affix the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Secretary of State, law enforcement, the courts, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.

- (11) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.
- (12) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.
- (13) An online notary public may use his or her electronic signature only for performing online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law, but only where the online notary public is capable of independently verifying the document is a true and correct copy of the electronic record.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

**1360-07-03-.04 ELECTRONIC SIGNATURE AND SEAL**

- (1) An online notary public must use the same unique electronic signature for all online notarial acts performed by the online notary public.
- (2) An online notary public must use the same unique electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Department of State at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.
- (3) An online notary public shall use an electronic seal that substantially conforms to the following design: a circular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center, and the words "Online Notary Public" printed below, followed by the online notary public's identification number. The electronic seal must also be accompanied by a statement of the date upon which the online notary public's commission expires. A sample seal format appears below:



Online Notary Public  
ID Number

- (4) An online notary public must attach or logically associate his or her unique electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (5) The online notary public must use technology from a third-party provider who has provided the online notary public with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.

- (6) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication".
- (7) The online notary public's unique electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.
- (8) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated.

If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Department of State of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Department of State.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

### **1360-07-03-.05 STANDARDS FOR ONLINE NOTARIZATION**

- (1) Identity proofing and credential analysis must be performed by a third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.
- (2) Requirements for Credential Analysis.

A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

- (a) Use automated processes to aid the online notary public in verifying the identity of a principal;
- (b) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:
  - 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
  - 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
  - 3. Use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and,
  - 4. Provide output of the authenticity test to the online notary public; and
- (c) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.
- (3) Requirements for Identity Proofing.

Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

- (a) The principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;
  - (b) Each question must have a minimum of five (5) possible answer choices;
  - (c) At least 80% of questions must be answered correctly;
  - (d) All questions must be answered within two (2) minutes;
  - (e) If the principal fails in his or her first attempt, the principal may retake the quiz one time within 24 hours;
  - (f) During the second attempt, a minimum of 60% of the prior questions must be replaced; and
  - (g) If the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of 24 hours.
- (4) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.
- (5) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:
- (a) Provide for continuous, synchronous audio-visual feeds;
  - (b) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, real-time transmission;
  - (c) Provide sufficient captured image resolution for credential analysis to be performed in accordance with these rules;
  - (d) Include a means of authentication that reasonably ensures only authorized parties have access to the audio video communication;
  - (e) Provide some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal;
  - (f) Be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the credential analysis output; and
  - (g) Provide reasonable security measures to prevent unauthorized access to:
    - 1. The live transmission of the audio-video communication;
    - 2. A recording of the audio-video communication;
    - 3. The verification methods and credentials used to verify the identity of the principal; and
    - 4. The electronic documents presented for online notarization.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

**1360-07-03-.06 FEES**

An online notary public, or the online notary public's employer, may charge a fee that does not exceed twenty-five dollars (\$25.00) for performing each online notarization.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.07 CHANGES AFTER COMMISSIONING**

- (1) An online notary public must notify the Secretary of State, on the prescribed form, of any change in address within fifteen (15) days of the date of the change.
- (2) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public commission or an online notary public commission, vacates the office of online notary public and must surrender the online notary public commission to the Secretary of State.
- (3) During the term of the online notary public commission, an online notary public may change the name on the online notary public commission by notifying the Secretary of State of the name change on the prescribed form, along with a copy of a court order or other document verifying the change of name and updated copies of the online notary public's electronic notarial certificate, electronic signature, and electronic seal showing the updated name. The Secretary of State shall then issue an amended commission to the online notary public in the updated name. Upon issuance of the amended commission, the online notary public must only conduct notarial acts using the updated electronic notarial certificate, electronic signature, and electronic seal bearing the updated name. Notwithstanding the above, the online notary public must first ensure that he or she has appropriately changed his or her name with respect to his or her traditional notary public commission in the county in which the commission was issued before updating his or her name relating to the online notary public commission.
- (4) An online notary public who replaces or changes an electronic notarial certificate or electronic seal during the term of the online notary public commission must provide an updated copy of the electronic notarial certificate or electronic seal to the Secretary of State prior to conducting any notarial acts using the updated electronic notarial certificate or electronic seal.
- (5) If at any time during the term of the online notary commission the online notary public elects to use a new vendor or technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public's electronic signature and seal to be read and authenticated prior to conducting any notarial acts using the new vendor or technology or technologies.
- (6) If at any time during the term of the online notary public commission the online notary public elects to use a new vendor or technology or technologies to be used in conducting identity proofing and credential analysis, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public to conduct identity proofing and credential analysis prior to conducting any notarial acts using the new vendor or technology or technologies.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018).

#### **1360-07-03-.08 TERMINATION OF COMMISSION**

If the Secretary of State determines that any online notary public has not complied with these regulations or the provisions of Tennessee Code Annotated Title 8, Chapter 16 related to online notarization, the Secretary of State shall terminate the commission of the online notary public.

Authority: T.C.A. § 8-16-301, et seq. (Public Chapter 931, effective April 18, 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)

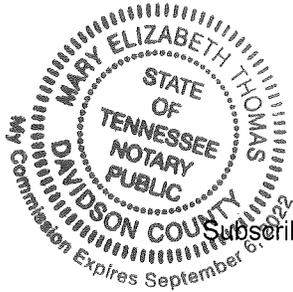
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 4/8/19

Signature: *Tre Hargett*

Name of Officer: Tre Hargett

Title of Officer: Secretary of State



Subscribed and sworn to before me on: 4/8/19

Notary Public Signature: *Mary Elizabeth Thomas*

My commission expires on: 9/6/22

Agency/Board/Commission: Secretary of State

Rule Chapter Number(s): 1360-07-03 Online Notaries Public

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

4/11/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 4/15/2019

Effective for: 180 \*days

Effective through: 10/12/2019

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

*Tre Hargett*

Tre Hargett  
Secretary of State

RECEIVED  
2019 APR 15 PM 12:33  
SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Technological University

SUBJECT: Use of University Property by Affiliated Users and for Free Speech Activities

STATUTORY AUTHORITY: Tennessee Pub Acts 2017, Chapter No 336, § 10

EFFECTIVE DATES: July 16, 2019, through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule establishes the general conditions and terms by which the Tennessee Tech community can reserve Tennessee Tech property for use. The rule also establishes the general conditions and terms by which nonaffiliated individuals can use a designated space for free speech activities.

## **Regulatory Flexibility Addendum**

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

This rule is not anticipated to have an impact on small business.

## **Impact on Local Governments**

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

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

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

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

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

The rule establishes the general conditions and terms by which the Tennessee Tech community can reserve Tennessee Tech property for use. The rule also establishes the general conditions and terms by which non-affiliated individuals can use a designated space for free speech activities.

- (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;

TN. Pub Acts 2017, ch. 336, § 10

- (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 and employees are most affected by this rule. Because Tennessee Tech has had a similar policy in place since 2012, Tennessee Tech is not aware of any person, organizations, corporations, or governmental entities that would urge rejection of the rule. Tennessee Tech's Board of Trustees 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;

None of which Tennessee Tech is aware.

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

No impact

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

Marc Burnett, Vice President for Student Affairs

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

Marc Burnett, Vice President for Student Affairs, Katherine Williams, Dean of Students

- (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

1000 N. Dixie Avenue, Cookeville, TN 38505; (931) 372-3411; [mburnett@tntech.edu](mailto:mburnett@tntech.edu) and [kwilliams@tntech.edu](mailto:kwilliams@tntech.edu)

- (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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 04-12-19  
Rule ID(s): 8894  
File Date: 4/17/2019  
Effective Date: 7/16/2019

## 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).*

<b>Agency/Board/Commission:</b>	Tennessee Technological University
<b>Division:</b>	
<b>Contact Person:</b>	Marc Burnett, Vice President for Student Affairs
<b>Address:</b>	1000 N. Dixie Avenue, Cookeville, TN
<b>Zip:</b>	38505
<b>Phone:</b>	(931) 372-3411
<b>Email:</b>	mburnett@tntech.edu

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0240-09-06	Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities
Rule Number	Rule Title
0240-09-06-.01	Purpose and Implementation
0240-09-06-.02	Definitions
0240-09-06-.03	General Policy
0240-09-06-.04	General Conditions for Use of Tennessee Tech Property by Affiliated and Non-affiliated Users
0240-09-06-.05	Application Requirements and Use of Tennessee Tech Property Applicable to All Users
0240-09-06-.06	Specific Provisions Related to Affiliated Users
0240-09-06-.07	Requirements Related to Free Speech Activities of Non-affiliated Users
0240-09-06-.08	Denial or Limitation of Application for Use of Facilities
0240-09-06-.09	Indemnification and Insurance Requirements
0240-09-06-.10	Distribution of Leaflets, Literature, Pamphlets, Etc.
0240-09-06-.11	Commercial Use of Tennessee Tech Property

0240-09-06-.12	Solicitation of Funds
0240-09-06-.13	Bulletin Boards and Approved Areas for Posting
0240-09-06-.14	Compliance with Contractual Obligations
0240-09-06-.15	Exceptions

Rules  
Of  
Tennessee Technological University

Chapter 0240-09-06  
Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities

New Chapter

Table of Contents is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.01 Purpose and Implementation

0240-09-06-.02 Definitions

0240-09-06-.03 General Policy

0240-09-06-.04 General Conditions for Use of Tennessee Tech Property by Affiliated and Non-affiliated Users

0240-09-06-.05 Application Requirements and Use of Tennessee Tech Property Applicable to All Users

0240-09-06-.06 Specific Provisions Related to Affiliated Users

0240-09-06-.07 Requirements Related to Free Speech Activities of Non-affiliated Users

0240-09-06-.08 Denial or Limitation of Application for Use of Facilities

0240-09-06-.09 Indemnification and Insurance Requirements

0240-09-06-.10 Distribution of Leaflets, Literature, Pamphlets, Etc.

0240-09-06-.11 Commercial Use of Tennessee Tech Property

0240-09-06-.12 Solicitation of Funds

0240-09-06-.13 Bulletin Boards and Approved Areas for Posting

0240-09-06-.14 Compliance with Contractual Obligations

0240-09-06-.15 Exceptions

0240-09-06-.01 Purpose and Implementation is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.01 Purpose and Implementation

- (1) The purpose of this rule is to provide a uniform basis upon which Tennessee Tech can regulate and facilitate the use of Tennessee Tech Property for Affiliated Users and for Free Speech Activities.
- (2) This rule is intended to operate consistently with Tennessee Tech's educational and research purpose and mission through the implementation of constitutional time, place, and manner restrictions and reasonable content and viewpoint-neutral restrictions, as appropriate for the forum and category of the User.
- (3) This rule shall be implemented and construed so as to preserve the primacy of Tennessee Tech's educational and research purpose and mission and to protect the safety of persons and security of property, and to prevent use of Tennessee Tech Property contrary to federal and state laws, rules, regulations, and Tennessee Tech policies.

Authority: TN, Pub Acts 2017, ch. 336, § 10

0240-09-06-.02 Definitions is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.02 Definitions

- (1) Affiliated Use: The use of Tennessee Tech Property by an Affiliated User for a reason associated with the Affiliated User's status.
- (2) Affiliated User: Registered student organizations as defined by Tennessee Tech policy or a person officially connected with Tennessee Tech, including Students, faculty, and other employees. The mere membership of a Student, faculty, or employee in a group or organization does not convert that group or organization to an Affiliated User.

- (3) Application for Use: Form or process used by Tennessee Tech for Users who wish to reserve and use Tennessee Tech Property.
- (4) Free Speech Activities: Speech, expression, or assemblies protected by the First Amendment of the United States Constitution or Article 1, Section 19 of the Tennessee Constitution, verbal or written, including but not limited to all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free Speech Activities" do not include the promotion, sale, or distribution of any product or service.
- (5) Non-affiliated Use: The use of Tennessee Tech Property for activities other than Affiliated Use.
- (6) Non-affiliated User: Any person, group, or organization that is not an Affiliated User.
- (7) Normal Administrative Activities: For the purposes of this rule only, "Normal Educational Activities" means activities that fall within the scope of a Tennessee Tech employee's job-related duties, activities, or responsibilities.
- (8) Normal Educational Activities: Activities that occur outside of the scheduled class period to enhance and to continue student learning and project completion. These include, but are not limited to the following: small group study sessions (whether organized by students, tutors, instructors or teachers), review sessions, open labs, student-teacher conferences, and students working together on class projects.
- (9) Official Tennessee Tech Purpose: Use of Tennessee Tech Property by student groups/organizations, administrative offices, and/or departments for events, programs, activities, etc. that primarily support Tennessee Tech's purpose and mission and/or are planned primarily for members of the Tennessee Tech community.
- (10) Student: A person who is currently enrolled in a Tennessee Tech credit course of study or a student organization that is comprised entirely of individuals currently enrolled in credit courses of study and registered with Tennessee Tech.
- (11) Tennessee Tech Official: An employee or agent of Tennessee Tech, including but not limited to university police, faculty members, and staff, acting in the performance of his/her duties, as well as Student employees, including but not limited to event staff, resident assistants, and graduate or teaching assistants.
- (12) Tennessee Tech Property or Property: All facilities and property owned, leased, or controlled by Tennessee Tech.
- (13) User: Both Affiliated and Non-affiliated Users.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.03 General Policy is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.03 General Policy

- (1) Use of Tennessee Tech Property is restricted to Affiliated Users and invited guests of Tennessee Tech, except as specifically provided by rules, laws related to free speech, or when part or all of Tennessee Tech's campus, buildings, or facilities is open to the general public for a designated time and purpose.
- (2) Use of Tennessee Tech Property shall be through a process of Application for Use, except as provided by state law related to free speech on campuses and, absent unusual circumstances, for use for Normal Educational or Administrative Activities.
- (3) Except as provided by state law related to free speech on campuses, Tennessee Tech, in its sole discretion, may restrict use of Tennessee Tech Property during periods that are dedicated to Tennessee

Tech activities. Such periods include but are not limited to the final week of classes, final examination periods, welcome or homecoming weeks, etc.

- (4) Tennessee Tech will publish a list of Property available for use by Affiliated Users and the office/department responsible for accepting and processing the Application for Use.
- (5) Tennessee Tech will publish a list of spaces designated for Free Speech Activities by Non-affiliated Users and the process for Application for Use.
- (6) Except as provided by state law related to free speech on campuses, Tennessee Tech Property not specifically identified as available for use is specifically unavailable for use other than for Normal Educational or Administrative Activities.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.04 General Conditions for Use of Tennessee Tech Property by Affiliated and Non-affiliated Users is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.04 General Conditions for Use of Tennessee Tech Property by Affiliated and Non-affiliated Users

- (1) Users and use of the Property must comply with federal and state laws, rules, regulations, and Tennessee Tech policies, including but not limited to applicable fire and safety codes and policies related to the protection of minors on campus.
- (2) Tennessee Tech shall have the right to terminate immediately the use of Tennessee Tech Property by any User due to a violation or violations of any federal or state law(s), rule(s), regulation(s), or Tennessee Tech policy or policies.
- (3) Sound amplification equipment may be used only when prior approval has been requested and granted by the Tennessee Tech Official in charge of approving the Application for Use, taking into account Tennessee Tech's purpose and mission and the nature of the requested Tennessee Tech Property, location, time of day, manner, volume, etc.
- (4) A Student may not allow a Non-affiliated User to use Tennessee Tech Property in her/his/its name in order to circumvent or to avoid the requirements of Tennessee Tech's rule or policies related to rental of Tennessee Tech Property.
- (5) Consistent with state law related to free speech on campuses, a Student or a faculty member may invite a guest speaker, provided the Student or faculty is responsible for all matters related to the activity or event.
  - (a) The responsibilities of the Student or faculty member include but are not limited to the following:
    1. Submitting an Application for Use and receiving approval for the use of the requested Property;
    2. Acting as the primary contact and communicator for facility needs and campus services;
    3. Assuming responsibility for working with and resolving problems related to the activity or event, including any damages caused by the guest speaker, invitees, or guests;
    4. Ensuring the invitees and guests follow Tennessee Tech rules, policies, regulations, guidelines, and procedures; and
    5. Ensuring all financial obligations for the activity or event are met.
  - (b) The Student or faculty member must be present at the activity or event for the duration of the event.
- (6) An affiliated entity may sponsor an activity or event that would ordinarily be deemed a Non-affiliated Use if the activity or event is directly related to the purpose and mission of the affiliated entity and Tennessee Tech.

- (a) In order to sponsor such an activity or event, the affiliated entity must be responsible for all matters related to the activity or event. The affiliated entity's responsibilities include but are not limited to the following:
1. Submitting an Application for Use and receiving approval for the activity or event;
  2. Seeking and obtaining all necessary campus approvals and authorizations for the activity or event;
  3. Ensuring the affiliated entity's name is associated with the activity or event;
  4. Acting as the primary contact and communicator for facility needs and campus services;
  5. Assuming responsibility for working with and resolving problems related to the activity or event, including any damages caused by the activity or event;
  6. Ensuring the invitees and guests follow Tennessee Tech policies, regulations, guidelines, and procedures; and
  7. Ensuring all financial obligations for the activity or event are met.
- (b) An affiliated entity must ensure that its members, including at least one (1) officer of the affiliated entity, are present at the activity or event for the duration of the activity or event.
- (7) Users of Tennessee Tech Property are responsible for all aspects of the activity or event, including but not limited to the conduct of the invitees and guests, set up, break down, clean up, etc.
- (8) User must return Tennessee Tech Property in the same condition it was in when made available to the User. User will be responsible for all expenses incurred by Tennessee Tech to remedy the condition of damaged Tennessee Tech Property.
- (9) Use of Tennessee Tech Property shall be limited to the declared purpose in the Application for Use.
- (10) Tennessee Tech will not permit overnight use of Tennessee Tech Property unless specifically requested and approved in writing by the Tennessee Tech Official in charge of approving the Application for Use.
- (11) All persons on Tennessee Tech Property in conjunction with an activity or event shall provide adequate identification upon request to Tennessee Tech Officials and security personnel. Persons or groups who refuse to provide such identification may be subject to immediate removal from Tennessee Tech Property, to campus disciplinary action, and/or to arrest, as appropriate.
- (12) Users are restricted to the area of Tennessee Tech Property approved for their use.
- (13) The use and/or possession of alcoholic beverages on Tennessee Tech Property is prohibited unless approved pursuant to Tennessee Tech policies related to alcohol on Tennessee Tech Property.
- (14) Users shall not:
- (a) Block or substantially impede vehicular, bicycle, pedestrian, or other traffic;
  - (b) (Block or substantially impede entrances or exits to Tennessee Tech Property;
  - (c) Substantially disrupt or interfere with Tennessee Tech operations, activities, or events;
  - (d) Substantially disrupt or interfere with the ability of a Student to sleep or study in a Tennessee Tech residence hall during the hours designated by Tennessee Tech as quiet hours, or the ability of a Student to study in the Tennessee Tech library or in a designated study area;
  - (e) Engage in speech that is obscene; is defamatory; consists of fighting words; communicates an

objectively serious expression of intent to commit an act of unlawful violence to a particular individual or group; or is directed to inciting or producing imminent lawless action and is likely to incite or produce such action;

(f) Unreasonably threaten the health or safety of another person; or

(g) Damage or deface Tennessee Tech Property, including but not limited to grass, shrubs, trees, or other landscaping.

(15) Except as provided by state law related to free speech on campuses, User may be required to pay certain fees or costs, including but not limited to maintenance, custodial, utilities, set-up, and/or security, related to the nature of the activity or event and the use of particular Tennessee Tech Property. The fees and costs schedule will be applied to all similar uses on a content- and viewpoint-neutral basis. Payment of such fees and costs may be required in advance of an activity or event, at the sole discretion of Tennessee Tech.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.05 Application Requirements and Use of Tennessee Tech Property Applicable to All Users is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.05 Application Requirements and Use of Tennessee Tech Property Applicable to All Users

- (1) Affiliated Users' requests to use Tennessee Tech Property have priority over requests by Non-affiliated Users.
- (2) Users may reserve Tennessee Tech Property by following the procedures published by Tennessee Tech.
- (3) The Tennessee Tech Official responsible for approving the Application for Use may approve an application filed late according to the required time period specified in procedures, if it is determined that the use of the requested Tennessee Tech Property can be reasonably accommodated. Approval of late applications shall be within the sole discretion of the Tennessee Tech Official, whose decision will be final.
- (4) The Tennessee Tech Official responsible for approving the Application for Use will provide written notice of approval or disapproval of the Application for Use to the applicant within a reasonable time from the date the application is submitted. Such notices may be made electronically.
- (5) Notices of disapproval shall include a statement of the basis for disapproval, which shall be based solely on content- and viewpoint-neutral factors.
- (6) An applicant must receive written approval of an Application for Use prior to the commencement of the activity or event.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.06 Specific Provisions Related to Affiliated Users is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.06 Specific Provisions Related to Affiliated Users

- (1) Except as provided by state law related to free speech on campuses, Tennessee Tech may limit use or availability of Tennessee Tech Property.
- (2) Affiliated Users are required to submit an Application for Use for open-air (open space) activities and events if any of the following apply:

- (a) The Affiliated User wants to be assured that the Property will be available for use at the preferred time;
  - (b) The activity or event will involve more than twenty-five (25) participants, including expected invitees or guests;
  - (c) User intends to serve, provide, or distribute food that exceeds the limits described in Tennessee Tech policies related to food purchases;
  - (d) User intends to use equipment including but not limited to tables and stages or utilities, including but not limited to water or electricity;
  - (e) The activity or event includes the use of signs, banners, posters, and/or other displays causing ground penetration or attached to Tennessee Tech Property;
  - (f) User intends to erect any structure, platform, edifice, or similar construct; or
  - (g) User intends to use sound amplification.
- (3) Use of Tennessee Tech equipment in connection with the use of Tennessee Tech Property is subject to the prior approval of the Tennessee Tech Official in charge of approving the Application for Use.
  - (4) All signs, displays, structures, etc. must be stable and safe for their intended use.
  - (5) Affiliated Users may obtain permission for the repeated use of a particular Tennessee Tech Property without requiring repeated application and approval for each occurrence of the activity or event if the meetings are limited to Affiliated Users.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.07 Requirements Related to Free Speech Activities of Non-affiliated Users is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.07 Requirements Related to Free Speech Activities of Non-affiliated Users

- (1) Non-affiliated Users' use of Tennessee Tech Property for any purpose other than Free Speech Activities is governed by Tennessee Tech's rule and policies related to rental of Tennessee Tech Property.
- (2) Non-affiliated Users must submit an Application for Use for Free Speech Activities and receive approval from the Dean of Students and the Vice President of Student Affairs prior to any Free Speech Activities.
- (3) Non-affiliated Users may not use Tennessee Tech equipment during the Free Speech Activities.
- (4) Provided the specific Tennessee Tech Property is available for use by Non-affiliated Users for Free Speech Activities, a Non-affiliated User may reserve Tennessee Tech Property for Free Speech Activities two (2) times per month, for a period not to exceed sixteen (16) hours monthly. Tennessee Tech may, in its sole discretion, waive this limit.
- (5) Children under the age of eighteen (18) are not permitted to participate in the Free Speech Activities unless accompanied and supervised by an adult.
- (6) A Non-affiliated User shall not:
  - (a) Build or erect any structure, platform, edifice or similar construct;
  - (b) Place any signs, banners, posters, or other displays on or against, attach them to or write on any

structure or natural feature of Tennessee Tech Property, including but not limited to doors, buildings, windows, walls, the surface of walkways or roads, fountains, utility poles, lampposts, waste receptacles, trees, street signs, benches, bus stops, Tennessee Tech-owned signage, emergency phones, railings, newsstands, and utility boxes; or

(c) Use any chalk, paint, or permanent markings on Tennessee Tech Property, including natural features.

(7) Tennessee Tech is not responsible for Non-affiliated User's or invitees' and guests' loss, damage, or harm to persons, equipment, or property.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.08 Denial or Limitation of Application for Use of Facilities is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.08 Denial or Limitation of Application for Use of Facilities

- (1) Any denial or limitation of a request to use Tennessee Tech Property shall be consistent with the requirements of state law related to free speech on campuses.
- (2) Tennessee Tech's reasons for denying a request may include but are not limited to the following:
  - (a) The requested Tennessee Tech Property has been previously reserved by another User with equal or higher priority;
  - (b) The applicant's frequency of previous use exceeds a contemporaneous applicant's use of the same Tennessee Tech Property or exceeds limits on use by Non-affiliated Users;
  - (c) Use of the requested Tennessee Tech Property would be impractical due to scheduled usage prior to or following the requested use;
  - (d) The applicant or sponsor of the activity or event has knowingly provided inaccurate or false information on the Application for Use;
  - (e) The User or User's invitees and guests violated federal or state law(s), rule(s), regulation(s), or Tennessee Tech policy or policies during a previous use;
  - (f) The requested Tennessee Tech Property has not been designated as available for use;
  - (g) The requested Tennessee Tech Property is not available for use during the requested time;
  - (h) The anticipated size or attendance for the activity or event will exceed building/fire codes, established safety standards, and/or the physical or other limitations of the requested Tennessee Tech Property;
  - (i) The anticipated nature or duration of the activity or event cannot reasonably be accommodated in the requested Tennessee Tech Property;
  - (j) The anticipated size and/or location of the activity or event would cause substantial disruption or interference with Normal Educational or Administrative Activities, the educational use of other Property or services, or the flow of vehicular or pedestrian traffic;
  - (k) The activity or event conflicts with existing Tennessee Tech contractual obligations;
  - (l) The activity or event would constitute an immediate and actual danger to Tennessee Tech Students and/or employees, or to the peace and security of Tennessee Tech that available law enforcement officials could not control with reasonable effort;
  - (m) The activity or event would be contrary to federal or state laws, rules, regulations or Tennessee Tech policies;

- (n) Tennessee Tech does not have sufficient institutional resources available for the activity or event, as determined by the appropriate Tennessee Tech Official(s); or
- (o) Other extenuating circumstances exist that, in the sole discretion of Tennessee Tech, prevent or limit the use of Tennessee Tech Property.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.09 Indemnification and Insurance Requirements is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.09 Indemnification and Insurance Requirements

- (1) Users of Tennessee Tech Property shall indemnify Tennessee Tech and hold it harmless from any and all liabilities arising out of the use of Tennessee Tech Property, including but not limited to personal injury, property damage, court costs, attorney's fees, and any other damage, whether caused by User, invitees, guests, or by User's employees, agents, or contractors.
- (2) Users must provide, upon request, proof of insurance, with types and coverage appropriate for the intended use, as determined by the Tennessee Tech Official in charge of approving the Application for Use in consultation with the Office for Planning and Finance.
- (3) Tennessee Tech may, in its sole discretion, require User to include the State of Tennessee, the Tennessee Tech Board of Trustees and/or Tennessee Tech as additionally insured entities on User's insurance policy.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.10 Distribution of Leaflets, Literature, Pamphlets, Etc. is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.10 Distribution of Leaflets, Literature, Pamphlets, Etc.

- (1) Except as provided by state law related to free speech on campuses, Tennessee Tech may limit locations where the sale or distribution of literature associated with an activity or event will be allowed.
- (2) Except as provided by state law related to free speech on campuses, a User must request to distribute or sell literature and/or advertisements prior to undertaking such activity or event.
- (3) Non-affiliated Users are not allowed to sell or to distribute literature within any Tennessee Tech building unless the distribution or sale is pursuant to a contract for rental pursuant to Tennessee Tech rule and policies.
- (4) No User is allowed to place literature and/or advertisements on vehicles parked on Tennessee Tech Property.
- (5) Any literature that is distributed or sold and any advertisement must comply with all applicable federal and state laws, rules, regulations, and Tennessee Tech policies.
- (6) No obscene literature or material, as defined by law, shall be distributed on any Tennessee Tech Property.
- (7) Users permitted to distribute printed materials pursuant to this rule or Tennessee Tech policy shall refrain from littering and may be held responsible for costs incurred as a result of littering.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.11 Commercial Use of Tennessee Tech Property is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.11 Commercial Use of Tennessee Tech Property

- (1) Tennessee Tech Property may not be used by any User to conduct profit-making activities except when engaged in a contractual business relationship with Tennessee Tech or as allowed by a User's contract for rental pursuant to Tennessee Tech rule and policies.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.12 Solicitation of Funds is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.12 Solicitation of Funds

- (1) Users who engage in gift solicitation, proposals for gift solicitation, or fundraising events conducted for the benefit of Tennessee Tech, any Tennessee Tech foundation, or part of Tennessee Tech must receive the prior approval of the Vice President for University Advancement or designee.
- (2) Solicitation does not include Affiliated Users' activities or events for the purpose of raising funds to meet expenses of an affiliated entity or entities or for a charitable cause. The funds raised by such activities or events must be used for the benefit of the affiliated entity or for charity. No funds shall be distributed to the officers, members, or any individual for personal profit or use.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.13 Bulletin Boards and Approved Areas for Posting is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.13 Bulletin Boards and Approved Areas for Posting

- (1) A Tennessee Tech Official authorized to approve use of a bulletin board or area for posting may specify or limit the authorized uses and/or entities for such boards/areas as well as the types of material that may be posted, the maximum size and duration of any notice, and any other conditions.
- (2) The use of a bulletin board or an area for posting may be subject to the prior approval of the Tennessee Tech Official authorized to approve use of the board or area. Use of a board or an area may be denied on the basis of one or more of the following:
  - (a) The person or group is not authorized to use the board or area in question;
  - (b) The material is not the type authorized for the board or area in question or fails to meet any required conditions;
  - (c) The material is obscene or otherwise violates a federal or state law, rule, regulation, or Tennessee Tech policy; or
  - (d) There is insufficient space available for the material on the board or in the area due to the previous posting of other material.
- (3) Areas not specifically identified and/or authorized for posting are not available for such purpose for any individual or entity, whether Affiliated or Non-affiliated.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.14 Compliance with Contractual Obligations is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.14 Compliance with Contractual Obligations

- (1) Users must comply with applicable Tennessee Tech contractual obligations, including but not limited to

use of Tennessee Tech's contracted dining service vendor, beverage pouring rights exclusivity, etc.

Authority: TN. Pub Acts 2017, ch. 336, § 10

0240-09-06-.15 Exceptions is added to Chapter 0240-09-06 Use of Tennessee Tech Property by Affiliated Users and for Free Speech Activities and shall read as follows:

0240-09-06-.15 Exceptions

- (1) The President or his/her designee may grant exceptions when, in the President's or designee's sole discretion, the requested exception is in furtherance of Tennessee Tech's educational and research purpose and mission.

Authority: TN. Pub Acts 2017, ch. 336, § 10

\* 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)
Tom Jones	X				
Trudy Harper	X				
Melissa Geist	X				
Rhedona Rose	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 03/21/2019, 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: 3/22/19

Signature: *Marc L Burnett*

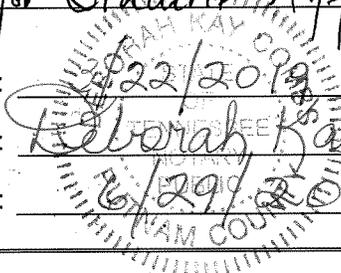
Name of Officer: Marc L Burnett

Title of Officer: VP for Student Affairs

Subscribed and sworn to before me on:

Notary Public Signature: *Deborah Kay Combs*

My commission expires on: 6/29/2020



Agency/Board/Commission: Jenn Jack Umw

Rule Chapter Number(s): Chapter 0240-09-06 (New)

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

4/15/2019

Date

**Department of State Use Only**

Filed with the Department of State on: 4/17/2019

Effective on: 7/16/2019

Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
2019 APR 17 AM 9:18  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Technological University

SUBJECT: Rental of University Property

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-102(12)(A) defines a rule as "an agency regulation, standard, statement, or document of general applicability that [d]escribes the procedure or practice requirements of an agency." Tennessee Tech's statements related to rental of its property appear to fall within the terms of this definition.

EFFECTIVE DATES: July 23, 2019, through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule establishes the general conditions and terms on which it will make its property available to the public for rent or for purposes unrelated to its education and research purpose and mission. The university has not previously promulgated a rule on this matter.

## **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 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 is not anticipated to have an impact on local government.

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

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

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

The rule establishes the general conditions and terms on which it will makes its property available to the public for rent or for purposes unrelated to its education and research purpose and mission. Tennessee Tech has not previously promulgated a rule on this matter.

- (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. § 4-5-102(12)(A) defines a rule as "an agency regulation, standard, statement, or document of general applicability that [d]escribes the procedure or practice requirements of an agency." Tennessee Tech's statements related to rental of its property appear to fall within the terms of this definition.

- (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;

Any person or entity that wishes to rent space on Tennessee Tech's property is affected by this rule. Because Tennessee Tech has had a similar policy in place since 2012, Tennessee Tech does not believe affected persons or individuals would urge rejection of the rule. The Tennessee Tech Board of Trustees 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;

None of which Tennessee Tech is aware.

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

No impact

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

Dr. Claire Stinson, Vice President for Planning and Finance

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

Dr. Claire Stinson, Vice President for Planning and Finance

- (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

1 William L. Jones Drive, Cookeville, TN 38505; 931-372-3311; [cstinson@tntech.edu](mailto:cstinson@tntech.edu)

(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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 04-13-19  
Rule ID(s): 8895  
File Date: 4/24/19  
Effective Date: 7/23/19

## 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).*

<b>Agency/Board/Commission:</b>	Tennessee Technological University
<b>Division:</b>	
<b>Contact Person:</b>	Dr. Claire Stinson, Vice President for Planning and Finance
<b>Address:</b>	1 William L. Jones Drive, Cookeville, TN
<b>Zip:</b>	38505
<b>Phone:</b>	931-372-3311
<b>Email:</b>	cstinson@tntech.edu

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0240-09-07	Rental of Tennessee Tech Property
Rule Number	Rule Title
0240-09-07-.01	Purpose and Implementation
0240-09-07-.02	Scope
0240-09-07-.03	Definitions
0240-09-07-.04	General Policy
0240-09-07-.05	Priority of Use and Frequency of Rental
0240-09-07-.06	Rental Requirements
0240-09-07-.07	Application and Agreement Process
0240-09-07-.08	Payment by Renter
0240-09-07-.09	Penalties
0240-09-07-.10	Exceptions

Rules  
Of  
Tennessee Technological University, Cookeville

Chapter 0240-09-07  
Rental of Tennessee Tech Property

New Chapter

Table of Contents is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.01 Purpose and Implementation  
0240-09-07-.02 Scope  
0240-09-07-.03 Definitions  
0240-09-07-.04 General Policy  
0240-09-07-.05 Priority of Use and Frequency of Rental  
0240-09-07-.06 Rental Requirements  
0240-09-07-.07 Application and Agreement Process  
0240-09-07-.08 Payment by Renter  
0240-09-07-.09 Penalties  
0240-09-07-.10 Exceptions

0240-09-07-.01 Purpose and Implementation is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.01 Purpose and Implementation

- (1) The purpose of this rule is to provide a uniform basis upon which Tennessee Tech can regulate and facilitate the rental of its Property.
- (2) This rule is intended to operate consistently with Tennessee Tech's educational and research purpose and mission through the implementation of reasonable and viewpoint-neutral restrictions related to rented Property.
- (3) This rule shall be implemented and construed so as to preserve the primacy of Tennessee Tech's educational and research purpose and mission, to protect the safety of persons and security of Property, and to prevent the use of Tennessee Tech's Property contrary to federal or state laws, rules, regulations, or Tennessee Tech policies.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.02 Scope is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.02 Scope

- (1) This rule does not apply to use of Tennessee Tech Property by affiliated users for Official Tennessee Tech Purposes or for free speech activities. Such use is subject to Tennessee Technological University Rules, Chapter 0240-09-06.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.03 Definitions is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.03 Definitions

- (1) Official Tennessee Tech Purpose: Use of Tennessee Tech Property by student groups/organizations, administrative offices, and/or departments for events, programs, activities, etc. that primarily support

Tennessee Tech's purpose and mission and/or are planned primarily for members of the Tennessee Tech community.

- (2) Renter: A person or entity who has received the appropriate approvals and has received a fully executed agreement for the rental of Tennessee Tech Property.
- (3) Tennessee Tech Property or Property: All facilities and property owned, leased, or controlled by Tennessee Tech.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.04 General Policy is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.04 General Policy

- (1) Tennessee Tech dedicates its Property primarily for use by its students and employees for purposes that promote its educational and research purpose and mission.
- (2) Consistent with its purpose and mission, priority of use, and pursuant to this rule, Tennessee Tech may make certain portions of its Property available for rent to students, employees, or the public for purposes other than for Official Tennessee Tech Purposes.
- (3) Tennessee Tech may establish and modify, in its sole discretion, rental fees and charges for use of Property and will publish those rates to the public.
- (4) Tennessee Tech may, in its sole discretion, deny or limit the use of any Property if:
  - (a) The requested Property has not been designated as available for rental;
  - (b) The requested Property has been previously reserved by another user or Renter with equal or higher priority;
  - (c) The requested Property is not available for rental during the time requested;
  - (d) The rental would be impractical due to scheduled usage prior to or following the requested rental;
  - (e) The applicant has knowingly provided inaccurate or false information in the rental application;
  - (f) The applicant or the applicant's invitees or guests violated federal or state law(s), rule(s), regulation(s), or Tennessee Tech policy or policies during a previous use;
  - (g) The use would constitute an immediate and actual danger to Tennessee Tech students and/or employees, or to the peace or security of Tennessee Tech that available law enforcement officials could not control with reasonable effort;
  - (h) The anticipated size or attendance of the activity or event exceeds building/fire codes, established safety standards, and/or the physical or other limitations of the Property;
  - (i) The anticipated nature or duration of the activity or event cannot be reasonably accommodated in the requested Property;
  - (j) The anticipated size and/or location of the activity or event would cause disruption or interference with normal Tennessee Tech activities, the educational use of other Property or services, or the flow of vehicular or pedestrian traffic;
  - (k) The rental conflicts with existing Tennessee Tech contractual obligations;
  - (l) Tennessee Tech does not have sufficient institutional resources available for the proposed use as

determined by the appropriate Tennessee Tech official(s);

- (m) The rental would be contrary to federal or state law(s), rule(s), regulation(s), or Tennessee Tech policy or policies; or
  - (n) Other extenuating circumstances exist that, in the sole determination of Tennessee Tech, prevent or limit rental of the Property.
- (5) Renter must abide by all terms and conditions stated in the rental agreement, in addition to any requirements in federal or state laws, rules, regulations, or in Tennessee Tech policies.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.05 Priority of Use and Frequency of Rental is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.05 Priority of Use and Frequency of Rental

- (1) Tennessee Tech will establish priority of use of Property that is consistent with its educational and research purpose and mission.
- (2) Tennessee Tech may set reasonable limitations on the frequency of rental, intermittent rental, or repeated rental of Tennessee Tech Property.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.06 Rental Requirements is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.06 Rental Requirements

- (1) Renter and Renter's use of Property shall comply with federal and state laws, rules, regulations, and Tennessee Tech policies, including, but not limited to, applicable fire and safety codes and Tennessee Tech policies related to the safety of minors on campus.
- (2) Use of Tennessee Tech Property is limited to the declared purpose in the rental agreement.
- (3) Renters must comply with applicable Tennessee Tech contractual obligations, including but not limited to use of Tennessee Tech's contracted dining service vendor, beverage pouring rights exclusivity, etc.
- (4) Renter is solely responsible for ensuring that invitees and guests comply with federal and state laws, rules, regulations, and Tennessee Tech policies.
- (5) Tennessee Tech may assign and charge for additional services that Tennessee Tech determines, in its sole discretion, are necessary for any event considering the event's nature, size, location, or anticipated attendance.
- (6) To the extent allowed by federal or state law, Renter must agree to indemnify Tennessee Tech and hold it harmless from any and all liabilities arising out of Renter's use of Property, including, but not limited to, personal injury, property damage, court costs, attorney's fees, and any other damage, whether caused by Renter, invitees, guests, or by Renter's employees, agents, or contractors.
- (7) Renter must provide, upon request, proof of insurance of the types and coverages determined by Tennessee Tech to be appropriate for the intended use. Tennessee Tech may, in its sole discretion, require Renter to include the State of Tennessee, the Tennessee Tech Board of Trustees, and/or Tennessee Tech as additionally insured entities on Renter's insurance policy.
- (8) If requested, all persons on Property in conjunction with Renter's use shall provide adequate identification

to appropriate officials and security personnel of Tennessee Tech. Persons who refuse to provide such identification may be subject to immediate removal from Tennessee Tech Property and/or arrest, as appropriate.

- (9) Renters and their invitees and guests are restricted to the area(s) approved for their use.
- (10) Renter may not have overnight access to or use of Property unless specifically requested and approved by Tennessee Tech in the rental agreement or other written agreement.
- (11) Renter may not use Property to conduct profit-making activities unless specifically agreed upon in the rental agreement or in a separate agreement specifically addressing the profit-making activities.
- (12) Renter must return Property in the same condition it was in when made available to the Renter. Renter will be responsible for all expenses incurred by Tennessee Tech to remedy the condition of damaged Tennessee Tech Property.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.07 Application and Agreement Process is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.07 Application and Agreement Process

- (1) Tennessee Tech will establish and publish an application process, which will result in an estimate of fees and charges for the rental of the requested Property.
- (2) Any such estimated amount is subject to change if the actual conditions related to the activity or event differ from those presented in the application. Renter will be responsible for all such charges.
- (3) Rental of Tennessee Tech Property is not approved until Renter and Tennessee Tech have fully executed a rental agreement.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.08 Payment by Renter is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.08 Payment by Renter

- (1) All rentals are subject to applicable rental fees and charges for required services, including, but not limited to, maintenance, custodial, utilities, set-up, audio-visual, and security.
- (2) If rental includes the use of Tennessee Tech equipment, Tennessee Tech may limit the operation of that equipment to Tennessee Tech employees and may assess an additional charge for the use of such equipment and for the associated labor.
- (3) Renter must make payment as described in the rental agreement.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.09 Penalties is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.09 Penalties

- (1) Tennessee Tech may immediately terminate Renter's permission to use Tennessee Tech Property and may deny future requests for rental if Renter or Renter's invitees or guests violate any provision of the rental agreement or any federal or state law, rule, regulation, or Tennessee Tech policy.

Authority: T.C. A. § 49-8-203(a)(4)

0240-09-07-.10 Exceptions is added to Chapter 0240-09-07 Rental of Tennessee Tech Property and shall read as follows:

0240-09-07-.10 Exceptions

- (1) The President or the President's designee may grant exceptions to this rule when, in his/her sole discretion, the requested exception is in furtherance of Tennessee Tech's educational and research purpose and mission.

Authority: T.C. A. § 49-8-203(a)(4)

\* 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)
Tom Jones	X				
Trudy Harper	X				
Melissa Geist	X				
Rhedona Rose	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 03/21/2019, 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: 3/22/2019

Signature: Claire Stinson

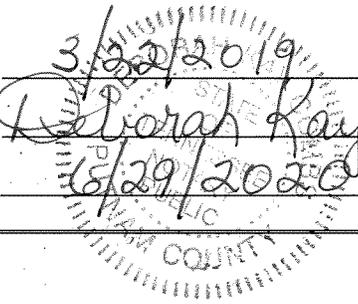
Name of Officer: Claire Stinson

Title of Officer: Vice President for Planning & Finance

Subscribed and sworn to before me on: 3/22/2019

Notary Public Signature: Laborah Kay Combs

My commission expires on: 6/29/2020



Agency/Board/Commission: Tennessee Tech Univ

Rule Chapter Number(s): 0240-09-07

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. Stately III  
Herbert H. Stately III  
Attorney General and Reporter  
4/15/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 4/24/19

Effective on: 7/23/19

Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
2019 APR 24 PM 12:12  
SECRETARY OF STATE  
COLUMBIA, TN 38401

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workplace Regulations and Compliance

SUBJECT: Prevailing Wage Commission Rules

STATUTORY AUTHORITY: The Prevailing Wage Act of 1975 was renamed on April 25, 2013 to the "Prevailing Wage Act for State Highway Construction Projects" and was amended to reflect that the Act now only applies to State highway construction projects. While the 2013 Act did not mandate that these rules be amended it is good practice to amend the rules to reflect the requirements of the new Act and to lessen confusion among contractors in the building trades and the general public.

EFFECTIVE DATES: July 7, 2019, through June 30, 2020

FISCAL IMPACT: These proposed rules should have no impact on state and local government revenue as state highway construction projects have been covered by the Prevailing Wage Act of 1975 since that Act's inception. These rules will not add additional burdens to state highway construction projects.

STAFF RULE ABSTRACT: The Prevailing Wage Act of 1975 was amended on April 25, 2013 by deleting all references to state building construction and replacing it with language addressing only "state highway construction". The Act enacted on April 25, 2013 is called the "Prevailing Wage Act for State Highway Construction Projects" and became effective on January 1, 2014. These proposed rules reflect the changes made by the new Act by deleting all references to State building construction. These proposed rules also delete some job classifications that no longer exist in the highway construction business, and modifies the names of other job classifications to more accurately reflect the names of job classifications currently performing highway construction work.

## **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 amendments, deletions, and additions to these rules will not 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 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 amendments, deletions, and additions to these 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;

The Prevailing Wage Act of 1975 was amended on April 25, 2013 by deleting all references to state building construction and replacing it with language addressing only "state highway construction". The Act enacted on April 25, 2013 is called the "Prevailing Wage Act for State Highway Construction Projects" and it became effective on January 1, 2014. These proposed rules reflect the changes made by the new Act by deleting all references to State building construction. These proposed rules also deletes some job classifications that no longer exist in the highway construction business and modifies the names of other job classifications to more accurately reflect the names of job classification currently performing highway construction work.

- (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 Prevailing Wage Act of 1975 was renamed on April 25, 2013 to the "Prevailing Wage Act for State Highway Construction Projects" and was amended to reflect that the Act now only applies to State highway construction projects. While the 2013 Act did not mandate that these rules be amended it is good practice to amend the rules to reflect the requirements of the new Act and to lessen confusion among contractors in the building trades and the general public.

- (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 highway construction contractors who bid on State highway construction projects and the employees who work for those contractors are the ones who are most directly affected by these proposed rules and they urge that these rules be adopted.

- (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 not any Attorney General and Reporter opinions or judicial rulings that directly relates to these proposed rules.

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

These proposed rules should have no impact on state and local government revenue as state highway construction projects have been covered by the Prevailing Wage Act of 1975 since that Act's inception. These proposed rules will not add any additional burdens to state highway construction projects.

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

The Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Assistant Commissioner Kim Jefferson and Legal Counsel for the Prevailing Wage Commission, Dan Bailey, has knowledge and understanding of these proposed rules.

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

The Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance,

Assistant Commissioner Kim Jefferson and Legal Counsel for the Prevailing Wage Commission, Dan Bailey, will explain the rule at a scheduled meeting of the committees.

- (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

Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, 220 French Landing Drive, Suite 2B, Nashville, TN 37243, 615-253-2741, [kim.y.jefferson@tn.gov](mailto:kim.y.jefferson@tn.gov) and Tennessee Department of Labor and Workforce Development, Legal Division, 220 French Landing Drive, Suite 3A, Nashville, TN 37243, 615-741-9550, [daniel.a.bailey@tn.gov](mailto:daniel.a.bailey@tn.gov).

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

**Department of State  
Division of Publications**

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

**For Department of State Use Only**

Sequence Number: 04-09-19  
Rule ID(s): 8891  
File Date: 4/8/2019  
Effective Date: 7/7/2019

## 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 Labor and Workforce Development/Prevailing Wage Commission  
**Division:** Workplace Regulations and Compliance  
**Contact Person:** Kim Y. Jefferson, Esq., Assistant Commissioner  
**Address:** 220 French Landing Drive, Suite 2B  
**Zip:** 37243  
**Phone:** 615-253-2741  
**Email:** [kim.y.jefferson@tn.gov](mailto:kim.y.jefferson@tn.gov)

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0800-03-02	Prevailing Wage Commission Rules
Rule Number	Rule Title
0800-03-02-.01	Definitions
0800-03-02-.02	Classification of Covered Workers
0800-03-02-.03	Effective Dates
0800-03-02-.04	Construction Wages
0800-03-02-.05	Regulations for Contractors and Contracts
0800-03-02-.06	Regulations for State Agencies
0800-03-02-.07	Inspection Process
0800-03-02-.08	Prevailing Wage Survey
0800-03-02-.09	Copy Fee

Rules  
of  
Tennessee Department of Labor and Workforce Development

Chapter ~~0800-3-20~~0800-03-02  
Prevailing Wage Commission Rules

Table of Contents

<del>2-0800-3-04</del> <u>0800-03-02-.01</u> Definitions	<del>0800-3-2-.05</del> <u>0800-03-02-.05</u> Regulations for Contractors and Contracts
<del>0800-3-2-.02</del> <u>0800-03-02-.02</u> Classification of Covered Workers	<del>0800-3-2-.06</del> <u>0800-03-02-.06</u> Regulations for State Agencies
<del>0800-3-2-.03</del> <u>0800-03-02-.03</u> Effective Dates	<del>0800-3-2-.07</del> <u>0800-03-02-.07</u> Regulations for Commission Inspection Process
<del>0800-3-2-.04</del> <u>0800-03-02-.04</u> Construction Wages	<del>0800-3-2-.08</del> <u>0800-03-02-.08</u> Prevailing Wage Survey
	<u>0800-03-02-.09</u> Copy Fee

~~0800-3-2-.01~~ 0800-03-02-.01 Definitions.

- (1) ~~The terms below shall have the following clarifying definitions in addition to those contained in T.C.A. §12-4-402 of the Prevailing Wage Act, for the purpose of construing the Act and these rules and regulations~~ As used in these rules, unless the context otherwise requires:
- (a) "Apprentices" means those persons registered individually under a bona fide apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor. The state agency contracting officer shall require the contractor or subcontractor using the apprentice to submit evidence of his/her indenture and/or apprenticeship registration when the apprentice's name first appears on a submitted payroll.
  - (b) "Commission" means the Prevailing Wage Commission or its administrative delegate, the Tennessee Department of Labor and Workforce Development ("Department").
  - (c) "Covered Worker" means all a workers employed on a Sstate construction projects as defined by T.C.A. §12-4-402(6).
  - (d) "Subcontractor" means one who performs part of the job work called for in the prime contract. This term shall include materialmen whose employees engage in the substantial operations at the project site, provided the employees of the materialmen devote as much as 20 percent of their work time on the construction premises site.
  - (e) ~~"Contract" means any contract within the scope of the Act (Tennessee Code Annotated § 12-4-401 et seq.), and which is entered into for the erection, remodeling, alteration, repairing, demolition, or making any additions to any building or buildings or for the purpose of building, rebuilding, locating or relocating or repairing any streets, highways, or bridges, or any type of building and construction work wherein any state funds may be appropriated or expended for such building or construction~~ "State contract" means any contractual agreement, written or oral, entered into by any person, firm or corporation with this state for the performance of work on a state highway construction project.
  - (f) "Highway contractor" means any contractor, subcontractor, person, firm, or corporation engaged in a state construction project for the purpose of building, rebuilding, locating, relocating, or repairing any public highway.

- (g) "Public highway" means any street, road, highway, expressway, bridge, or viaduct, including an adjacent right-of-way, that is constructed or maintained by the state, or any municipality or political subdivision of the state, and that is funded in whole or in part with federal or state highway funds.
- (h) "State highway construction project" means any construction project for the purpose of building, rebuilding, locating, relocating, or repairing any public highway.
- (2) Tennessee Prevailing Wage Rates apply to any highway contractor entering into a state contract for the performance of work on state highway construction projects. If an entity not defined above so chooses to include prevailing wage rates, the Tennessee Department of Labor and Workforce Development has no jurisdiction to enforce those prevailing wage rates.

Authority: T.C.A. §§ 12-4-402, 12-4-403, 12-4-413, and 12-4-415. Administrative History: Original Rule filed June 14, 1976; effective July 14, 1976. Repeal and new rule filed March 12, 1987; effective April 26, 1987. Repeal and new rule filed June 30, 2006; effective September 13, 2006.

0800-3-2-.02 0800-03-02-.02 Classification of Covered Workers.

- (1) All contractors and subcontractors must classify covered workers in the contract and payroll records in conformity with the schedule of classifications issued by the Commission.

~~(a) The Commission hereby issues the following classifications of crafts of workers to be used for workers employed by building contractors and subcontractors. Pursuant to T.C.A. §12-4-405(3)(A), each such craft shall only be assisted by qualified apprentices of the crafts as defined in subparagraph (a) of paragraph (1) of Rule 0800-3-2-.01.~~

~~1. "Boilermaker" means one who assembles, analyzes defects in, and repairs boilers, pressure vessels, tanks, and vats in field, following blueprints and using hand tools and portable power tools and equipment; locates and marks reference points for columns or plates on foundation, using a master straightedge, squares, transit, and measuring tape, and applying knowledge of geometry; attaches rigging or signals crane operator to lift parts to a specified position; aligns structures or plate sections to assembly boiler frame, tanks, or vats, using plumb bobs, levels, wedges, dogs, or turnbuckles; hammers, flame cuts, files, or grinds irregular edges of sections or structural parts to facilitate fitting edges together; bolts or arc-welds structures and sections together; positions drums and headers into supports and bolts or welds supports to frame; aligns watertubes and connects and expands ends to drums and headers, using a tube expander; bells, beads with a power hammer, or welds tube ends to ensure leak proof joints; bolts or welds casing sections, uptakes, stacks, baffles, and such fabricated parts as chutes, air heaters, fan stands, feeding tubes, catwalks, ladders, coal hoppers, and safety hatches to frames, using wrenches; installs manholes, handholes, valves, gauges, and feedwater connection in drums to complete assembly of watertube boilers; assists in testing assembled vessels by pumping water or gas under specified pressure into vessels and observing instruments for evidence of leakage; repairs boilers or tanks in field by unbolting or flame cutting defective sections or tubes, straightening plates, using torches or jacks, installing new tubes, fitting and welding new sections and replacing worn lugs or bolts; may rivet and caulk sections of vessels using pneumatic riveting and caulking hammers; may line firebox with refractory brick and asbestos rope and blocks; may fabricate such parts as stacks, uptakes, and chutes to adapt boiler to premises in which it is installed; assembles boilers, tanks, vats and pressure vessels according to blueprint specifications, using power tools and hand tools; reads blueprints to determine location and relationship of parts; connects firetubes to heads or~~

watertubes to drums and headers of boilers, by expanding and beading ends, using a tube expander and beading ends, using a power hammer; drills and taps holes for installation of studs, using a portable drill; tightens bolts to assemble frames, using hand or power wrenches; mounts casings of watertube boilers, or attaches davit heads, burners or furnace casings to firetube boilers, using wrenches; bolts or screws accessories, such as manholes, handholes, fans, gauges, and valves to vessels, using hand tools or power wrenches; replaces defective parts, using power wrenches, prying bars or hand tools; may install and repair refractory brick; may thread and install stay bolts, using pipe wrenches and dies; may remove and replace rivets and caulk seams to repair riveted shells and structures, using a pneumatic chisel, riveter, and caulking hammer; and may cut out defective parts, using an acetylene torch.

2. "Bricklayer" means one who performs duties in the following areas:

- (i) "Construction" means one who lays building materials, such as brick, structural tile, concrete block, glass, gypsum, and terra cotta block (except stone) to construct or repair walls, partitions, arches, sewers, and other structures; measures distance from reference points and marks guidelines on working surface to lay out work; spreads soft bed (layer) of mortar that serves as a base and binder for block; taps block with a trowel to level, align, and embed in mortar, allowing specified thickness of joint; removes excess mortar from face of block, using a trowel; finishes mortar between brick with pointing tool or trowel; breaks brick to fit spaces too small for whole brick, using the edge of a trowel or brick hammer; determines vertical and horizontal alignment of courses, using a plumb bob, gaugeline (tightly stretched cord), and level; fastens brick or terra cotta veneer to face of structures, with tie wires embedded in mortar between bricks, or in anchor holes in veneer brick; may weld metal parts to structural steel members; and may apply plaster to walls and ceiling, using a trowel to complete repair work.
- (ii) "Firebrick and Refractory Tile" means one who lays firebrick and refractory tile to build, rebuild, reline, or patch high-temperature or heating equipment, such as boilers, ovens, furnaces, converters, cupolas, ladles, and soaking pits, according to job orders and blueprints; lays out work, using chalklines, plumb bobs, tapes, squares, and levels; calculates angles and courses for building walls, arches, columns, corners and bottoms; removes burned or damaged brick and cleans surface of setting, using a sledgehammer, pry bar, pneumatic chipping gun, scraper and wire brush; cuts brick to size, using a brick hammer or powered abrasive saw; spreads fire-clay mortar over brick with a trowel and lays brick in place; spreads or sprays refractories over exposed bricks to protect bricks against deterioration by heat, using a trowel or spray gun; positions or bends special frame or hanger over casings to lay arches; cuts, notches, or drills openings to provide outlets, pyrometer mountings, brackets and heating elements, using hand tools; patches or replaces firebrick linings of ladles and furnace tap holes; constructs refractory forms for controlling quantity and flow of molten materials from furnace to rolling machines; may replace bolts, brackets, and heating elements, repair coke oven doors, weld cracks or holes in shells, or perform other repairs; and may pack insulation into shells and frames to insulate heating equipment, such as furnaces, boilers and ovens.

- (iii) — “Marble Finisher” means one who supplies and mixes construction materials for marble setter; applies grout, and cleans installed marble; moves marble installation materials, tools, machines, and work devices to work areas; mixes mortar, plaster, and grout, as required, following standard formulas and using manual or machine mixing methods; moves mixed mortar or plaster to installation area, manually or using a wheelbarrow; selects marble slabs for installation, following numbered sequence or drawings; drills holes and chisels channels in edges of marble slabs to install metal wall anchors, using a power drill and chisel; bends wires to form metal anchors, using pliers; inserts anchors into drilled holes of marble slab, and secures anchors in place with wooden stake and plaster; moves marble slabs to installation site, using a dolly, hoist, or portable crane; fills marble joints and surface imperfections with grout, using a grouting trowel or spatula, and removes excess grout, using a wet sponge; grinds and polishes marble, using abrasives, chemicals, and manual or machine grinding and polishing techniques; cleans installed marble surfaces, work and storage areas, installation tools, machinery, and work aids, using water and cleaning agents; stores marble, installation materials, tools, machinery, and related items; may modify mixing, material moving, grouting, polishing, and cleaning methods and procedures, according to type of installation or materials; may repair and fill chipped, cracked, or broken marble pieces, using a torch, spatula, and heat sensitive adhesive and filler; may secure marble anchors to studding, using pliers, and cover ends of anchors with plaster to secure anchors in place; may assist marble setter to saw and position marble; and may erect scaffolding and related installation structures.
- (iv) — “Marble Setter” means one who cuts, tools, and sets marble slabs in floors and walls of buildings and repairs and polishes slabs previously set in buildings; trims, faces and cuts marble to specified size, using power sawing, cutting, and facing equipment and hand tools; drills holes in slabs and attaches brackets; spreads mortar on bottom of slabs and on sides of adjacent slabs; sets block in position, tamps it into place, and anchors bracket attachment with wire; fills joints with grout; removes excess grout from marble with a sponge; cleans and bevels cracks or chips on slabs, using hand tools and power tools; heats cracked or chipped area with a blowtorch and fills defect with composition mastic that matches grain of marble; and polishes marble and other ornamental stone to a high luster, using power tools or by hand.
- (v) — “Stonemason” means one who sets stone to build stone structures, such as piers, walls and abutments, or lays walks, curbstones, or special types of masonry, such as alberene (acid-resistant soapstone for vats, tanks, and floors), using a mason's tools; shapes stone preparatory to setting, using a chisel hammer, and other shaping tools; spreads mortar over stone and foundation with a trowel and sets stone in place by hand or with the aid of a crane; aligns stone with plumbline and finishes joints between stone with a pointing trowel; may spread mortar along mortar guides to ensure joints of uniform thickness; may clean surface of finished wall to remove mortar, using muriatic acid and a brush; and may set cut and dressed ornamental and structural stone in buildings.
- (vi) — “Terrazzo Finisher” means one who supplies and mixes construction materials for terrazzo worker; applies grout, and finishes surface of installed terrazzo; moves terrazzo installation materials, tools, machines, and work devices to work areas, manually or using a wheelbarrow;

measures designated amounts of ingredients for terrazzo or grout, using graduated containers and a scale, following standard formulas and specifications, and loads portable mixer, using a shovel; mixes materials according to experience and requests from terrazzo worker and dumps mixed materials that form base or top surface of terrazzo into prepared installation site, using a wheelbarrow; applies curing agent to installed terrazzo to promote even curing, using a brush or sprayer; grinds surface of cured terrazzo, using power grinders to smooth terrazzo and prepare for grouting; spreads grout across terrazzo to fill surface imperfections, using a trowel; fine grinds and polishes surface of terrazzo when grout has set, using power grinders; washes surface of polished terrazzo, using a cleanser and water, and applies sealer, according to manufacturer's specifications, using a brush; installs grinding stone in power grinders, using hand tools; cleans installation site, mixing and storage areas, tools, machines, and equipment, using water and various cleaning devices; stores terrazzo installation materials, machines, tools, and equipment; may modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used; may assist terrazzo worker to position and secure moisture membrane and wire mesh prior to pouring base materials for terrazzo installation; may spread marble chips or other material over fresh terrazzo surface and press into terrazzo, using a roller; may cut divider and joint strips to size as directed; and may cut grooves in terrazzo stairs, using a power grinder, and fill grooves with nonskid material.

(vii) "Terrazzo Worker" means one who applies cement, sand, pigment and marble chips to floors, stairways, and cabinet fixtures to attain durable and decorative surfacing according to specifications and drawings; spreads roofing paper on surface of foundation; spreads mixture of sand, cement, and water over surface with a trowel to form a terrazzo base; cuts metal division strips and presses them into terrazzo base so that top edges form desired design or pattern and define level of finished floor surface; spreads mixture of marble chips, cement, pigment, and water over terrazzo base to form a finished surface, using a float and trowel; scatters marble chips over finished surface; pushes roller over surface to embed chips; allows surface to dry, and pushes electric powered surfacing machine over floor to grind and polish terrazzo surface; grinds curved surfaces and areas inaccessible to surfacing machine, such as stairways and cabinet tops, with a portable hand grinder; and may precast terrazzo blocks in wooden forms.

(viii) "Tile Finisher" means one who supplies and mixes construction materials for tile setter; applies grout, and cleans installed tile; moves tiles, tile setting tools, and work devices from storage area to installation site manually or using a wheelbarrow; mixes mortar and grout according to standard formulas and requests from tile setter, using a bucket, water hose, spatula, and portable mixer; supplies tile setter with mortar, using a wheelbarrow and shovel; applies grout between joints of installed tile, using a grouting trowel; removes excess grout from tile joints with a wet sponge and scrapes corners and crevices with a trowel; wipes surface of tile after grout has set to remove grout residue and polish tile, using nonabrasive materials; cleans installation site, mixing and storage areas, and installation machines, tools, and equipment, using water and various cleaning tools; stores tile setting materials, machines, tools, and equipment; may apply caulk, sealers, acid steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment; may modify mixing, grouting, grinding, and cleaning procedures according to type of

installation or material used; may assist tile setter to position and secure metal lath, wire mesh, or felt paper prior to installation of tile; and may cut marked tiles to size, using a power saw or tile cutter.

(ix) "Tile Setter" means one who applies tile to walls, floors, ceilings and promenade roof decks, following design specifications; examines blueprints, measures and marks surfaces to be covered, and lays out work; measures and cuts metal lath to size for walls and ceilings with tin snips; tacks lath to wall and ceiling surfaces with a staple gun or hammer; spreads plaster base over lath with a trowel and levels plaster to specified thickness, using a screed; spreads concrete on subfloor with a trowel and levels it with a screed; spreads mastic or other adhesive base on a roof deck using a serrated spreader to form the base for promenade tile; cuts and shapes tile with tile cutters and biters; and positions tile and taps it with a trowel handle to affix tile to plaster or adhesive base.

3. "Carpenter" means one who constructs, erects, installs and repairs structures and fixtures of wood, plywood, and wallboard, using a carpenter's hand tools and power tools, and conforming to local building codes; studies blueprints, sketches, or building plans for information pertaining to type of material required, such as lumber or fiberboard, and dimensions of structure or fixture to be fabricated; selects specified type of lumber or other materials; prepares layout, using a rule, framing square, and calipers; marks cutting and assembly lines on materials, using a pencil, chalk and marking gauge; shapes materials to prescribed measurements, using saws, chisels, and planes; assembles cut and shaped materials and fastens them together with nails, dowel pins, or glue; verifies trueness of structure with a plumb bob and carpenter's level; erects framework for structures and lays subflooring; builds stairs and lays out and installs partitions and cabinet work; covers subfloor with building paper to keep out moisture and lays hardwood, parquet, and wood-strip-block floors by nailing floors to subfloor or cementing them to mastic or asphalt base; applies shock-absorbing, sound-deadening, and decorative paneling to ceilings and walls; fits and installs prefabricated window frames, doors, door frames, weather stripping, interior and exterior trim, and finish hardware, such as locks, letterdrops, and kick plates; assembles scaffolding and seals off work area, using plastic sheeting and duct tape; positions a mobile decontamination unit or portable showers at entrance of work area; builds a connecting walkway between a mobile unit or portable showers and work area, using hand tools, lumber, nails, plastic sheeting, and duct tape; constructs forms and chutes for pouring concrete; erects scaffolding and ladders for assembling structures above ground level; may weld metal parts to structural steel members; when specializing in particular phase of carpentry, is designated according to specialty as combination window installer (construction); when specializing in finish carpentry, such as installing interior and exterior trim, building stairs, and laying hardwood floors, is designated finish carpenter (construction); when erecting frame buildings and performing general carpentry work in residential construction, is designated house carpenter (construction); may remove and replace sections of structures prior to and after installation of insulating materials and be designated building-insulating carpenter (construction; retail trade); may perform carpentry work in construction of walk-in freezers and environmental test chambers and be designated carpenter, refrigerator (service industry machinery); and may be designated: door hanger (construction), finished hardware erector (construction), garage door hanger (construction), hardwood-floor installer (construction), jalousie installer (construction), stair builder (construction), trim setter (construction), weather stripper (construction), wood-strip-block installer (construction), pile driver, or dock builder. A carpenter may work on resilient floors, computer floors, pedestal floors, carpet installations,

siding, acoustical ceilings, metal and wood framing, furniture installation, lathing, scaffold erecting, metal partitions, the disassembly of forms for concrete, counter tops of all materials, plastic laminates, solid surface materials, and toilet partitions.

4. ~~“Cement Finisher, Plasterer” means one who smooths and finishes surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures, using hand tools or power tools, including floats, trowels, and screeds; signals concrete deliverer to position truck to facilitate pouring concrete; moves discharge chute of truck to direct concrete into forms; spreads concrete into inaccessible sections of forms, using a rake or shovel; levels concrete to a specified depth and workable consistency, using a hand held screed and floats to bring the water to the surface to produce a soft topping; smooths and shapes surfaces of freshly poured concrete, using a straightedge and float or power screed; finishes concrete surfaces, using a power trowel, or wets and rubs concrete with abrasive stone to impart finish; removes rough or defective spots from concrete surfaces, using a power grinder or chisel and hammer, and patches holes with fresh concrete or epoxy compound; molds expansion joints and edges, using edging tools, jointers, and straightedge; may sprinkle colored stone chips, powdered steel, or coloring powder on concrete to produce prescribed finish; may produce rough concrete surface, using a broom; may mix cement, using a hoe or concrete mixing machine; may direct sub-grade work, mixing of concrete, and setting of forms; may specialize in finishing steps and stairways and be designated a step finisher (construction); and may break up and repair old concrete surfaces, using pneumatic tools, and be designated a cement mason, maintenance (any industry).~~
  
5. ~~“Class A Operator” means one who operates a wide variety of heavy equipment such as but not limited to: backhoes, drag lines, cranes, winches with booms, motor patrols, trenching machines (18" and over), pile drivers, tug boats, mechanics (heavy), central mixing plants, locomotives, straddle carriers, earth freezing equipment, 3-drum hoists, side booms, dredges, mucking machines, cableways, central compressor plants, derrick boats, concrete pumps, well point systems, self-propelled sweepers, bulldozers, forklifts, and front end loaders; adjusts hand wheels, depresses pedals and moves levers to drive equipment and control attachments such as blades, buckets, scrapers and swing booms; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Various equipment operating engineers may also operate steel and stone handling equipment in connection with erections, machine handling machinery, cable spinning machines, conveyor loaders, keystones, all types of shovels, derricks, trench shovels, pippin type backhoes, hoists, pavers, milling machines, gradalls, tandem scrapers, drills (self-contained drillmaster type), batch plants with mixer, scrapers and tournapulls, rollers, spreaders, tractors, conveyors, pressure boilers, well drillers, ditch witch type trenchers, concrete breaking machines, fine grade machines, seamen pulverizing mixers, form line graders, road finishing machines, power booms, seed spreaders, grease trucks, compressors, pumps and machines similar to above. Included in this definition are tiremen on power equipment, asphalt plant engineers, maintenance engineers (power boat), firemen, oilers and deck hands (personnel boats), and grease truck helpers.~~
  
6. ~~“Class B Operator” means one who operates a wide variety of equipment such as: trenching machines (less than 18"), tandem rollers, pavers, mobile mixers (rubber tired mobile, mixed on job), back fillers, blade graders, dinkeys (over 10 tons), elevating graders, winches (operated from trucks or tractors without booms and powered other than by the trucks), bituminous distributors, 1 and 2 drum~~

- hoists, grout pumps, motor boats, self-propelled earth compactors, finishing machines, and mixers; adjusts hand-wheels, depresses pedals and moves levers to drive equipment and control attachments such as blades, buckets, scrapers and swing booms; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Included in this definition are switchmen, brakemen, and firemen.
7. "Class C Operator" means one who operates a wide variety of equipment such as: air compressors, earth drills, scales, tractors (40 horse power and less), pumps (larger than 4"), and dinkeys (less than 10 tons); adjusts hand-wheels, depresses pedals and moves levers to drive equipment and control attachments; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Included in this definition are motor crane drivers and oilers.
8. "Electrician" means one who plans layout, installs, and repairs wiring, electrical fixtures, apparatus, and control equipment; plans new or modified installations to minimize waste of materials, provide access for future maintenance, and avoid unsightly, hazardous, and unreliable wiring, consistent with specifications and local electrical codes; prepares sketches showing location of wiring and equipment, or follows diagrams or blueprints, ensuring that concealed wiring is installed before completion of future walls, ceilings, and flooring; measures, cuts, bends, threads, assembles, and installs electrical conduit, using tools, such as hacksaw, pipe threader, and conduit bender; pulls wiring through conduit; splices wire by stripping insulation from terminal leads, using a knife or pliers, twisting or soldering wires together, and applying tape or terminal caps; connects wiring to lighting fixtures and power equipment, using hand tools; installs control and distribution apparatus, such as switches, relays, and circuit-breaker panels, fastening in place with screws or bolts, using hand tools and power tools; connects power cables to equipment, such as electric range or motor, and installs grounding leads; lays polyvinyl chloride (PVC) pipe for main feed electric line; and tests continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such as ohmmeter, battery and buzzer, and oscilloscope.
9. "Elevator Constructor" means one who assembles and installs electric and hydraulic freight and passenger elevators, escalators, and dumbwaiters, determining layout and electrical connections from blueprints; studies blueprints and lays out location of framework, counterbalance rails, motor pump, cylinder, and plunger foundations; drills holes in concrete or structural steel members with portable electric drill; secures anchor bolts or welds brackets to support rails and framework, and verifies alignment with a plumb bob and level; cuts prefabricated sections of framework, rails, and other elevator components to specified dimensions, using an acetylene torch, power saw, and disc grinder; installs cables, counterweights, pumps, motor foundations, escalator drives, guide rails, elevator cars, and control panels, using hand tools; connects electrical wiring to control panels and electric motors; installs safety and control devices; positions electric motor and equipment on top of elevator shaft, using hoists and cable slings; and may be designated according to type of equipment installed as elevator constructor, electric (construction), elevator constructor, hydraulic (construction), or escalator constructor (construction).
10. "Glazier" means one who installs glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops; marks outline or pattern on glass, and cuts glass, using a glasscutter; breaks off excess glass by hand or with notched tool; fastens glass panes into

wood sash with glazier's points, and spreads and smoothes putty around edge of panes with knife to seal joints; installs mirrors or structural glass on building fronts, walls, ceilings, or tables, using mastic, screws, or decorative molding; bolts metal hinges, handles, locks, and other hardware to prefabricated glass doors; sets glass doors into frames and fits hinges; may install metal window and door frames into which glass panels are to be fitted; may press plastic adhesive film to glass or spray glass with tinting solution to prevent light glare; may install stained glass windows; may assemble and install metal framed glass enclosures for showers and be designated shower enclosure installer (construction); and may be designated according to type of glass installed as glazier, structural glass (construction), or plate glass installer (construction).

11. "Insulation Worker for Mechanical Trades/Asbestos Worker" means one who applies insulating material\* to exposed surfaces of structures, such as air ducts, hot and cold pipes, storage tanks, and cold storage rooms; reads blueprints and selects required insulation material (in sheet, tubular, or roll form) such as fiberglass, foam rubber, styrofoam, cork, or urethane, based on material's heat retaining or excluding characteristics; brushes adhesives on or attaches metal adhesive-backed pins to flat surfaces as necessary to facilitate application of insulation material; measures and cuts insulation material to specified size and shape for covering flat or round surfaces, using a tape measure, knife, or scissors; fits, wraps, or attaches required insulation material around or to structure, following blueprint specifications; covers or seals insulation with preformed plastic covers, canvas strips, sealant, or tape to secure insulation to structure, according to type of insulation used and structure covered, using a staple gun, trowel, paintbrush, or caulking gun; removes asbestos\*\*from ceilings, walls, beams, boilers, and other structures, following hazardous waste handling guidelines; positions portable air evacuation and filtration system inside work area; sprays chemical solution over asbestos covered surfaces, using a tank with an attached hose and nozzle, to soften asbestos; cuts and scrapes asbestos from surfaces, using a knife and scraper; shovels asbestos into plastic disposal bags and seals bags, using duct tape; cleans work area of loose asbestos, using a vacuum, broom, and dust pan; places asbestos in disposal bags and seals bags, using duct tape; dismantles scaffolding and temporary walkway, using hand tools, and places plastic sheeting and disposal bags into transport bags; and seals bags, using duct tape, and loads bags into truck. (\*Note: Installation of insulation is also found in other classifications relating to other trades. \*\*Note: Whenever asbestos is removed on any State construction project, all contractors and subcontractors must comply with the Tennessee Occupational Safety and Health Regulations in 29 Code of Federal Regulations 1926.1101.)

12. "Ironworker" means one who performs any combination of the following duties to raise, place, and unite girders, columns, and other structural steel members to form completed structures or structure frameworks, working as a member of a crew; sets up hoisting equipment for raising and placing structural steel members; fastens steel members to cable of hoist, using a chain, cable, or rope; signals worker operating hoisting equipment to lift and place steel members; guides steel members using a tag line (rope) or rides on steel members in order to guide them into position; pulls, pushes, or pries steel members into approximate positions while steel members are supported by hoisting device; forces steel members into final positions, using turnbuckles, crowbars, jacks, and hand tools; aligns rivet holes in steel members with corresponding holes in previously placed steel members by driving drift pins or handle of wrench through holes; verifies vertical and horizontal alignment of steel members, using a plumb bob and level; bolts aligned steel members to keep them in position until they can be permanently riveted, bolted, or welded in place; catches hot rivets tossed by

rivet heater (heat treating) in bucket and inserts rivets in holes, using tongs; bucks (holds) rivets while pneumatic riveter uses air hammer to form heads on rivets; cuts and welds steel members to make alterations, using oxyacetylene welding equipment; may specialize in erecting or repairing specific types of structures and be designated bridge maintenance worker (construction), chimney builder, reinforced concrete (construction), metal building (construction), or structural steel equipment erector (construction); positions and secures steel bars in concrete forms to reinforce concrete; determines number, sizes, shapes, and locations of reinforcing rods from blueprints, sketches, or oral instructions; selects and places rods in forms, spacing and fastening them together, using wire and pliers; cuts bars to required lengths, using a hacksaw, bar cutters, or acetylene torch; may bend steel rods with hand tools or rod bending machine; may reinforce concrete with wire mesh; may weld reinforcing bars together, using arc welding equipment; welds deck pans on a bridge, reinforcing supports for the concrete structure; installs wire, cable, steel and other materials used for the purpose of pre-stressing and post-stressing concrete girders, beams, columns, etc.; loads, unloads, hoists, handles, signals, places and erects all pre-stressed and post-stressed pre-cast material including grouting of post-tension cables, glass fiber reinforced concrete panels, including the securing by bolting and/or welding and the installation of steeltex and wire mesh of any type when used for reinforced concrete construction; erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways; erects ornamental enclosures and other ironwork not included in structural ironwork; fastens ironwork to walls of buildings by means of bolts, brackets, and anchors; fastens newel posts, balusters, and other parts of stairways by fastening to supports or embedding them in sockets; and forges, welds, drills, and cuts as needed.

13. "Laborer (Class A)" means one who performs any combination of the following duties on construction projects, usually working in a utility capacity, by transferring from one task to another where demands require a worker with varied experience and ability to work without close supervision. Laborers may not assist mechanics in the performance of mechanics' work using tools peculiar to an established trade. Their work is to be confined to the following tasks and operation of various power tools such as but not limited to: jackhammers, air tampers, vibrators, cat crawlers, chipping hammers, motorized wheel barrows, concrete saws, motorized posthole diggers, chain saws, air tools, power driven tools, and mortar mixers. Laborers may have duties as mason tenders, asphalt rakers, form setters, strippers, and tool-room attendants. Included in this definition is one who performs a variety of tasks involving dextrous use of hands and tools such as demolishing buildings, sawing rough lumber, dismantling forms, removing projections from concrete, and mounting pipe hangers (work that is usually performed with other workers); uses a cutting torch for demolition work on steel or other metal structures; on utility projects, lays tile, concrete, or corrugated metal pipe, receiving pipe lowered from top of trench, inserting spigot end of pipe into bell end of last laid pipe, adjusting pipe to line and grade and sealing joints with cement or other sealing compound; assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixing mortar used in the patching of concrete, and performing other tasks as may be directed by cement mason or plasterer; mixes mortar for working; sets up scaffolding as directed by foreman; assists brickmasons, stonemasons, and blockmasons by preparing mortar mix, either by hand or machine, delivering material to masons on scaffolds, and operating small material moving equipment such as power buggies, hoists, mortar mix pumps and other similar equipment; erects and dismantles bricklayer scaffolds according to directions of mason; mixes plaster to be used in a machine designed to apply plaster to surfaces by means of a hose; handles and maintains hose, placing and moving machine;

may service and maintain machine, as necessary; and may also be in charge of cleaning and caring for tools and equipment used in the preparation and application of plaster.

14. ~~“Laborer (Class B) Unskilled” means one who may not assist mechanics in the performance of mechanics’ work using tools peculiar to an established trade. Their work is to be confined to the following manual tasks: digging and filling holes and trenches; loading, unloading and stockpiling materials; cleaning and sweeping; driving stakes; stripping forms; ripping out material which is to be discarded; ground cleanup of roof removal work; roof removal work for demolitions; clearing and grubbing; flagging; operating chippers and/or stump grinders; cleaning, screening and feeding sand to hopper or pot of sandblasting machines; cleaning and preparing surfaces by the use of sandblasting equipment; assisting in setting up drill, assorting drill steels, and inserting drill steel into drill chuck (as wagon, air track, drill and diamond drillers’ tender outside); lubricating drills; cleaning and washing windows; performing landscaping duties including site development, soil preparation, fertilizing, the building of garden accessories, preparation for the installation of garden sprinkler systems, and operating small walking type farm equipment. Their duties shall not include electrical work, fencing, concrete retaining walls, or other work which is generally performed by skilled craftsmen.~~
  
15. ~~“Millwright” means one who installs machinery and equipment according to layout plans, blueprints, and other drawings in an industrial establishment, using hoists, lift trucks, hand tools, and power tools; reads blueprints and schematic drawings to determine work procedures; dismantles machines, using hammers, wrenches, crowbars and other hand tools; moves machinery and equipment, using hoists, dollies, rollers, and trucks; assembles and installs equipment, such as shafting, conveyors, and tram rails, using hand tools and power tools; constructs foundations for machines, using hand tools and building materials, such as wood, cement, and steel; aligns machines and equipment, using hoists, jacks, hand tools, squares, rules, micrometers, and plumb bobs; assembles machines, and bolts, welds, rivets, or otherwise fastens them to foundations or other structures, using hand tools and power tools; may operate engine lathe to grind, file, and turn machine parts to dimensional specifications; may repair and lubricate machines and equipment; may install robot and modify its program, using a teach pendant; and may perform installation and maintenance work as part of team of skilled trades workers.~~
  
16. ~~“Painter/Plaster” means one who applies coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures; reads work orders or receives instructions from supervisor regarding painting; smoothes surfaces, using sandpaper, brushes, or steel wool, and removes old paint from surfaces (to include lead-based paint), using paint remover, scraper, wire brush, or blowtorch to prepare surfaces for painting; fills nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using a caulking gun and putty knife; selects premixed paints, or mixes required portions of pigment, oil, and thinning and drying substances to prepare paint that matches specified colors; removes fixtures, such as pictures and electric switchcovers from walls prior to painting, using a screwdriver; spreads dropcloths over floors and room furnishings, and covers surfaces, such as baseboards, door frames, and windows with masking tape and paper to protect surfaces during painting; paints surfaces, using brushes, spray guns, or paint rollers; simulates wood grain, marble, brick, or tile effects; applies paint with cloth, brush, sponge, or fingers to create special effects; erects scaffolding or sets up ladders to perform tasks above ground level;~~

may be designated according to type of work performed as: painter, interior finish (construction); painter, maintenance (any industry); or according to type of material used as calciminer (construction); or varnisher (construction); may also hang wallpaper and fabrics; may wash surfaces prior to painting with mildew remover, using a brush; may apply drywall finish to work which will include, but not be limited to the preparation or leveling of any surface or substrate which is to receive a coating, finish and/or wall covering for all levels of finishing and/or spackling of all surfaces, including gypsum wallboard taping and finishing, fire taping and all firestopping systems, glaze coatings, skim coating or any other finishing system, spotting of nails, finishing of corner beads/flex beads, patching and sanding that is within the system of preparing surfaces for finishes, and all stucco and dryvit systems; applies coats of plaster to interior walls, ceilings, and partitions of buildings, to produce finished surface, according to blueprints, architect's drawings, or oral instructions, using hand tools and portable power tools; directs workers to mix plaster to desired consistency and to erect scaffolds; spreads plaster over lath or masonry base, using a trowel, and smooths plaster with a darby and float to attain uniform thickness; sprays fireproof insulation onto steel beams; applies scratch, brown, or finish coats of plaster to wood, metal, or board lath successively; roughens undercoat with scratcher (wire or metal scraper) to provide bond for succeeding coats of plaster; creates decorative textures in finish coat by marking surface of coat with a brush and trowel or by spattering surface with pebbles; may install lathing; may mix mortar; may install guide wires on exterior surface of buildings to indicate thickness of plaster to be applied; may install precast ornamental plaster pieces by applying mortar to back of pieces and pressing pieces into place on wall or ceiling; molds and installs ornamental plaster panels and trim, and runs (casts) ornamental plaster cornices and moldings by either of the following methods: spreads freshly mixed plaster on table or in forms with a trowel when molding and installing ornamental trim; shapes plaster by hand, using a template and cuts trim to size after plaster has hardened; applies coat of plaster to wall and presses trim into position; nails wooden strips to wall and ceiling to serve as guide for template when casting (running) cornices or moldings; applies plaster to wall or ceiling, using a trowel, or pushes template over plaster striking off excess plaster until desired shape and smoothness of molding is obtained; applies weatherproof, decorative covering of portland cement or gypsum plaster to outside building surfaces, using hand tools; decorates final or finish coat by marking coat with sand, or with a brush or trowel, or by spattering with small stones; may nail wire mesh, lath, or similar material to outside surfaces to serve as binding device to hold stucco in place; may apply stucco, using a spray gun; and may install guide wires on surface of buildings to indicate thickness of stucco to be applied.

17. "Plumber/Pipe Fitter/Steam Fitter/Sprinkler Fitter" means one who lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints; selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications; inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness; plans installation or repair to avoid obstruction and to avoid interfering with activities of other workers; cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch and pipe cutting machine; threads pipe, using a pipe threading machine; bends pipe, using pipe bending tools and pipe bending machine; assembles and installs a variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic; connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints and hand tools;

secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools; installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools; installs and maintains refrigeration and air conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints; increases pressure in pipe system and observes connected pressure gauge to test system for leaks; may weld pipe supports to structural steel members; may operate machinery to verify repair; may modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using a teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller; may be designated steam fitter when installing piping systems that must withstand high pressure; assembles, installs, and repairs pipes, fittings, and fixtures of heating, water, and drainage systems, according to specifications and plumbing codes; studies building plans and working drawings to determine work aids required and sequence of installations; inspects structure to ascertain obstructions to be avoided to prevent weakening of structure resulting from installation of pipe; locates and marks position of pipes and pipe connections and passage holes for pipes in walls and floors, using a ruler, spirit level, and plumb bob; cuts openings in walls and floors to accommodate pipe and pipe fittings, using hand tools and power tools; cuts and threads pipe, using pipe cutters, cutting torch, and pipe threading machine; bends pipe to required angle by use of pipe bending machine or by placing pipe over block and bending it by hand; assembles and installs valves, pipe fittings, and pipes composed of metals, such as iron, steel, brass, lead, and nonmetals, such as glass, vitrified clay, and plastic, using hand tools and power tools; joins pipes by use of screws, bolts, fittings, solder, plastic solvent, and caulks joints; fills pipe system with water or air and reads pressure gauges to determine whether system is leaking; installs and repairs plumbing fixtures, such as sinks, commodes, bathtubs, water heaters, hot water tanks, garbage disposal units, dishwashers, and water softeners; repairs and maintains plumbing by replacing washers in leaky faucets, mending burst pipes, and opening clogged drains; may weld holding fixtures to structural steel members; tests, adjusts and balances heating and cooling pipe systems in commercial and industrial buildings, using specialized tools and equipment to attain performance standards specified in system design; adjusts flow control valves in piping to balance system, using hand tools such as pliers, screwdrivers, and wrenches; works with balancing personnel to perform tests to see if the heating and cooling systems are operating to specifications and to detect malfunctions in piping system component parts; as a sprinkler fitter, installs and maintains all fire protection and fire control systems including the unloading, handling by hand power equipment and installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, also all tanks and pumps connected thereto, also included shall be carbon dioxide (CO<sub>2</sub>) and cardox systems, dry chemical systems, foam systems, halon and all other fire protection systems, the locating of and cutting or coring of all holes for piping and the setting of all sleeves and inserts required for the installation of the work.

18. "Roofer" means one who covers roofs with roofing materials other than sheet metal, such as composition shingles or sheets, wood shingles, or asphalt and gravel, to waterproof roofs; cuts roofing paper to size, using a knife, and nails or staples it to roof in overlapping strips to form base for roofing materials; aligns roofing material with edge of roof, and overlaps successive layers, gauging distance of overlap with chalkline, gauge on shingling hatchet, or by lines on

shingles; fastens composition shingles or sheets to roof with asphalt, cement, or nails; punches holes in slate, tile, terra cotta, or wooden shingles, using a punch and hammer; cuts strips of flashing and fits them into angles formed by walls, vents, and intersecting roof surfaces; when applying asphalt or tar and gravel to roof, mops or pours hot asphalt or tar onto roof base; applies alternate layers of hot asphalt or tar and roofing paper until roof covering is as specified; applies gravel or pebbles over top layer, using a rake or stiff-bristled broom; may construct and attach prefabricated roof sections to rafters; may attach shingles to exterior walls and apply roofing paper and tar to shower pans, decks, and promenades to waterproof surfaces; installs insulation in connection with roofer's work; sprays roofs, sidings, and walls with urethane or polyurethane foam to bind, seal, insulate, or soundproof sections of structures; flips switches to start generator, air compressor, and heaters; turns nozzle on spray gun to obtain specified consistency of mixture; directs foam onto surfaces, and determines thickness of foam, using a probe; and connects hose of nitrogen tank to spray compound supply tank when spraying is completed, and turns valves to inject nitrogen into supply tank to prevent crystallization of compounds in tank.

19. "Sheet Metal Worker" means one who plans, lays out, fabricates, assembles, installs, and repairs sheet metal parts, equipment, and products, utilizing knowledge of working characteristics of metallic and nonmetallic materials, machining, and layout techniques using hand tools, power tools, machines, and equipment; reads and interprets blueprints, sketches, or product specifications to determine sequence and methods of fabricating, assembling, and installing sheet metal products; selects gauge and type of sheet metal, such as galvanized iron, copper, steel, aluminum, or nonmetallic materials such as plastics or fiberglass, according to product specifications; lays out and marks dimensions and reference lines on material, using scribes, dividers, squares, and rulers, applying knowledge of shop mathematics and layout techniques to develop and trace patterns of products or parts or using templates; sets up and operates fabricating machines, such as shears, brakes, presses, forming rolls, and routers, to cut, bend, block and form, or straighten materials; shapes metal material over anvil, block, or other form, using hand tools; trims, files, grinds, deburrs, buffs, and smooths surfaces, using hand tools and portable power tools; welds, solders, bolts, rivets, screws, clips, caulks, or bonds component parts to assemble products, using hand tools, power tools, and equipment; installs assemblies in supportive framework according to blueprints, using hand tools, power tools, and lifting and handling devices; inspects assemblies and installation for conformance to specifications, using measuring instruments, such as calipers, scales, dial indicators, gauges, and micrometers; repairs and maintains sheet metal products; may operate computer-aided-drafting (CAD) equipment to develop scale drawings of product or system; may operate laser-beam cutter or plasma arc cutter to cut patterns from sheet metal; installs sheet metal duct work to facilitate the movement of air; and frequently specializes in such areas as ventilation and air conditioning, restaurant equipment, and architectural sheet metal work.

20. "Truck Driver (3 or More Axles)" means one who operates trucks with 3 or more axles, dump trucks over 6 yards, dumpsters, semi-trailers, tandems escort and pilot vehicles, flat body material trucks, form trucks, greasers and steamers, rubber tired towing and pushing vehicles, A-frames, agitators or mixers, asphalt distributors, low-boys, batch trucks, euclid type or similar off-highway equipment, off-highway tandem back-dumps, specialized earth moving equipment, twin engine equipment, double hitched equipment, and equipment similar to above.

~~21. "Truck Driver (2 Axles, Over 1 Ton)" means one who operates trucks with 2 axles over 1 ton, and 5 yard dump trucks.~~

~~22. "Truck Driver (2 Axles, 1 Ton and Less)" means one who operates small trucks such as panel trucks and pickups.~~

(b)(a) The Commission hereby issues the following classifications of crafts of workers and helpers to be used for workers employed by highway contractors and subcontractors.

1. "Blaster" means a person qualified by reason of training, knowledge, experience and registration to fire or detonate explosives in blasting operations.

~~12.~~ "Bricklayer" means one who lays out work from plans; sets up templates and guidelines lines; lays bricks, concrete blocks, tiles or other materials in the construction of manholes, catch basins, drop inlets, sidewalks, retaining walls, and other incidental structures; and may perform other related duties.

~~23.~~ "Carpenter" means one who lays out work from plans or sketches; builds wooden structures, such as concrete forms, falsework, pouring chutes, scaffolds, etc.; builds in place to line and grade, or prefabricates in units to be erected later; builds forms for bridges, drainage structures, walls, etc.; and may perform other related duties.

~~34.~~ "Class A Operator" means one who operates a backhoe/hydraulic excavator (¾ yard and over), crane, end loader (3 yards and over), motor patrol (rough) (finish), tractor (crawler/ utility), scraper, shovel, or trenching machine; and is further defined as follows:

(i) "Backhoe Operator" means one who operates boom-type equipment to hoist and move materials, raise and lower heavy weights, and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as excavations and may be used for other miscellaneous tasks for which crane or stick-type equipment is required.)

(ii) "Crane Operator" means one who operates boom-type equipment less than 20 tons to hoist and move materials, raise and lower heavy weights and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as pouring concrete and setting steel. This work is subjected to strict inspection and must conform closely to specifications. The equipment may also be used for other miscellaneous tasks for which crane or stick-type equipment is required which may include hoist operations and pile driving operations.)

(iii) "End Loader Operator (3 yards and over)" means one who operates a rubber-tired or crawler-type tractor with an attached bucket on the front end; moves levers to raise and lower to dump contents of bucket; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The machine is used to load materials from stockpiles, excavations, charging batch plants, and loading trucks.)

- (iv) ~~“Motor Crane Driver” means one who drives a heavy or medium-duty gasoline or diesel truck upon which is mounted a crane for picking up various objects; positions and levels truck at object to be lifted, fastens cables, operates levers or controls in lifting of objects in accordance with signals from designated worker on ground; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.~~
- (v)(iv) “Motor Patrol Operator (Finish)” means one who rides in a control cab of a motor grader to move levers and hand-wheels to guide the machine and to regulate the scraper blade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The blade is mounted on a carrying and turning circle at the front of the machine. The equipment is used to level dirt to a fine grade and to lay asphalt and flexible base materials. This work is subjected to strict inspection and must conform closely to specifications.)
45. “Class B Operator” means one who operates a backhoe/hydraulic excavator (less than  $\frac{3}{4}$  yard), bulldozer ~~or push dozer~~, end loader (less than 3 yards), motor patrol (rough), tractor (crawler/utility), scraper, shovel, or trenching machine; and is further defined as follows:
- (i) ~~“Bulldozer or Push Dozer Operator”~~ means one who operates a large tractor with a concave steel blade or push block mounted in front of the chassis; regulates heights of blades or push blocks from the ground; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used to level, distribute and push earth. The work is subjected to strict inspection and must conform closely to specifications. The equipment may also be used as a pusher to load earth-carrying equipment. At times a ripper attachment is used for ripping the earth prior to loading the scraper.)
- (ii) “Motor Patrol Operator (Rough)” means one who rides in a control cab of a motor grader to move levers and hand-wheels to guide the machine and to regulate the scraper blade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The blade is mounted on a carrying and turning circle at the front of the machine. The equipment is used to level dirt to a rough grade and to lay asphalt and flexible base materials.)
- (iii) “Scraper Operator” means one who operates a self-propelled rubber tired or tractor drawn unit known as a scraper, pan, etc. to excavate, transport, and deposit materials moved in normal grading operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (iv) “Shovel Operator (Dragline)” means one who operates boom-type equipment to hoist and move materials, raise and lower heavy weights, and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work in excavations to load haulage equipment with material. Equipment may be used for other miscellaneous tasks for which crane or stick-type equipment is required. It may include hoist operations and pile driving operations.)

~~(v)~~ "Tractor Operator (Crawler or Utility)" means one who operates a gasoline or diesel powered crawler tread or rubber tired tractor to haul heavier implements such as large root plows, heavy sheepfoot rollers, large pneumatic rollers, water tanks, trailers, etc. used in heavy ground clearing operations; uses miscellaneous attachments such as a post-hole digger; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(vi)~~(v) "Trenching Machine Operator" means one who moves levers to operate a power-driven machine that digs trenches for sewers, water, drainage, oil, or gas pipelines; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel of edged buckets that excavate and deposit the material on a conveyor belt that in turn discharges the material at the side of the trench.)

56. "Class C Operator" means one who operates an asphalt paver, concrete finishing machine, concrete paver, scale, spreader (self-propelled), concrete grinder, asphalt milling machine, or boring machine (horizontal); and is further defined as follows:

(i) "Asphalt Milling Machine Operator" means one who uses a specialized machine to mill asphalt for use in resurfacing highways, etc.; and may perform other related duties.

(ii) "Asphalt Paver Machine Operator" means one who manipulates hand or foot levers to control movements of a paving machine that spreads and levels asphalted concrete on the sub-grade of a highway; turns hand-wheels to raise or lower screeds, and regulates width of screeds; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(iii) "Concrete Barrier Rail (Transfer) Machine Operator" means a heavy vehicle used to transfer concrete lane dividers which are used to relieve traffic congestion during rush hours; it is also used temporarily during construction work.

~~(iii)~~(iv) "Concrete Finishing Machine Operator" means one who operates a self-propelled machine which travels on concrete paving forms; levels fresh concrete to an approximate grade and contour by pushing and pulling two (2) screeds over the surface; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(iv)~~(v) "Concrete Grinder Operator" means one who uses a self-propelled machine to grind out concrete surfaces; and may perform other related duties.

~~(v)~~(vi) "Concrete Paver Operator" means one who operates a paving machine that travels on forms or in slipform operation; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(vi)(vii) "Scale Operator" means one who weighs materials in trucks prior to deliveries; records net and gross weights, truck numbers, and kinds of materials; may weigh empty trucks on the truck scale in order to compute net weights; may issue weight tickets on certain types of scale equipment since the job is clerical in nature; and may perform other related duties.

(viii) "Spreader Operator (Self-Propelled)" means one who drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

67. "Class D Operator" means one who operates a bobcat, central mixing plant, concrete pump, concrete saw, curb machine (automatic or manual), dozer or loader (stockpile), drill (piling), mulcher or seeder, rock drill (truck mounted), roller (asphalt), roller (compaction self-propelled), soil stabilization machine, tractor (boom and hoist), bituminous distributor machine, pump, track drill, or striping machine; and is further defined as follows:

(i) "Bituminous Distributor Machine Operator" means one who operates a machine that spreads and levels hot-mix bituminous paving material on the sub-grade of highways and streets; and may perform other related duties.

(ii) "Bobcat Operator" means one who uses small tractor-type equipment for excavations, backfill trenching or smoothing with a blade-lift, scoop or bucket; and may perform other related duties.

(iii) "Boring Machine Operator (Horizontal)" means one who sets up and operates a drilling mechanism that drills holes horizontally; levels a machine by placing timbers under wheels or tracks; inserts and fastens drill steel in chuck; adjusts angles of drill towers and bolts into position; controls drilling and speed of drill by moving levels; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(iv) "Central Mix Plant Operator (Asphalt or Concrete)" means one who operates a stationary or portable batching plant in mixing concrete materials or asphaltic materials and aggregates to produce asphaltic or concrete paving materials; adjusts controls for required mixture of the materials; operates controls that admit materials separately from storage hoppers or mixing bins; observes indicators that show when proper amounts of materials have been made; discharges materials from bins into trucks or other carriers or mixers; and may perform other related duties.

(v) "Concrete Saw Operator" means one who operates a water-cooled power saw with either a diamond or an abrasive blade to saw expansion and contraction joints in concrete paving or asphaltic pavements; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(vi) "Curb Machine Operator (Automatic)" means one who operates a self-propelled machine which finishes fresh concrete to a contour by pushing and pulling two (2) screeds over the surface; may oil, grease or otherwise

service and make necessary adjustments to equipment as needed; and may perform other related duties.

- (vii) "Curb Machine Operator (Manual)" means one who operates a manual curb machine which by auger action forces compacted fresh concrete or asphalt through a tube to form an extruded curb along a contour to a grade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (viii) "Distributor Operator (Bituminous)" means one who drives a truck equipped with a tank and controls for regulating distribution of bituminous materials for highway surfacing; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- ~~(ix) "Ditch Paver Machine Operator" means one who operates a self-propelled machine in pouring concrete ditch paving; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.~~
- (x)(ix) "Dozer or Loader (Stock Pile Only)" means one who operates a rubber-tired or crawler-type tractor with an attached bucket on the front end; moves levers to raise and lower to dump contents of bucket; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The machine is used to load materials from stockpiles, charging batch plants, and loading trucks.)
- (xi)(x) "Drill Operator (Piling)" means one who sets up and operates a drill mechanism for driving piling; levels and positions drill; adjusts angle of drill; controls drilling and speed of drill by moving controls; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xii)(xi) "Mulcher or Seeder Operator" means one who operates a mulching machine for the placement of mulched materials; operates a gun for distribution; feeds machine as required; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xiii)(xii) "Pile Driver Operator" means one who operates a machine either crane or skid mounted with leads and hammer or jets for driving piling; assists other workers in setting up pile drive leads; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xiv)(xiii) "Pump Operator" means one who operates a concrete, fuel, or other fluid pump; sets up pump and lays pipes or flexible lines; operates power unit of pump; takes pipelines apart to clean and store; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xv)(xiv) "Roller Operator (Asphalt)" means one who operates a self-propelled machine with either two or three steel flat wheels, which is used to compact plant mix asphalt pavement; rides on the platform of a machine and moves levers, pedals, or throttles to control and guide the machine; may oil,

grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(xvi)~~(xv) "Roller Operator (Other than Asphalt)" means one who operates a crawler tread tractor to pull a grid, sheepfoot, or extra-heavy pneumatic roller, which is used to compact earth fills, flexible bases, etc.; operates a tractor by manipulating the throttle, levers, and pedals and steers tractor by working levers or pedals that individually control both crawler treads; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(xviii)~~(xvi) "Soil Stabilization Machine Operator" means one who operates a self-propelled rubber tired or crawler-type equipment to mix and spread road materials for soil stabilization with cement, asphalt, lime, fly ash, etc.; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(xviii)~~(xvii) "Striping Machine Operator" means one who rides the back of a paint truck and uses a specialized machine on pavement to apply paint or thermo plastic; aligns lower carriages as necessary; and may perform other related duties.

~~(xix)~~(xviii) "Track Drill Operator" means one who operates a drilling machine, such as a wagon drill, air trac, well driller, etc. for the purpose of drilling rock, shale, or other materials; starts, stops and services portable air compressors; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

~~(xx)~~(xix) "Tractor Operator (Boom and Hoist)" means one who operates a rubber-tired or crawler-type tractor with an attached boom and hoist; moves levers to raise and lower materials and miscellaneous items in trenches and excavations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

78. "Concrete Finisher" means one who finishes wet surfaces to grade with hand tools, floats, trowels, screeds, templates and straight edges on all types of concrete work requiring a fine finish; and may perform other related duties.

89. "Drill Operator (Caisson)" means one who sets up and operates a drill mechanism for caissons; levels and positions drill; adjusts angle of drill; controls drilling and speed of drill by moving controls; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

910. "Electrician" means one who plans and executes the layout of electrical conduits; installs wiring systems, switch-panels, and buss bars; works on overhead distribution systems and underground distribution systems; and may perform other related duties.

4011. "Farm Tractor Operator (Power Broom)" means one who operates a small gasoline or diesel powered four-wheel, rubber tired tractor of the farm type; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The tractor is used to

pull pneumatic rollers and is operated by steering with the wheel and brake clutch.)

4112. "Ironworker - Reinforcing" means one who performs layout work of rods within an area to be paved; fastens rods in place with wire or fasteners and bends or adjusts as required; selects and places steel bars or spirals in concrete forms to reinforce concrete; may cut rods with hack-saw or oxyacetylene torch; may bend rods, using a rod-bending machine; may prefabricate reinforcement assembly for placement complete in forms; and may perform other related ironwork duties.
4213. "Ironworker - Structural" means one who works as a member of a group that raises and places fabricated structural-steel members, such as girders, plates, and columns to unite them permanently to form a completed structural-steel framework; heats rivets, signals erection cranes, splices cables, and rigs equipment which may include dismantling and erecting large units of equipment; may spin suspension bridge cables; and may perform other related ironwork duties.
14. "Large Crane Operator" means one who operates boom-type equipment equal to or greater than 20 tons to hoist and move materials, raise and lower heavy weights and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as pouring concrete and setting steel. This work is subjected to strict inspection and must conform closely to specifications. The equipment may also be used for other miscellaneous tasks for which crane or stick-type equipment is required which may include hoist operations and pile driving operations.)
4315. "Mechanic - Class I (Heavy Duty)" means one who assembles, sets up, adjusts, maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers, and paving equipment; may perform the duties of a welder in repair of equipment; and may perform other related duties.
4416. "Mechanic - Class II (Light Duty)" means one who assembles, sets up, adjusts, maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers, and paving equipment; may perform the duties of a welder in repair of equipment; and may perform other related duties and periodically needs and receives assistance from a mechanic – Class I.
4517. "Painter or Sandblaster" means one who sandblasts surfaces of structures, stone, etc. by currents of air or steam carrying sand at a high velocity in painting preparation; paints sign posts, signs, bridges and structures, etc. with either a brush, roller or spray; and may perform other related duties.
16. ~~"Powder Person (Blaster)" means one who supervises and assists in locating, loading, and firing blast holes for breaking up hard materials; enlarges bottom of drilled holes by discharging small quantities of explosives; inserts detonator in a charge of explosive, attaching a fuse or electrical wires, the stick and detonator forming a primer, the discharge of which effects the discharge of the remainder of the explosive; charges hole by placing explosive, including stick that contains detonator, in hole and tamping lightly with a pole; depresses handle of blasting machine or lights fuse to fire explosive; may use prima-cord or delay caps; and may perform other related duties.~~

4718. "Skilled Laborer" means one who is an air tool operator, asphalt raker, chain saw operator, concrete mixer operator (less than 1 yard), concrete rubber, edger, fence erector, form setter (steel road), guard rail erector, mechanic's helper (tire changer or oiler), mortar mixer, nozzleman or gun operator (gunite), pipelayer, sign erector, or survey helper/rodman; and is further defined as follows:

- (i) "Air Tool Operator" means one who is a semi-skilled laborer who uses a tool driven by compressed air to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottoms and sides of trenches, breaking large rocks, chipping concrete, trimming or cutting stone or compaction of earthen backfill; and may perform other related semi-skilled duties.
- (ii) "Asphalt Raker" means one who distributes asphalted road-building materials evenly over a road surface by raking and brushing material to correct thickness; directs asphalt shovelers when to add or take away material to fill low spots or to reduce high spots; and may perform other related duties.
- (iii) "Chain Saw Operator" means one who operates a chain saw with employer fuel or current for power; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (iv) "Concrete Mixer Operator (Less Than 1 Yard)" means one who operates a small portable concrete mixing machine to mix sand, gravel, cement and water to make concrete; starts power units and does loading of materials; controls mixing by levers to discharge concrete from drums; rises drums with water to remove adhering concrete; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The small machines are sometimes charged by operators shoveling in the proportions of materials directly into the mixing drums, and some while others have a skip into which materials are shoveled or dumped before being hoisted into the mixing drums.)
- (v) "Concrete Rubber" means one who uses tools on exposed surfaces of concrete masonry after the forms have been removed to patch holes with fresh concrete; rubs surfaces with abrasive stone to remove rough spots; and may perform other related duties.
- (vi) "Fence Erector" means one who digs holes for posts, drives posts, attaches fences, and pours incidental concrete; and may perform other related duties.
- (vii) "Form Setter (Steel Road)" means one who fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces; dismantles, moves and cleans forms after concrete hardens; and may perform other related semi-skilled duties.
- (viii) "Guard Rail Erector" means one who digs holes for posts, drives posts, attaches guard rails, pours incidental concrete, and paints guard rails; and may perform other related duties.

(ix) "Handler" means a person qualified by reason of training, knowledge, experience and registration to accept custody and possession of explosives in blasting operations.

(ix)(x) "Nozzleman or Gunman (Gunite)" means one who handles the equipment and directs the placing of concrete or mortar that is moved by pneumatic equipment such as gunite; may fine-grade and place wire mesh at times; and may perform other related semi-skilled duties.

(x)(xi) "Pipelayer" means one who lays, connects, inspects and tests water lines, force mains, gas lines, sanitary or storm sewers and drains, underground telephone and electric ducts or other utilities manufactured from clay, concrete, steel, plastic, cast iron pipe, or other similar materials; may smooth bottom of trench to proper elevation by scooping with a shovel; receives pipe lowered from top of trench; inserts spigot end of pipe into bell end of last laid pipe; adjusts pipe to line and grade; caulks and seals joint with cement or other sealing compound; may connect threaded or flanged joint pipe; may assemble and place corrugated metal or plastic pipe; and may perform other related duties.

(xi)(xii) "Sign Erector" means one who reads plans; makes layouts for erection of signs; cuts, ties, and sets reinforcing steel; sets forms for concrete; pours concrete; sets anchor bolts; erects wood or metal structures; places clamps, brackets, or other required hardware on structures; and may perform other related duties.

(xii)(xiii) "Welder's Helper (Any Class to Which the Work Is Incidental)" means one who is a learner or worker semi-skilled in welding who assists the welder in electric arc and acetylene welding; assists in oxyacetylene cutting and layout; and may perform other related duties.

1819. "Survey Instrument Operator" means one who obtains data pertaining to angles, elevations, points, and contours used for construction, mapmaking, mining, or other purposes, using an alidade, level, and transurveying instruments; compiles notes, sketches, and records of data obtained and work performed; directs work of subordinate members of survey team; and performs other duties relating to surveying work as directed by chief of party.

1920. "Sweeping Machine (Vacuum) Operator" means one who drives a sweeping machine that cleans streets of trash and other accumulations; fills water tank of machine from hydrant; drives sweeper along street near curbs; moves controls to activate rotary brushes and water spray so that machine automatically picks up dust and trash from paved streets and deposits it in a dirt trap at the rear of the machine; and pulls lever to dump refuse in piles at curbs for removal.

2021. "Truck Driver (2 Axles)" means one who drives a multi-rear axle truck for transporting construction materials; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The truck may have various kinds of beds attached, such as a dump, flat bed, water tank, etc. The truck may be a water wagon, service truck, hoist truck, etc.)

2122. "Truck Driver (3 or 4 Axles)" means one who may pull a semi-trailer or trailer to transport construction equipment and materials.

2223. "Truck Driver (5 or More Axles on the Road/ or Heavy Duty Off-the-Road)" means one who either operates a truck on the road with 5 or more axles or a heavy duty off-road truck, either rigid frame or articulated, rock-moving equipment, such as, but not limited to a Koehring dumpster, Euclid either back or bottom dump, International Payhauler, etc.; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

2324. "Unskilled Laborer" means one who works in construction covering many unskilled occupations; works with all crews doing everything from pick and shovel work to cleaning up lumber, and hammering, shoveling and placing concrete; applies coats of oil to inside face of forms; strips forms; works on rock crushers to feed traps; opens cement sacks to batch plant; lowers pipes into ditches for pipelayers; works with dirt crew to move construction layout stakes; serves as dump man; spreads hot asphaltic material over roadbeds with shovel; operates hand concrete buggy or wheelbarrow; helps painter to prepare surfaces for painting and cleans paint equipment; carries rods to forms or attaches them to cable of hoisting machines; and may perform other related duties; and is further defined as follows:

- (i) "Mortar Mixer (Hand)" means one who mixes proportions of material in skip; may do or oversee loading of materials in skip by shoveling; and may perform other related duties.
- (ii) "Survey Helper/Rodman" means one who performs any of the following duties to assist in surveying land: holds level or stadia rod at designated points to assist in determining elevations and laying out stakes for mapmaking, construction, mining, land, and other surveys; calls out reading or writes station number and reading in notebook; marks points of measurement with elevation, station number, or other identifying mark; measures distance between survey points, using a steel or cloth tape or surveyor's chain; marks measuring points with keel (marking crayon), paint sticks, scratches, tacks, or stakes; places stakes at designated points and drives them into the ground at specified elevations, using a hammer or hatchet; and cuts and clears brush and trees from the line of survey, using a brush hook, knife, ax, or other cutting tools.

2425. "Worksite Traffic Coordinator" means one who supervises and coordinates activities of workers engaged in installing and repairing traffic signals, and erecting signs or devices, such as traffic islands and barriers; and may perform other related duties.

Authority: T.C.A. §§~~12-4-405(3)(A)~~, 12-4-405(3)(B), 12-4-411, and 12-4-415. Administrative History: Original Rule filed June 14, 1976; effective July 14, 1976. Repeal and new rule filed March 12, 1987; effective April 26, 1987. Repeal and new rule filed June 30, 2006; effective September 13, 2006.

0800-3-2-03 0800-03-02-03 Effective Dates.

Pursuant to the Prevailing Wage Act of ~~1975~~ for State Highway Construction Projects (Act), this the Commission shall determine and establish the prevailing wage rate biennially ~~for covered workers of building contractors and~~ annually for covered workers of highway contractors on state highway construction projects. The highway wage rate promulgated by the Commission will shall be effective from January 1 to December 31 of each year. The ~~building wage rate promulgated by the Commission will be effective from the first day of January after the building rate is set and will remain in effect for two (2) years ending on December 31 of the second year.~~ No contract shall be let by any state agency or by any

municipality, county, or other political subdivision for a state highway construction project not in compliance with the prevailing wage rates as established by this the Commission.

Authority: T.C.A. §§~~12-4-406~~ 12-4-403, 12-4-405(4), 12-4-406, 12-4-408, and 12-4-415. Administrative History: Original Rule filed June 14, 1976; effective July 14, 1976. Repeal and new rule filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-.04~~ 0800-03-02-.04 Construction Wages.

The bid specifications issued by the ~~contracting~~ state agency ~~contracting~~ for a state highway construction project shall include the prevailing wage rates that are in effect ten (10) days preceding ~~on~~ the date the bids ~~is~~ are advertised received. The same rates that are contained in the bid specifications shall be made a part of the contract awarded pursuant to the bid.

Authority: T.C.A. §§12-4-407, 12-4-408, and 12-4-415. Administrative History: Original Rule filed June 14, 1976; effective July 14, 1976. Repeal and new rule filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-.05~~ 0800-03-02-.05 Regulations for Contractors and Contracts.

- (1) All Sstate highway construction project contracts between the contracting state agency and the ~~building or~~ highway contractors ~~or~~ shall contain a provision requiring the contractor and all subcontractors to pay the prevailing wage and shall include the following:

- (a) All contractors and subcontractors shall:

1. Classify all covered workers in conformity with the schedule of classifications issued by the Commission in accordance with Rule ~~0800-3-2-.02~~ 0800-03-02-.02.
2. Post the prevailing wage rates at the site of construction in a prominent place and make these rates available to all covered workers employed on the project at all reasonable times.
3. Pay overtime compensation as required by any applicable federal or state laws, rules, or regulations or as may be required by the contract with the state agency.
4. Make only those deductions from wages authorized by law.
5. Submit weekly a copy of all payrolls to the contracting state agency. The contractor or subcontractor shall certify that the payrolls are correct and complete, and that the wage rates paid to covered workers during the reporting period equal or exceed those determined by the Commission, and that the classifications set forth for each covered worker conform with the work she/he performs. The contracting state agency shall promptly submit the contractor's or subcontractor's weekly payroll statements to the Commission. The contractor or subcontractor shall make its employment records available for inspection by representatives of the contracting state agency, the Commission, and the ~~Tennessee Department of Labor and Workforce Development~~, and will shall permit such representative to visit construction projects at all reasonable times.
6. Incorporate into each awarded contract a bonding provision in accordance with T.C.A. §12-4-409.
7. Pay the rate of wages established by the Commission on all classifications of work that may be used by the contractor or subcontractor in carrying out the contractual agreement between the contractor or subcontractor and the contracting state agency.

8. The Commission or any employee of any contractor or subcontractor whose wages are determined pursuant to the Act may maintain an action against any contractor or subcontractor for the breach of any condition of any performance bond given under the provisions of the Act, and, in case of breach of any provision of such bond, the particular state agency which awarded the contract may advertise the work and relet the contract in the same manner as the original letting.

Authority: T.C.A. §§12-4-403, 12-4-405(1)(B), 12-4-405(4), 12-4-408, 12-4-409, 12-4-410, 12-4-411, 12-4-412, 12-4-413, and 12-4-415. Administrative History: Original Rule certified filed June 10, 1974. Repeal and new rule filed March 12, 1987; effective April 26, 1987. Repeal and new rule filed June 30, 2006; effective September 13, 2006.

~~0800-3-2-06~~ 0800-03-02-.06 Regulations for State Agencies.

(1) State agencies entering into state highway construction project contracts governed by T.C.A. §12-4-401 ~~et seq.~~, shall submit the name(s) of the project(s), address(es) of the project site(s), and name(s) and address(es) of the successful bidder(s) to the Commission Department within ten (10) working days of ~~execution of the contract~~ the state highway construction project start date.

Authority: T.C.A. §§12-4-408, 12-4-413 and 12-4-415. Administrative History: Original Rule certified filed June 10, 1974. Repeal and new rule filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-07~~ 0800-03-02-.07 Regulations for Commission Inspection Process.

The Commission Department shall:

- (1) Check the weekly payrolls submitted by contractors and subcontractors ~~together with conditions~~ and conduct interviews at the job construction site in order to determine that workers have been properly classified in accordance with the work performed by them.
- (2) Ascertain whether the prevailing wage rates schedule ~~has~~ have been posted at the construction site in a prominent place.
- (3) ~~Make inquiry of a number of~~ Interview workers sufficient to determine whether full all wages earned have been paid.
- (4) Examine the weekly payrolls submitted by contractors and subcontractors in order to determine whether hourly rates equal to or exceeding those determined by the Commission have been paid for the classifications of covered workers being employed.

Authority: T.C.A. §§12-4-408, 12-4-410, 12-4-411, 12-4-412, 12-4-413, 12-4-414, and 12-4-415. Administrative History: Original Rule certified filed June 10, 1974. Repeal and new rule filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-08~~ 0800-03-02-.08 Prevailing Wage Survey.

- (1) SubContractors who elect to respond to the Prevailing Wage Survey shall submit the data required in T.C.A. §12-4-405 by regular mail or via electronic transmission to the Department on the portion of any construction projects on which they worked. No other contractor may submit data on behalf of a subcontractor.
- (2) The term "immediately preceding calendar quarter" referred to in T.C.A. §12-4-405(1)(A) and (B) means the months of July, August, and September.

- (3) Contractors, who pursuant to ~~T.C.A. §12-4-405~~ furnish payroll data to the Commission Department for its prevailing wage determination, shall provide straight time hourly wage rates. Fringe benefits or overtime rates shall not be included in the hourly rates submitted.
- (4) In each prevailing wage determination, the Commission shall have the authority to designate the classifications of crafts of workers ~~subject to the Prevailing Wage Act~~. The Commission is not restricted to the use of the classifications enumerated in T.C.A. §12-4-405, and it may from time-to-time combine or group classifications, add new classifications, and delete classifications.
- (5) If the Commission Department rejects payroll documentation submitted by a contractor pursuant to ~~the survey conducted under T.C.A. §12-4-405~~, the Commission Department shall notify the affected contractor or his representative, as soon as possible, of the reasons for not considering the documentation in the Commission's prevailing wage rate determination. The affected contractor or his representative shall be advised of the right to appear and testify at the public hearing relative to the prevailing wage determination. Incomplete surveys received by the Commission Department may be completed by the contractor ~~or subcontractor~~ providing the information within a reasonable time after submission, but in no case later than the date of the public hearing setting the rates.
- (6) Contractors, who furnish payroll documentation to the Commission Department in response to the prevailing wage survey shall provide such data to the Commission Department by October 31 of the survey year. Documentation which is sent by mail or via electronic transmission must be postmarked no later than October 31 and must be received by the Commission Department by the 3<sup>rd</sup> third state business day following October 31.
- (7) In any classification of a craft of workers listed on the prevailing wage survey form where four (4) or fewer separate nonaffiliated company survey responses are received, these responses may be excluded from establishing the rates. Where the data is excluded, the Commission may continue the rate in existence at the time of the survey or adjust it pursuant to T.C.A. §12-4-405(4).

Authority: T.C.A. §§12-4-405, 12-4-406, and 12-4-415. Administrative History: Original rule certified filed June 10, 1974. Repeal and new rule filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-09~~ 0800-03-02-09 Repealed Copy Fee.

- (1) Pursuant to Tenn. Code Ann. § 10-7-503(g) and rule 0800-08-01 of the Department, upon request any citizen of the state of Tennessee may obtain a copy of the information in the agency record.
  - (a) Fees and charges for copies will be in accordance with the Office of Open Records Counsel's (OORC) Schedule of Reasonable Charges:
    1. \$0.15 per page for letter and legal-size black and white copies.
    2. \$0.50 per page for letter and legal-size color copies.
    3. Labor when the time exceeds 1 hour.
    4. If an outside vendor is used, the actual costs assessed by the vendor.
  - (b) Fees may be paid in the form of cash, money order, cashier's check or other approved methods. Fees shall be made payable to Tennessee Department of Labor & Workforce Development and presented to the records custodian.

(c) Payment in advance will be required when costs are estimated to exceed \$75.00.

Authority: T.C.A. Title ~~12~~, chapter ~~4~~ § 12-4-415. Administrative History: Original rule certified filed June 10, 1974. Amendment filed March 12, 1987; effective April 26, 1987.

~~0800-3-2-.10~~ 0800-03-02-.10 Repealed.

Authority: Chapter 368, Tennessee Public Acts of 1975. Administrative History: Original rule certified filed June 10, 1974. Amendment filed March 12, 1987; effective April 26, 1987.

\* 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)
Burns Phillips, Chairman	X				
Wayburn Crabtree			X		
Ann McGauran	X				
Robert T. Summers	X				
Stephen D. Wright	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Prevailing Wage Commission on 11/29/2018, 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: 12-20-18

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner TDWD



Subscribed and sworn to before me on: December 20, 2018

Notary Public Signature: Desiree W. Felts

My commission expires on: March 17, 2021

Agency/Board/Commission: \_\_\_\_\_

Rule Chapter Number(s): \_\_\_\_\_

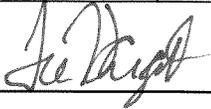
All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
3/27/2019  
 Date

Department of State Use Only

Filed with the Department of State on: 4/8/2019

Effective on: 7/7/2019



Tre Hargett  
Secretary of State

RECEIVED  
2019 APR -8 AM 9: 04  
SECRETARY OF STATE  
PHOTOGRAPHY

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

DEPARTMENT: Education

SUBJECT: Public Records

STATUTORY AUTHORITY: Pursuant to Chapter 712 of the Public Acts of 2018, every state governmental entity shall promulgate rules regarding public records that meet the requirements of Tennessee Code Annotated, Section 10-7-503.

EFFECTIVE DATES: July 8, 2019, through June 30, 2020

FISCAL IMPACT: Not applicable

STAFF RULE ABSTRACT: This proposed rule sets forth the procedures for public records requests.

**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 will not impact 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 item sets forth the procedures for public records requests.

- (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;

Pursuant to Chapter 712 of the Public Acts of 2018, every state governmental entity shall promulgate rules regarding public records that meet requirements of T.C.A. §10-7-503.

- (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 most directly affected and urges adoption of this rule.

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

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;

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)  
  
Lee Danley  
[Lee.Danley@tn.gov](mailto:Lee.Danley@tn.gov)

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

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)  
  
Lee Danley  
[Lee.Danley@tn.gov](mailto:Lee.Danley@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

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)  
Andrew Johnson Tower, 9<sup>th</sup> Floor  
710 James Robertson Parkway

Nashville, TN 37243  
615-253-1960

Lee Danley  
[Lee.Danley@tn.gov](mailto:Lee.Danley@tn.gov)  
Andrew Johnson Tower, 9th Floor  
710 James Robertson Parkway  
Nashville, TN 37243  
615-253-1550

(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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 04-10-19  
Rule ID(s): 8892  
File Date: 4/9/19  
Effective Date: 7/8/19

## 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).*

<b>Agency/Board/Commission:</b>	Department of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Fiveash
<b>Address:</b>	Andrew Johnson Tower, 9 <sup>th</sup> Floor 710 James Robertson Parkway Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-1960
<b>Email:</b>	<a href="mailto:elizabeth.fiveash@tn.gov">elizabeth.fiveash@tn.gov</a>

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-12-03	Public Records
Rule Number	Rule Title
0520-12-03.01	Definitions
0520-12-03.02	Making Public Records Requests
0520-12-03.03	Responding to Public Records Requests
0520-12-03.04	Inspection of Records
0520-12-03.05	Copies of Records
0520-12-03.06	Fees and Charges

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

<https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

**RULES**  
**OF THE**  
**DEPARTMENT OF EDUCATION**  
**CHAPTER 0520-12-03**  
**PUBLIC RECORDS**

**0520-12-03.01 DEFINITIONS**

- (1) "Department" means the Tennessee Department of Education.
- (2) "Office of Open Records Counsel" or "OORC" means the office established under T.C.A. § 8-4-601, et. Seq., within the Tennessee Comptroller of the Treasury.
- (3) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.
- (4) "Public Records Request Coordinator" or "PRRC" means any individual within a governmental entity whose role it is to ensure that public records requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with T.C.A. § 10-7-503(a)(2)(B). The PRRC may also be a records custodian.
- (5) "Records Custodian" means any office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (6) "Requestor" means a Tennessee citizen seeking access to a public record, whether it is for inspection or duplication.
- (7) "Tennessee Public Records Act" or "TPRA" means the state law codified in T.C.A. § 10-7-503, et seq., regarding access to public records.

***Authority:*** T.C.A. §§ 10-7-503 and 49-1-201. ***Administrative History:*** Original rule filed

**0520-12-03.02 MAKING PUBLIC RECORDS REQUESTS**

- (1) Public record requests shall be made to the PRRC in order to ensure public records requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.
- (2) The designated PRRC for the Department is the Deputy Director of Communications; provided, however, that the responsibilities of the PRRC under this rule may be delegated to one or more employees under the supervision of the PRRC. The PRRC may be contacted at:

Public Records Request Coordinator  
Tennessee Department of Education  
710 James Robertson Parkway  
9<sup>th</sup> Floor, Andrew Johnson Tower  
Nashville, Tennessee 37243

Telephone: (615) 741-8457  
Email: TDOE.OpenRecords@tn.gov

- (3) Requests only for inspection of public records may be made orally or in writing to the PRRC at the PRRC's mailing address, email address or phone number. The PRRC shall, however, request a U.S. mail address or email address from the Requester in order to provide any written communication required under the TPRA.
- (4) Requests for copies, or requests for inspection and copies, shall be made in writing and may be made to the PRRC at the mailing address or email address provided.
- (5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or a Tennessee photo ID card is required as a condition to inspect or receive copies of public records.

**Authority:** T.C.A. §§ 10-7-503 and 49-1-201. **Administrative History:** *Original rule filed*

### **0520-12-03.03 RESPONDING TO PUBLIC RECORDS REQUESTS**

- (1) Public Records Request Coordinator
  - (a) The PRRC shall review public record requests received by the Department and make an initial determination of the following:
    1. If the requestor provided evidence of Tennessee citizenship;
    2. If the records requested are described with sufficient specificity to identify them; and
    3. If the Department is the custodian of the records.
  - (b) The PRRC shall acknowledge receipt of the request and take at least one (1) of the following actions, as appropriate:
    1. Advise the Requestor of:
      - (i) Any determinations regarding proof of Tennessee citizenship;
      - (ii) Applicable fees; or
      - (iii) Aggregation of multiple or frequent requests.
    2. Deny the request in writing, providing the appropriate ground such as one of the following:
      - (i) The Requestor is not, or has not presented evidence of being, a Tennessee citizen;
      - (ii) The request lacks specificity or needs clarification;
      - (iii) The records requested are not subject to inspection under state or federal law;
      - (iv) The Department is not the custodian of the requested records; or
      - (v) The requested records do not exist;
    3. Contact the Requestor to see if the request can be narrowed or clarified;
    4. Forward the records request to the appropriate Records Custodian in the Department with notice of the date the request was received and the deadline for when a response to the request is due; or

5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the Requestor of the correct governmental entity and PRRC for that entity, if known.

(2) Records Custodian

- (a) Upon receiving a public records request, a Records Custodian shall promptly make requested public records available in accordance with T.C.A. § 10-7-503, if the requested records are not exempt from disclosure. If the Records Custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.
- (b) If a Records Custodian determines that it is not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then the Records Custodian or PRRC shall, within seven (7) business days from the Records Custodian's receipt of the request, send the Requestor a completed public records request response.
- (c) If a Records Custodian 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, the Records Custodian or PRRC shall, within seven (7) business days from the from the Records Custodian's receipt of the request, send the Requestor a public records request response informing the Requestor that the production of records will be in segments and that a records production schedule will be provided as expeditiously as practicable.
- (d) If a Records Custodian determines that a public records request should be denied, the Records Custodian or PRRC shall, within seven (7) business days from the from the Records Custodian's receipt of the request, deny the request in writing and shall include the basis for denial.
- (e) If a Records Custodian discovers records responsive to a public records request were omitted in a production, the Records Custodian or PRRC shall 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 shall coordinate with counsel or other appropriate parties regarding review and redaction of records. The Records Custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.
- (b) Whenever a redacted record is provided, a Records Custodian or PRRC shall 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. §§ 10-7-503 and 49-1-201. **Administrative History:** Original rule filed

**0520-12-03.04 INSPECTION OF RECORDS**

- (1) There shall be no charge to view a public record that are subject to inspection under the TPRA.
- (2) Inspection of records shall take place at the offices of the Tennessee Department of Education, 710 James Robertson Parkway, 9th Floor, Andrew Johnson Tower, Nashville, Tennessee 37243. The location for inspection of records within the offices of the Tennessee Department of Education shall be determined by either the PRRC or the Records Custodian.
- (3) Appointments for inspection of public records that cannot be promptly made available for inspection are required and may be scheduled by contacting the PRRC at TDOE.OpenRecords@tn.gov or 615-741-

8457. Under reasonable circumstances, the PRRC or a Records Custodian may require inspection of records at an alternate location.

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

***Authority:*** T.C.A. §§ 10-7-503 and 49-1-201. ***Administrative History:*** *Original rule filed*

#### **0520-12-03.05 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 the Tennessee Department of Education, 710 James Robertson Parkway, 9th Floor, Andrew Johnson Tower, Nashville, Tennessee 37243.
- (3) Upon payment for postage, copies will be delivered to the Requestor's home address by the United States Postal Service.
- (4) A Requestor may be allowed to make copies of records that total twenty-five (25) pages or less with personal equipment at the Tennessee Department of Education.

***Authority:*** T.C.A. §§ 10-7-503 and 49-1-201. ***Administrative History:*** *Original rule filed*

#### **0520-12-03.06 FEES AND CHARGES**

- (1) Prior to producing copies of records, a Records Custodian or the PRRC shall provide a Requestor with an itemized estimate of the fees and charges, to the extent possible.
- (2) Payment in advance may be required before producing requested records if the estimated cost exceeds \$100.
- (3) When fees for copies and labor do not exceed \$10.00, the fees shall be waived.
- (4) Fees and charges for copies are as follows:
- (a) 15 cents (\$0.15) per page for 8 ½" x 11 " (letter) or 8 ½" x 14" (legal) black and white copies.
- (b) 50 cents (\$0.50) per page for 8 ½" x 11 " (letter) or 8 ½" x 14" (legal) color copies
- (c) Labor charges for the time, in hours, to produce copies of records whenever the time exceeds 1 hour. Labor charges shall be calculated by multiplying the base hourly wage rate of each employee by the time each employee spends in locating, retrieving, reviewing, redacting, and reproducing records, minus the first hour of the most highly paid employee.
- (d) The actual costs assessed by a vendor, if an outside vendor is used.
- (5) If a public record is maintained in color but can be produced in black and white, the Records Custodian or PRRC shall advise the Requestor that the record can be produced in color if the Requestor is willing to pay a charge higher than that of a black and white copy.
- (6) Payment is to be made by cashier's check or money order payable to the Tennessee Department of Education.
- (7) The Department will aggregate record requests when more than four (4) requests are received in a calendar month, either from a single individual or a group of individual deemed working in concert, in accordance with the "Frequent and Multiple Request Policy" promulgated by the OORC. The PRRC shall

notify a Requestor if they have been deemed to be working in concert and shall notify the Requestor of their right to appeal the decision to the OORC.

**Authority:** T.C.A. §§ 10-7-503 and 49-1-201. **Administrative History:** Original 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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Education on November 5, 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.

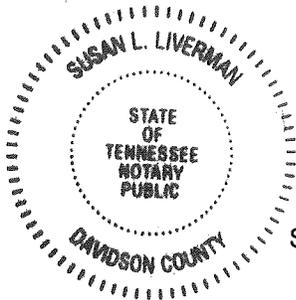
Date: January 2, 2019

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

*Elizabeth Fiveash*

Name of Officer: Elizabeth Fiveash

Title of Officer: Assistant Commissioner, Policy and Legislative Affairs



Subscribed and sworn to before me on: \_\_\_\_\_

January 2, 2019

Notary Public Signature: \_\_\_\_\_

*Susan L. Liverman*

My commission expires on: \_\_\_\_\_

8-4-20

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

1/28/2019

Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

4/9/19

Effective on: \_\_\_\_\_

7/8/19

*Tre Hargett*

Tre Hargett  
Secretary of State

SECRETARY OF STATE

2019 APR -9 AM 9:04

SECRET

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Boating and Law Enforcement Division

SUBJECT: Rules and Regulations for Boating Certificates – Vessel Registration and Certification of Number Fees

EFFECTIVE DATES: June 27, 2019 through June 30, 2020

FISCAL IMPACT: Increase state revenue to the Wildlife Resources Fund by approximately \$681,000 each year.

STAFF RULE ABSTRACT: Pursuant to Tennessee Code Annotated, Section 69-9-207, the agency is amending this rule to adjust the boat registration fees to account for the increase in the consumer price index CPI since the last adjustment 10 years ago.

**Public Hearing Comments**

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

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

Attached hereto are the responses to public comments.

### **Regulatory Flexibility Addendum**

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

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

### **Impact on Local Governments**

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

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

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

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

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

Pursuant to Tenn. Code Ann. § 69-9-207, the Agency is amending this rule to adjust the boat registration fees to account for the increase in the consumer price index (CPI) since the last adjustment 10 years ago.

- (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;

Boat owners registering their boats in the State of Tennessee will be impacted 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;

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 proposed amendment to boat registration fees will increase state revenue to the Wildlife Resources Fund by approximately \$681,000 each year.

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

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

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

Chris Richardson, 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.

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

**For Department of State Use Only**

Sequence Number: 03-18-19  
 Rule ID(s): 8890  
 File Date: 3/21/2019  
 Effective Date: 4/27/2019

# 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).

<b>Agency/Board/Commission:</b>	Tennessee Wildlife Resources Agency
<b>Division:</b>	Boating and Law Enforcement Division
<b>Contact Person:</b>	Chris Richardson
<b>Address:</b>	PO Box 40747, Nashville, TN
<b>Zip:</b>	37204
<b>Phone:</b>	615-308-0477
<b>Email:</b>	chris.richardson@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1660-02-01	RULES AND REGULATIONS FOR BOATING CERTIFICATES
Rule Number	Rule Title
1660-02-01-.03	FEES FOR VESSEL REGISTRATION AND CERTIFICATE OF NUMBER.

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

#### Amendment

1660-02-01-.03 is amended by increasing the fees to register a vessel

#### **1660-02-01-.03 FEES FOR VESSEL REGISTRATION AND CERTIFICATE OF NUMBER.**

The fee to be collected for issuance of a vessel certificate of number or registration shall be as follows:

Vessel Fee Category	1 year	2 years	3 years
16 feet and under	<del>\$13</del> 15	\$24 28	<del>\$35</del> 41
Over 16 feet to less than 26 feet	<del>25</del> 29	48 56	71 83
26 feet to less than 40 feet	<del>38</del> 44	72 84	107 125
40 feet and over	<del>51</del> 59	97 113	142 166
Dealer / Manufacturer	<del>32</del> 37	64 75	95 111
Duplicate	6 7		
Consignment:			
16 feet and under	<del>13</del> 15	24 28	35 41
Over 16 feet to less than 26 feet	<del>25</del> 29	48 56	71 83
26 feet to less than 40 feet	<del>38</del> 44	72 84	107 125
40 feet and over	<del>51</del> 59	97 113	142 166

**Authority:** T.C.A. §§ 69-9-207 and 70-1-206. **Administrative History:** Original rule filed July 31, 1998; effective October 14, 1998. Amendment filed April 3, 2008; effective June 17, 2008.

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

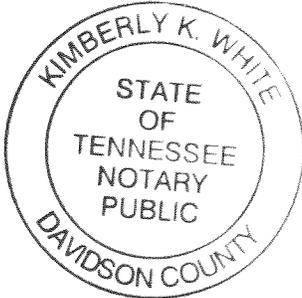
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Angie Box					
Jeff Cook					
Bill Cox					
Dennis Gardner					
Kurt Holbert					
Connie King					
Brian McLerran					
Tony Sanders					
James Stroud					
Bill Swan					
Kent Woods					
Jamie Woodson					

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 01/18/19, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/09/18

Rulemaking Hearing(s) Conducted on: (add more dates). 01/18/19



Date: 1/18/19

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 1/18/19

Notary Public Signature: Kimberly K. White

My commission expires on: 11/8/2022

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-02-01-.03

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

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

3/1/2019  
Date

Department of State Use Only

Filed with the Department of State on: 3/29/2019

Effective on: 4/27/2019



Tre Hargett  
Secretary of State

RECEIVED  
2019 MAR 29 PM 3:16  
SECRETARY OF STATE  
DPM

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

DEPARTMENT: Wildlife Resources Agency

DIVISION: Director's Office

SUBJECT: Public Record Requests

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 10-7-503

EFFECTIVE DATES: June 6, 2019 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Pursuant to Tennessee Code Annotated, Section 10-7-503(9)(2), these rulemaking hearing rules establish a written public records policy designating the public records request coordinator, address the process for making records requests, and addressing the process for responding to records requests.

NOTE: Rule not submitted in redline form.

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

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

Attached hereto are the responses to public comments.

## **Regulatory Flexibility Addendum**

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

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

### **Impact on Local Governments**

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

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

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

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

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

Pursuant to Tenn. Code Ann. § 10-7-503(g)(2), these rules establish a written public records policy designating the public records request coordinator, address the process for making records requests, and addressing the process for responding to records requests.

- (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. § 10-7-503 mandates the promulgation of these rules.

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

Any person submitting a public records request to the Agency will be affected by 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;

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;

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

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

Chris Richardson, 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.

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

**For Department of State Use Only**

Sequence Number: 03-07-19  
 Rule ID(s): 8850  
 File Date: 3/8/19  
 Effective Date: 6/6/19

## 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).*

<b>Agency/Board/Commission:</b>	Tennessee Wildlife Resources Agency
<b>Division:</b>	Director's Office
<b>Contact Person:</b>	Chris Richardson
<b>Address:</b>	PO Box 40747, Nashville, TN
<b>Zip:</b>	37204
<b>Phone:</b>	615-308-0477
<b>Email:</b>	chris.richardson@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1660-03-02	Rules and Regulations Governing Public Record Requests
Rule Number	Rule Title
1660-03-02-.01	Policy
1660-03-02-.02	Public Record Requests
1660-03-02-.03	Responding to Requests

**RULES  
OF  
TENNESSEE WILDLIFE RESOURCES AGENCY  
ADMINISTRATION**

**CHAPTER 1660-03-02  
RULES AND REGULATIONS GOVERNING PUBLIC RECORDS REQUESTS**

**TABLE OF CONTENTS**

1660-03-02-.01	Policy
1660-03-02-.02	Public Record Requests
1660-03-02-.03	Responding to Requests

**1660-03-02-.01 POLICY**

- (1) The Tennessee Public Records Act ("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 the Agency are presumed to be open for inspection unless an exemption is otherwise provided by law. Personnel of the Agency shall provide access and assistance in a timely and efficient manner to persons requesting access to public records. None of the 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 the Agency shall be protected as provided by current law. Concerns about the provisions or enforcement of this rule should be addressed to the Agency's Public Records Request Coordinator.
- (2) Definitions:
  - (a) "Records custodian" means 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.
  - (b) "Public records" mean 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.
  - (c) "Public records request coordinator" means the individual, or individuals, responsible for ensuring public record 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.
  - (d) "Redacted record" means a public record otherwise open for public inspection from which protected or confidential information is removed or obscured prior to release or inspection.
  - (e) "Requestor" means the person requesting access to a public record, whether inspection or duplication.

**Authority:** T.C.A. §§ 69-9-209; 70-1-206; and 10-7-503.

**1660-03-02-.02 PUBLIC RECORD REQUESTS**

- (1) All public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee in order to ensure public record requests made pursuant to the TPRA are routed to the appropriate records custodian and fulfilled in a timely manner.
- (2) Requests for inspection may be made at the Agency's administrative offices located at 5107 Edmondson Pike, Nashville, Tennessee 37211 between the hours of 8:00 am and 4:30 pm. C.S.T.,

Monday through Friday excepting holidays. Requests may also be made via phone, fax, email or web submissions.

- (3) Requests for copies and/or inspection and copies may be made via phone, fax, email, or web submissions in addition to being mailed or hand delivered to the Agency's administrative offices. If mailed, those should be addressed to the Public Records Request Coordinator c/o Legal Division, Tennessee Wildlife Resources Agency, 5107 Edmondson Pike, Nashville, Tennessee 37211.

**Authority:** T.C.A. §§ 69-9-209; 70-1-206; and 10-7-503.

### **1660-03-02-.03 RESPONDING TO REQUESTS**

- (1) Public Record Request Coordinator
  - (a) The PRRC shall review public record requests and make an initial determination of the following:
    1. If the records requested are described with sufficient specificity to identify them; and
    2. If the governmental entity is the custodian of the records requested.
  - (b) The PRRC shall acknowledge receipt of the request and take the following appropriate action(s):
    1. Advise the requestor of the following:
      - (i) Provision of proof of state citizenship;
      - (ii) Fees for reproduction and labor, if applicable;
      - (iii) Waivers of fees, if applicable; and
      - (iv) Aggregation of multiple requestors.
    2. The Agency may deny the request in writing if the following applies:
      - (i) The requestor is not a Tennessee citizen;
      - (ii) The request lacks specificity;
      - (iii) An exemption exists that makes the record not subject to disclosure under the TPRA; or
      - (iv) The Agency is not the custodian of the requested records. If the records relate to another governmental entity and the PRRC is aware of the correct governmental entity, the PRRC will advise the requestor of the correct governmental entity and PRRC for that entity, if known.
    3. If appropriate, the PRRC may contact the requestor to see if request can be narrowed.
    4. The PRRC shall forward the records request to the appropriate records custodian and help facilitate the production of the records.
- (2) The designated PRRC for the Tennessee Wildlife Resources Agency will be the attorney(s) in the Legal Division for the Agency.
- (3) Contact information for questions about the TPRA process:

Public Records Request Coordinator  
Attention: Legal Division  
5107 Edmondson Pike  
Nashville, TN 37211  
Telephone: 615-781-6606  
Fax: 615-781-5264  
E-mail: TWRA.RecordReq@tn.gov

(4) Records Custodian

- (a) Upon receiving a public records request, the request shall be forwarded to the PRRC for review.
- (b) If it is not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist, to gain access to records, to determine whether the records are open, or for other similar reasons, then the PRRC shall, within seven (7) business days from the date of receipt of the request, inform the requestor if the records can be released, and if so, provide a reasonable time for production of such records.
- (c) The Agency will provide existing records made in the normal course of business that are subject to disclosure pursuant to the Open Records Act; however the Agency is not required to create records in response to any request, including but not limited to summaries, spreadsheets, lists, etc.
- (d) If it is determined 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, 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 should contact the requestor to see if request can be narrowed.
- (e) If additional pertinent records are discovered that were inadvertently omitted from the original records production, the records custodian will inform the PRRC, who will contact the requestor concerning the omission and produce the records as quickly as practicable.

(5) 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. The records custodian shall coordinate with the Agency's Legal Division/PRRC for review and redaction of records.

(6) Confidential Records

- (a) Records that are created on the Agency's REAL system and that are populated and updated using information from the state's drivers' license database are considered confidential pursuant to § 18 USC 2721 and Tenn. Code Ann. § 55-25-101 et seq. Such records are not subject to the Open Records Act, and shall only be disclosed in accordance with exemptions provided for in federal and state law.

(7) Inspection of Records

- (a) There is no charge for inspection of open public records.
- (b) The location for inspection of records within the offices of the Agency shall be specified by the records custodian.
- (c) The PRRC may require an appointment for inspection or may require inspection of records at an alternate location under reasonable circumstances.

(8) Reproduction of Records

- (a) Copies will be available for pickup at the location specified by the records custodian.
- (b) Upon payment for costs of postage, copies will be delivered to the requestor's home address by US Postal Service.
- (c) A requestor may be allowed to make copies of records with personal equipment including but not limited to a cellphone equipped with a camera but only after such records have been inspected and properly redacted, if necessary.
- (d) In order to alleviate costs, copies of records may be provided via electronic transmission via email.

(9) Fees and Charges

- (a) Prior to producing copies of records, requestors will be provided with an estimate of the charges, itemized by per page costs, labor, as well as other media that has been reproduced, to be assessed.
- (b) When fees for copies and labor do not exceed \$10.00 the fees will be waived.
- (c) The Agency 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, which can be found on the Comptroller's website at: <http://www.comptroller.tn.gov/openrecords/forms.asp>.
- (d) Payment is to be made by cash, cashier's check, money order, or credit card. The cashier's check or money order shall be made payable to the Tennessee Wildlife Resources Agency and must be delivered to the agency sales office at TWRA Agency Sales Division, Ray Bell Region II Office Building 5105 Edmondson Pike PO Box 41489 Nashville, TN 37204.
- (e) Payment in advance will be required whenever reproduction costs are estimated to exceed \$10.00.

**Authority:** T.C.A. §§ 69-9-209; 70-1-206; and 10-7-503.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Angie Box					
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 01/18/19, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/09/18

Rulemaking Hearing(s) Conducted on: (add more dates). 01/18/19



Date: 1/18/19

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 1/18/19

Notary Public Signature: Kimberly K. White

My commission expires on: 11/8/2022

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-03-02

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

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
2/25/2019  
 Date

Department of State Use Only

Filed with the Department of State on: 3/8/19

Effective on: 6/6/19



Tre Hargett  
Secretary of State

RECEIVED  
2019 MAR -8 AM 11:21  
SECRETARY OF STATE  
PHOTOGRAPHY

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

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: Reimbursement for Rural Health Clinics, Federally Qualified Health Centers, and Federally Qualified Health Center Look-Alikes

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71 -5- 105, 71-5-107, 71 -5-109, 71-5-118, and 71 -5-130

EFFECTIVE DATES: July 13, 2019 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule is being promulgated to provide the reimbursement methodology necessary to determine appropriate reimbursable costs and payments for TennCare services provided by RHCs, FQHCs and FQHCLAs to TennCare enrollees.

NOTE: Rule not submitted in redline form.

## Public Hearing Comments

TennCare received comments from 26 individuals and organizations in response to this rulemaking. The comments and TennCare's responses are summarized below.

One commenter suggested an alternative to the reimbursement methodology in the rule whereby TennCare would establish a flat rate for RHCs. In response, TennCare expressed its view that a flat rate cannot adequately account for the significant variation in locations, patient mixes, and services represented by clinics around the state. No modifications were made to the rule based on this comment.

Several commenters expressed concern about the length of time needed to set rates under the current payment system. In response, TennCare noted that the rule adds a new requirement that in all circumstances rates must be finalized within 120 days of the facility providing all information necessary to set the rate. TennCare interpreted these comments as supportive of the rule's provision establishing a timeframe for setting final rates. No modifications were made to the rule based on these comments.

Two commenters suggested that the rule be clarified to specify that the 120-day timeframe for the Comptroller to set final rates begins upon the Comptroller's receipt of all necessary information from the provider. TennCare agreed with these suggestions and modified the rule accordingly.

One commenter suggested that the provision of the rule specifying that the Comptroller may grant no more than one extension to a provider that has been asked to submit additional documentation is unnecessary, since the rule also specifies that extensions are granted at the discretion of the Comptroller. TennCare agreed with this recommendation and removed the provision in question from the rule.

Multiple commenters expressed concern that the provisions of the rule would be applied retroactively to established PPS rates. In response, TennCare clarified that it is not the intent of the rule to recoup from rates applicable to prior years by applying new requirements that appear only in this rule.

A number of commenters expressed concern about the rule's limitation on reimbursement for administrative expenses. In response, TennCare noted that a reasonable limitation on administrative expenses is appropriate, helps minimize the risk of fraud, waste, and abuse, and helps protect the integrity of the payment system. The cap in the rule was based on a comprehensive statewide rate analysis performed by the Comptroller. One commenter expressed support for the rule's proposed cap on administrative expenses. TennCare thanked this commenter for his support. No modifications were made to the rule based on these comments.

One commenter questioned why the rule limits compensation for clinic owners. In response, TennCare clarified that nothing in the rule limits compensation for the owners of FQHCs or RHCs. Clinics continue to have discretion to establish their own salaries. The rule caps the amount of compensation for owners that can be considered an allowable expense for enhanced reimbursement through the prospective payment system. This cap is intended to help minimize the risk of fraud, waste, and abuse. No modifications were made to the rule based on this comment.

A few commenters objected to the exclusion of imputed owners' salaries in the rule. In response, TennCare noted that imputed salaries represent costs that were not actually paid by the clinic, and disallowing these costs helps protect the payment system from fraud, waste, and abuse. No modifications were made to the rule based on these comments.

One commenter expressed concern that the rule appeared not to account for reimbursement for clinic owners who perform both direct care and administrative duties. In response, TennCare clarified that it is not TennCare's intent to implement a rule that prevents owners from being reimbursed for both direct care and administrative work. TennCare modified the pertinent rule language to clarify that this is allowed.

Several commenters expressed concern about the rule's limitation on allowable reimbursement for compensation of clinic owners to 1 FTE. These commenters believed this limitation would have an adverse impact on providers who consistently work more than 40 hours per week. In response, TennCare elected to raise the applicable limit in the rule to 1.5 FTE. TennCare further clarified that for clinic owners and related parties, no more than 1 FTE per individual can be claimed for administrative hours.

Several commenters expressed concern that the rule's indexing of salaries and wages to the Tennessee Occupational Employment and Wage Rates would negatively impact clinics' ability to recruit and hire providers. In response, TennCare noted that the limit applies only to clinic owners and related parties, and thus, should not affect a clinic's ability to recruit new providers. Some commenters also objected to applying this limit on reimbursement for compensation of clinic owners. TennCare noted that reasonable limits on reimbursement for compensation of owners are necessary in order to help prevent the possibility of fraud, waste, and abuse in the payment system. No modifications were made to the rule based on these comments.

A few commenters expressed concern that the rule appeared to prohibit the use of productivity-based salaries. In response, TennCare clarified that the rule does not limit or prohibit the use of productivity-based salaries. No modifications were made to the rule based on these comments.

Multiple commenters expressed concern about the requirement in the rule for the annual submission of Medicaid cost reports. These commenters suggested that this required submission would represent an additional administrative burden for providers. One commenter suggested alternative documentation requirements to those outlined in the rule. In response, TennCare noted that cost reports are needed to ensure the appropriateness of payments and to minimize the risk of fraud, waste, and abuse. TennCare noted that its intent is to limit the cost report to as few data elements as possible in order to minimize administrative burden on clinics to the extent possible. No modifications were made to the rule based on these comments.

One commenter objected to a provision in the rule allowing the Comptroller to request additional information from providers. This commenter recommended that the rule should contain an exhaustive list of all documentation that could be requested. This commenter also recommended that the rule specify that the Comptroller may not deny any reasonable request from a provider for an extension in providing additional documentation. In response, TennCare noted that the Comptroller must maintain the ability to collect all necessary information in order to set the most accurate rates and guard against fraud, waste, and abuse in the payment system. No modifications were made to the rule based on these comments.

Several commenters objected to the rule's prohibition on contingency fee-based contracts. In response, TennCare noted that it is deeming these contracts impermissible in order to minimize the risk of fraud, waste, and abuse. One commenter expressed support for the rule's exclusion of contingency fee-based contracts. TennCare thanked this commenter for his support. No modifications were made to the rule based on these comments.

Multiple commenters expressed concern that the rule has no provision for providers to appeal decisions made by TennCare or the Comptroller's office. TennCare agreed with these commenters, and added a rule providing for such an appeals process.

One commenter suggested that the rule contains inconsistent standards as to what constitutes reasonable costs. TennCare respectfully disagreed with the commenter's assessment. No modifications were made to the rule based on this comment.

One commenter suggested that interim rates be set using statewide figures rather than regional figures for independent and provider-based RHCs. In response, TennCare noted that it is electing to calculate interim rates on the basis of Grand Division in order to account for regional variation in the cost of providing care and clinic operations. No modifications were made to the rule based on this comment.

One commenter suggested that the rule should include language addressing the reconciliation of primary care payments made under an interim rate to the payments that would have been made under the final rate and making any necessary additional payments. TennCare agreed with this recommendation and added corresponding language to the rule. The language added to the rule reflects the practice within the current payment system of adjusting payments upward or downward depending on the relationship between the interim rate and the final rate.

One commenter requested clarification as to whether certain information requirements in the rule would apply to all health centers or be limited to new health centers. In response, TennCare clarified that these requirements will apply to all FQHCs and RHCs. Based on consultation with the Comptroller, TennCare believes this list of information is necessary to protect the integrity of the payment system. No modifications were made to the rule based on this comment.

One commenter expressed concern about TennCare's use of paid visits as the basis for PPS/APM payments, and noted that similar paid visit policies have been challenged in other states. In response, TennCare noted that it believes the language in the rule related to paid claims is consistent with applicable state and federal laws and regulations. However, in response to this concern, TennCare added language to the rule to allow for reconsideration of visits denied by the MCO in limited circumstances.

One commenter requested that the rule be clarified to explicitly allow health centers to submit core visits and non-core visits performed on the same day as two visits. TennCare agreed with the commenter's recommendation and modified the rule accordingly.

One commenter suggested that the rule allows the Comptroller too much discretion to determine reasonable costs and suggested that more objective standards be included in the rule. In response, TennCare noted that the rule provides a significant level of detail concerning what constitutes allowable costs. No modifications were made to the rule based on this comment.

One commenter recommended the deletion of language from the rule concerning the Comptroller's ability to review cost reports for reasonableness. TennCare regards altering this language to be unnecessary as the rule already contains references to federal reasonableness language and adds new reasonableness requirements. These are the basis for determinations of reasonableness. No modifications were made to the rule based on this comment.

One commenter requested that language be added to the rule concerning changes that impart a change in type, intensity, duration, or amount. In response, TennCare noted that it regards the addition of this language as unnecessary, because such changes in type, intensity, duration, or amount are already addressed in the rule. No modifications were made to the rule based on this comment.

One commenter requested that language be added to the rule concerning changes in scope that occur when the state imposes new requirements on managed care organizations, which in turn result in new requirements for health clinics. TennCare agreed with the commenter's recommendation and added the requested language to the rule. The language added by TennCare applies when a change in requirements results in an increase in clinic costs of at least five percent.

One commenter suggested that TennCare replace the language related to change in scope in the rule in favor of TennCare's existing change of scope policy. In response, TennCare noted that much of the language cited by the commenter is necessary for the new payment system. TennCare agreed with a portion of the comment that it is unnecessary to first set an interim rate and then a final rate for a change of scope, and amended the rule accordingly to align with the current practice of using the facility's current rate until the final rate can be set.

One commenter expressed concern that the provision of the rule concerning reimbursement via quarterly settlements based on the final PPS rate is inconsistent with current procedures. In response, TennCare clarified that the rule does not change current procedures for submission of visits with regard to a main facility and its satellites, and that in fact, this provision of the rule is intended to make explicit that visits at satellites can be eligible for settlement. No modifications were made to the rule based on this comment.

One commenter requested clarification as to the use of the term "market basket measure" in the rule. In response, TennCare clarified that this term refers to the market basket established under Section 1834 of the Social Security Act. No modifications were made to the rule based on this comment.

One commenter requested confirmation that the review of all PPS rates by the Comptroller described in the rule will apply only to standard BIPA PPS rates. In response, TennCare confirmed that the commenter's understanding of the rule was accurate. No modifications were made to the rule based on this comment.

One commenter objected to a provision of the rule concerning circumstances in which a PPS rate may be frozen, and suggested that this provision is inconsistent with federal requirements. Upon review, TennCare elected to modify the rule to clarify that PPS rates will not be frozen.

One commenter requested that TennCare or the Comptroller provide information to health centers concerning which type of rate they have (PPS or APM). Although outside the scope of this rulemaking, TennCare agreed to work with the Comptroller to provide this information. No modifications were made to the rule based on this comment.

One commenter requested clarification concerning how a health center that has elected the APM can opt out of the APM and return to PPS. In response, TennCare noted that once an RHC, FQHC, or FQHCLA is on an APM rate, it permanently stays on an APM rate. There is no mechanism for returning to a standard BIPA PPS rate. No modifications were made to the rule based on this comment.

One commenter noted that the state is required to demonstrate that an APM is equal to or greater than the BIPA PPS rate and inquired how TennCare intends to demonstrate this. In response, TennCare noted that it is aware of its obligations concerning APMs, and will annually demonstrate that the APM is higher than the BIPA PPS rate, as calculated using methodology in the rule. No modifications were made to the rule based on this comment.

One commenter suggested that the rule should clearly state which service categories will be subject to a secondary PPS rate or a PPS rate outside of core reimbursement. In response and in an effort to clarify the rule's intent by reflecting all rates that are set outside of the core, TennCare added "optometry" to the relevant section of the rule.

One commenter requested clarification about the meaning of "Grand Division" in the rule. TennCare clarified that for purposes of TennCare rules, Grand Division has the same meaning as that located at T.C.A. 4-1-2. No modifications were made to the rule based on this comment.

One commenter questioned a provision in the rule allowing facilities to submit partial-year cost reports in instances when a complete fiscal year of data may not be available due to a change in ownership or a facility being new. TennCare elected to remove this provision of the rule in order to prevent confusion and unnecessary administrative burden for providers.

Two commenters questioned a provision in the rule allowing new RHCs and FQHCs to submit budgeted cost reports. TennCare elected to remove this provision of the rule in order to prevent confusion and unnecessary administrative burden for providers.

One commenter asked about the availability of the supplemental Medicaid cost report format. In response, TennCare indicated that the cost report will be available in the near future (prior to the rule's implementation), and that TennCare will communicate about the Medicaid cost report with the provider community. Another commenter requested that providers be allowed to review and provide feedback on the visit reporting template prior to its implementation. In response, TennCare noted that it intends to provide opportunities for review and feedback on the visit submission template. No modifications were made to the rule based on these comments.

One commenter requested clarification about the requirement in the rule for facilities to submit a written statement of the entity's maximum hours per day. To clarify, TennCare responded that facilities are required to report the hours of operation that the facility is available to provide FQHC/RHC services. No modifications were made to the rule based on this comment.

One commenter requested clarification about the documentation that will be required for the compensation of sole proprietors, partners, and single member LLCs to be considered reasonable and allowed on the cost report. To clarify, TennCare responded by noting that these requirements are addressed in the rule at 1200-13-10-.06(2)(b). No modifications were made to the rule based on this comment.

One commenter expressed concern and two commenters requested clarification about a provision in the rule concerning the periodic rebasing of clinics that have elected the Alternative Payment Methodology (APM). In response, TennCare confirmed that this rebasing applied only to clinics that have elected the APM. By rule, the APM must be at least as high as the standard BIPA PPS rate (as calculated using the new rule methodology), and a facility must elect to be reimbursed using the APM. No modifications were made to the rule based on these comments.

One commenter requested clarification about the support that will be required to document reasonable costs for the allocation of hospital costs to rural health clinics. To clarify, TennCare responded by noting that hospital-based RHCs will be required to submit hospital cost reports and supporting documentation as detailed at Rule 1200-13-10-.04(2). No modifications were made to the rule based on this comment.

Several commenters expressed concern about the proposed list of CPT codes for allowable visits. In response, TennCare noted that it has decided to implement a list of CPT codes in response to concerns that the current

system is unclear as to what constitutes a visit. TennCare also clarified that while the rule implements the use of a list, the rule does not speak to specific items that are included on the list. TennCare has developed a preliminary list of codes, and intends to work with the provider community to arrive at the most appropriate list of codes. In addition, in cases where the CPT codes list is missing a code that a provider believes to qualify as a visit, the rule provides a mechanism for the provider to submit that code separately and request that it be added to the CPT codes list. No modifications were made to the rule based on these comments.

One commenter observed that the reasonableness standards in the rule for codes not on the CPT codes list pertain to the reasonableness of costs, and not the reasonableness of visits. This commenter suggested that this point be clarified in the rule. TennCare agreed with the commenter's observation and modified the rule accordingly.

One commenter suggested that TennCare use HCPCS codes rather than CPT codes as the basis for how qualifying visits are identified. In response, TennCare noted that it has determined that CPT codes are a more accurate representation of the data TennCare needs to collect in order to operate the prospective payment system. No modifications were made to the rule based on this comment.

One commenter expressed concern regarding the rule's applicability to specific types of encounters that are excluded from the definition of allowable or reimbursable visits, particularly as they pertain to TennCare's payment reform initiatives. In response, TennCare clarified that those specific services will not be eligible to be reported as a visit and settled at the PPS rate. No modifications were made to the rule based on this comment.

One commenter expressed concern that "medication therapy management" is not counted as a visit in the rule. In response, TennCare clarified that the rule does not prohibit providers from performing medication management, but clarifies that a limited set of services defined as "medication therapy management" do not constitute a visit for purposes of enhanced reimbursement. No modifications were made to the rule based on this comment.

One commenter expressed concern as to the rule's application to patient-centered medical home (PCMH) services. In response, TennCare pointed out that the commenter appeared to have misunderstood the rule, and that payments for PCMH services are specifically carved out of the reimbursement methodology in the rule. No modifications were made to the rule based on this comment.

One commenter suggested that the definition of administrative costs in the rule should contain additional detail. TennCare respectfully disagreed with this suggestion and noted that the definition of administrative costs in the rule is adequate for implementation of the rule. No modifications were made to the rule based on this comment.

One commenter suggested modifications to the rule's definition of covered services. Upon review, TennCare determined that the definition in question is not necessary for implementation of the rule and elected to remove the definition from the rule.

One commenter suggested a clarification to the definition of FQHC in the rule. TennCare agreed with the commenter's suggestion and updated the rule to reflect this recommendation. Another commenter suggested removing a Medicare-related citation to the CFR from the rule's definition of FQHC. Upon review, TennCare elected to remove the citation in question from the definition of FQHC in the rule.

One commenter expressed concern about the definition of visit in the rule. In response, TennCare noted that the rule's definition is consistent with current practice, which TennCare does not intend to change. However, this does not mean that eligible CPT codes performed by some other provider types would not be eligible for settlement. No modifications were made to the rule based on this comment.

One commenter suggested that the provisions of the rule pertaining to determination of reimbursable visits are not in alignment with federal law. TennCare agreed with the commenter that any services that are required to be compensated according to federal laws and regulations would also be required to be compensated under Tennessee's payment system. TennCare elected to add clarifying information as to which services are reimbursed under non-core PPS rates to Rule 1200-13-10-.11.

One commenter suggested that TennCare tether reasonable cost determinations to applicable Medicare cost reimbursement principles. In response, TennCare noted that it believes that specific criteria for reasonableness are necessary in the rule to provide greater transparency and clarity to the payment system, while also protecting taxpayer dollars. No modifications were made to the rule based on this comment.

One commenter suggested that TennCare should limit the number of RHCs to one per county and/or one per specialty per county. In response, TennCare noted that this recommendation is outside the scope of this rulemaking. No modifications were made to the rule based on this comment.

One commenter expressed support for the rule because it would only allow reasonable costs to be included in the cost report. TennCare thanked the commenter for his support. No modifications were made to the rule based on this comment.

Multiple commenters expressed general concern about the rule's potential impact on rural health clinics in Tennessee. In response, TennCare noted that the purpose of these rules is to add transparency and clarity to the prospective payment system in Tennessee, to ensure the appropriateness of payments, and to minimize the risk of fraud, waste, and abuse in the payment system. No modifications were made to the rules based on these comments.

One commenter criticized the lack of clear cost reporting guidelines in the current reimbursement system. In response, TennCare noted that one of the purposes of these rules is to add transparency and clarity to the prospective payment system in Tennessee. No modifications were made to the rules based on this comment.

Multiple commenters expressed concern about TennCare's moratorium on new Rural Health Clinics entering the TennCare program. Although the RHC moratorium is not the subject of Rule Chapter 1200-13-10, TennCare noted that the moratorium was enacted in response to a significant increase in the potential for fraud, waste, and abuse, and that it is TennCare's intention to lift the moratorium once Rule Chapter 1200-13-10 is in effect. No modifications were made to the rule based on these comments.

One commenter requested clarification about payment processes that will be used for clinics that were certified as Rural Health Clinics during the moratorium. Although the RHC moratorium is not the subject of Rule Chapter 1200-13-10, TennCare noted that it has issued separate guidance on this subject. No modifications were made to the rule based on this comment.

One commenter suggested that TennCare establish an advisory body comprised of rural health providers and their representatives to advise TennCare on reimbursement and other issues related to rural health services. Although outside the scope of this rule, TennCare noted in response that it has communicated with various members of the provider community throughout the development of the new reimbursement methodology, including provider associations, individual clinics and owners, and consultants that support FQHCs and RHCs. TennCare values the input that providers have offered and intends to remain engaged with the provider community as the rule is implemented. No modifications were made to the rule based on this comment.

One commenter suggested that MCOs participating in the TennCare program should be required to allow patients to select FQHCs as their primary care provider. In response, TennCare clarified that TennCare enrollees are currently able to select any qualified provider in their MCO's network, including FQHCs, as their designated primary care provider, and that this choice is not affected by this rule. No modifications were made to the rules based on this comment.

## Regulatory Flexibility Addendum

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

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

The rule will impact health centers that are Rural Health Clinics. TennCare estimates that there are currently approximately 100 Rural Health Clinics in the state that are also small businesses.

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

The rule requires affected health centers to submit a Medicaid cost report, which will be used by TennCare to establish payment rates. The reporting, recordkeeping, and other administrative processes associated with these cost reports are not substantially different than what is otherwise already required for health centers.

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

The rule will have no impact on consumers. Small businesses impacted by the rule will benefit from greater transparency, clarity, consistency, and uniformity in the payment system. Because the rule establishes clear standards for acceptable costs, health centers will experience less ambiguity around payment and lower levels of audit risk.

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 and objectives of the rule.

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

There are no federal or state counterparts to the rule.

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

The purpose of the rule is to provide greater transparency, clarity, consistency, and uniformity to the payment system for Rural Health Clinics and Federally Qualified Health Centers. Because a significant number of Rural Health Clinics are also small businesses, exempting small business from the rule would prevent the rule from achieving this objective. The rule does not provide for exemptions for small businesses.

### **Impact on Local Governments**

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

The rule chapter is not anticipated to have an impact on local governments.

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

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

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

This rule chapter is being promulgated to provide the reimbursement methodology necessary to determine appropriate reimbursable costs and payments for TennCare services provided by RHCs, FQHCs and FQHCLAs to TennCare enrollees.

- (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 rule chapter is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109, 71-5-118 and 71-5-130.

- (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 and entities most directly affected by this rule chapter are TennCare enrollees, providers, and managed care contractors. The governmental entities most directly affected by this rule chapter is the Tennessee Comptroller of the Treasury, and the Division of TennCare, Tennessee Department of Finance & Administration.

- (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 rule chapter was approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (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 promulgation of this rule chapter is anticipated to have a minimal impact on state and local government revenues and expenditures.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy 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

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852

donna.tidwell@tn.gov

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

GW10119024dt

On April 3, 2019, the Government Operations Committee filed a 75-day stay of the effective date of the rules; new effective date July 13, 2019. See page 25.

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

**For Department of State Use Only**

Sequence Number: 01-28-19  
 Rule ID(s): 8530  
 File Date: 1/29/19  
 Effective Date: 4/29/19

## 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).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Division of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	Division of TennCare 310 Great Circle Road Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 507-6446
<b>Email:</b>	george.woods@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-13-10	Reimbursement for Rural Health Clinics, Federally Qualified Health Centers, and Federally Qualified Health Center Look-Alikes
Rule Number	Rule Title
1200-13-10-.01	Definitions
1200-13-10-.02	Determination of Reimbursable Costs for RHCs, FQHCs, or FQHCLAs
1200-13-10-.03	Medicaid Cost Reporting
1200-13-10-.04	Standard Reimbursement for a New RHC, FQHC, or FQHCLA
1200-13-10-.05	Determination of a Reimbursable Visit
1200-13-10-.06	Determination of Reasonable Costs
1200-13-10-.07	Change in Scope and Final PPS or APM Rate Adjustment
1200-13-10-.08	Standard Reimbursement for an Existing RHC, FQHC, or FQHCLA
1200-13-10-.09	Alternative Payment Methodology for an RHC, FQHC, or FQHCLA
1200-13-10-.10	Auditing of Provider-Reported Data
1200-13-10-.11	PPS Rates Outside of Core Reimbursement Rate
1200-13-10-.12	Provider Appeals
1200-13-10-.13	Implementation of this Chapter

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2660  
 Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 04-06-19  
 Rule ID(s): N/A  
 File Date: 4/3/19  
 Effective Date: 4/3/19

## Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Division of TennCare
<b>Contact Person:</b>	Doug Garrett
<b>Address:</b>	425 Fourth Avenue North, Suite 922; Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-9532
<b>Email:</b>	doug.garrett@capitol.tn.gov

**Type of Action on Rule:**

**Stay of Effective Date of Rules**

Rule Filing Date: 01/29/19  
 Rule Original Effective Date: 04/29/19  
 Length of Stay (not to exceed 75 days): 75 days  
 New Effective Date of Rule Filing: 07/13/19

**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)

**Notice of Withdrawal of Rules**

Rule Filing Date: (mm/dd/yy)  
 Rule Effective Date: (mm/dd/yy)

**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
1200-13-10	Reimbursement for Rural Health Clinics, Federally Qualified Health Centers, and Federally Qualified Health Centers Look-Alikes
Rule Number	Rule Title
1200-13-10-.01	Definitions
1200-13-10-.02	Determination of Reimbursable Costs for RHCs, FQHCs, or FQHCLAs
1200-13-10-.03	Medicaid Cost Reporting
1200-13-10-.04	Standard Reimbursement for a New RHC, FQHC, or FQHCLA

1200-13-10-.05	Determination of a Reimbursable Visit
1200-13-10-.06	Determination of Reasonable Costs
1200-13-10-.07	Change in Scope and Final PPS or APM Rate Adjustment
1200-13-10-.08	Standard Reimbursement for an Existing RHC, FQHC, or FQHCLA
1200-13-10-.09	Alternative Payment Methodology for an RHC, FQHC, or FQHCLA
1200-13-10-.10	Auditing of Provider-Reported Data
1200-13-10-.11	PPS Rates Outside of Core Reimbursement Rate
1200-13-10-.12	Provider Appeals
1200-13-10-.13	Implementation of this Chapter



Date: 04/03/19

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

*[Handwritten Signature]*

Name of Officer: Doug Garrett

Title of Officer: Legislative Attorney

Subscribed and sworn to before me on: \_\_\_\_\_

April 3, 2019

Notary Public Signature: \_\_\_\_\_

*[Handwritten Signature: Janika Lee Whitmore]*

My commission expires on: \_\_\_\_\_

8/20/2019

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

4/3/19

*[Handwritten Signature: Tre Hargett]*

Tre Hargett  
Secretary of State

2019 APR -3 PM 3:15  
SECRETARY OF STATE

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

Rules of the Tennessee Department of Finance and Administration, Division of TennCare, are amended by replacing repealed Chapter 1200-13-10 with a new Chapter 1200-13-10 Reimbursement for Rural Health Clinics, Federally Qualified Health Centers, and Federally Qualified Health Center Look-Alikes which shall read as follows:

Rules  
of  
Tennessee Department of Finance and Administration  
Division of TennCare  
  
Chapter 1200-13-10  
Reimbursement for Rural Health Clinics, Federally Qualified Health Centers, and  
Federally Qualified Health Center Look-Alikes

Table of Contents

1200-13-10-.01 Definitions  
1200-13-10-.02 Determination of Reimbursable Costs for RHCs, FQHCs, or FQHCLAs  
1200-13-10-.03 Medicaid Cost Reporting  
1200-13-10-.04 Standard Reimbursement for a New RHC, FQHC, or FQHCLA  
1200-13-10-.05 Determination of a Reimbursable Visit  
1200-13-10-.06 Determination of Reasonable Costs  
1200-13-10-.07 Change in Scope and Final PPS or APM Rate Adjustment  
1200-13-10-.08 Standard Reimbursement for an Existing RHC, FQHC, or FQHCLA  
1200-13-10-.09 Alternative Payment Methodology for an RHC, FQHC, or FQHCLA  
1200-13-10-.10 Auditing of Provider-Reported Data  
1200-13-10-.11 PPS Rates Outside of Core Reimbursement Rate  
1200-13-10-.12 Provider Appeals  
1200-13-10-.13 Implementation of this Chapter

1200-13-10-.01 Definitions. The following definitions apply to Rural Health Clinic (RHC), Federally Qualified Health Center (FQHC), and Federally Qualified Health Center Look-Alike (FQHCLA) provider reimbursement.

- (1) **Administrative Costs.** Expenses incurred in operating the clinic as a whole which are reasonable and that are related to the cost of administration and management of the clinic and are not directly associated with furnishing patient care. Administrative costs include but are not limited to: office salaries; office supplies; legal, accounting, or billing services; consulting services; insurance; telephone; fringe benefits; and, payroll taxes.
- (2) **Allowable Costs.** Costs that are reasonable in amount and proper and necessary for the efficient delivery of RHC and FQHC services and that are incurred by a participating RHC, FQHC or FQHCLA.
- (3) **Base Year.** The first full fiscal year following the effective date of a provider's registration with TennCare as an RHC, FQHC, or FQHCLA. The data collected during this fiscal year will provide the basis to determine the provider's PPS or APM rate. If a rate is rebased, the period of time on which the rebase is calculated becomes the new base year.
- (4) **Core Reimbursement Rate.** The payment under an established PPS or APM rate for medically necessary primary health services and qualified preventive health services furnished by an RHC, FQHC, or FQHCLA to Medicaid enrollees. Note that additional services of dental, optometry, or pharmacy are reimbursed outside of the core reimbursement rate and a separate rate is calculated for each additional service.
- (5) **Core Visit.** A reimbursable visit that counts toward the Core Reimbursement Rate.

- (6) Employee. Any individual who, under the common law rules that apply in determining the employer-employee relationship as defined by § 3121(d)(2) of the Internal Revenue Code of 1986 (26 U.S.C. § 3121(d)(2)), is considered to be employed by, or an employee of, an entity. Application of these common law rules is discussed in 20 C.F.R. § 404.1007 and 26 C.F.R. § 31.3121(d)-1(c).
- (7) Federally Qualified Health Center (FQHC). An entity that has been federally certified as an FQHC and meets one (1) of the three following criteria:
  - (a) Is registered with TennCare as an FQHC; and is receiving a grant under Section 330 of the Public Health Service (PHS) Act (42 U.S.C. § 254b) or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under Section 330 of the PHS Act; and is determined by the Health Resources and Services Administration (HRSA) to meet the requirements for receiving such a grant; or
  - (b) Was treated by CMS, for purposes of Medicare Part B, as a comprehensive federally funded health center as of January 1, 1990; or
  - (c) Is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an Urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.
- (8) Federally Qualified Health Center Look-Alike (FQHCLA). A community-based health care provider that meets the requirements of the HRSA Health Center Program, but does not receive HRSA Health Center Program funding.
- (9) Interim Rate. A rate established for new facilities after registration with TennCare as an RHC, FQHC, or FQHCLA and prior to the establishment of a final PPS or APM rate, as required by 42 U.S.C.A. §1396a(bb)(4).
- (10) Medicare Cost Report. Form CMS-222 and Form CMS-224, the instructions for which are provided at CMS Publication 15-2, Sections 2908-2908.2, and CMS Publication 15-2, Sections 4404.1-4404.3; or their successor forms or publications.
- (11) Non-Core Visit. A reimbursable visit that counts towards a rate established under rule .11.
- (12) Non-Core Reimbursement Rate. The payment under a rate established pursuant to rule .11 for additional services, including but not limited to, dentistry, optometry, or pharmacy services, that are reimbursed outside the Core Reimbursement Rate and where a separate rate is calculated for each additional service.
- (13) Owner. A person, persons, or entities with an enforceable claim or title to the asset or property, and is recognized as such by law.
- (14) Rebase. A new calculation of a provider's base rate utilizing cost data to determine a new reimbursement rate.
- (15) Reimbursable Visit. A visit as defined in this rule and which also meets the requirements of rule .05.
- (16) Related Parties. Any person, persons, or entities that are related to the owner, if applicable, either by familial relationship or by a business association other than the RHC, FQHC, or FQHCLA itself.
- (17) Rural Health Clinic (RHC). A facility that has:
  - (a) Been determined by the Secretary of Health and Human Services to meet the requirements of § 1861(aa)(2) of the Social Security Act (42 U.S.C. § 1395x(aa)(2)) and 42 C.F.R. Part 491, concerning RHC services and conditions for approval; and
  - (b) Filed an agreement with CMS that meets the requirements in 42 C.F.R. § 405.2402 to provide RHC services under Medicare; and
  - (c) Has registered with TennCare as an RHC.

- (18) TennCare. The state governmental agency administratively located within the Tennessee Department of Finance and Administration; includes references to the Division of TennCare, the Bureau of TennCare and to all employees and subdivisions of the agency.
- (19) Visit. A medically-necessary face-to-face medical or mental health encounter or a qualified preventive health encounter between the patient and a physician, nurse practitioner (NP), physician's assistant (PA), certified nurse-midwife (CNM), clinical psychologist (CP), clinical social worker (CSW), licensed professional counselor (LPC), or PharmD during which time one (1) or more qualified RHC, FQHC, or FQHCLA Medicaid covered services are furnished. In certain limited situations, an RHC, FQHC, or FQHCLA visit may also include a visit by a registered professional nurse or a licensed practical nurse to a homebound patient. For a provider that has an established Non-Core Reimbursement Rate, a Non-Core Visit will include a face-to-face encounter with a licensed professional for which the rate was established, during which time one (1) or more qualified Non-Core Visit covered services are furnished.
- (20) Acronyms. Following is a list of acronyms used in this chapter:
  - (a) APM: Alternative Payment Method
  - (b) CMS: Centers for Medicare and Medicaid Services
  - (c) CPT: Current Procedural Terminology
  - (d) FQHC: Federally Qualified Health Center
  - (e) FQHCLA: Federally Qualified Health Center Look-Alike
  - (f) FTE: Full Time Equivalent
  - (g) HRSA: Health Resources and Services Administration
  - (h) MEI: Medicare Economic Index
  - (i) PHS: Public Health Service
  - (j) PPS: Prospective Payment System
  - (k) RHC: Rural Health Clinic

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.02 Determination of Reimbursable Costs for RHCs, FQHCs, or FQHCLAs.

- (1) TennCare, in consultation with the Comptroller of the Treasury, establishes this chapter for the determination of the reimbursable per visit cost for services provided to Medicaid recipients who receive services at an RHC, FQHC, or FQHCLA. The Comptroller, pursuant to an agreement with TennCare, will review cost report and countable visit data submitted by providers to recommend a final PPS or APM rate.
- (2) Only a facility registered with TennCare as an RHC, FQHC, or FQHCLA may participate in and be reimbursed as a provider under this chapter. TennCare shall notify the Comptroller of the Treasury when a provider enters the program and when its participation terminates.
- (3) The specific items and services covered under the RHC, FQHC, or FQHCLA program shall be those defined and approved by TennCare. See rule .05. Other Medicaid services that are not RHC, FQHC, or FQHCLA services may be provided and billed outside of the PPS or APM payment structure, providing TennCare covers those services.
- (4) When calculating an RHC's, FQHC's, or FQHCLA's PPS settlement, the Comptroller and TennCare will multiply the number of reimbursable visits, as determined in rule .05, times the established PPS or APM rate for that facility to calculate the total that should be received for services rendered under each

established Core or Non-Core Reimbursement Rate. From that total, the Comptroller and TennCare will subtract any claims-based reimbursement received for those services to calculate the settlement amount.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.03 Medicaid Cost Reporting.

- (1) New and existing RHCs, FQHCs, or FQHCLAs shall, under the Medicare Cost Report Instructions, annually submit a Medicare Cost Report, located on the TennCare website, to the Comptroller by the due date imposed by Medicare. This cost report shall be for the RHC's, FQHC's, or FQHCLA's most recent fiscal year that ends at least six months before July 1.
- (2) New and existing RHCs, FQHCs, or FQHCLAs shall annually submit a supplemental Medicaid Cost Report, which will be located on the TennCare website, to the Comptroller by the same due date for the Medicare Cost Report. This cost report shall be for the RHC's, FQHC's, or FQHCLA's most recent fiscal year that ends at least six months before July 1.
- (3) Along with a Medicare Cost Report and supplemental Medicaid Cost Report, an RHC, FQHC, or FQHCLA shall submit to the Comptroller annually by the same due date imposed by Medicare for the Medicare Cost Report, a written statement of the RHC's, FQHC's, or FQHCLA's maximum hours per day, days per week, and weeks per year of operation, trial balance, detailed general ledger, depreciation schedule, schedule listing allocations, all management and consulting contracts, all billing NPI numbers, a listing of all related parties with which the provider does business, total visit log, schedule of owner's compensation, a schedule of all employee salaries by title, documentation for reclassification, and adjustments. If an RHC, FQHC, or FQHCLA does not submit this written statement, TennCare shall continue to pay the RHC, FQHC, or FQHCLA as it pays primary care centers that are not an RHC, FQHC, or FQHCLA.
- (4) RHCs, FQHCs, or FQHCLAs that have just undergone an ownership change will continue to receive the same rate as before the ownership change. The new owner may formally request the setting of a new rate from TennCare. TennCare will consult with the Comptroller and evaluate the request and determine whether to issue a new rate.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.04 Standard Reimbursement for a New RHC, FQHC, or FQHCLA.

- (1) New RHCs, FQHCs, or FQHCLAs are those providers which meet the definition for the provider type in rule .01 but did not register with TennCare prior to the implementation of the moratorium on the registration of new facilities approved by CMS on October 25, 2017 and have not had a final PPS or APM rate established by the Comptroller. New providers shall be reimbursed using an interim rate based on the average rate of similar entities (other FQHCs for an FQHC, or other RHCs for an RHC) in the same Grand Division, or in the entire state if there are not enough similar entities in the same Grand Division.
- (2) Upon receipt of a Medicare Cost Report and supplemental Medicaid Cost Report submitted by an RHC, FQHC, or FQHCLA to the Comptroller as required by rule .03, the Comptroller shall:
  - (a) Review the Medicare Cost Report and supplemental Medicaid Cost Report; and
  - (b) Notify the RHC, FQHC, or FQHCLA if additional documentation is necessary.
  - (c)
    1. If additional documentation is necessary to establish a final PPS rate or APM rate, the RHC, FQHC, or FQHCLA shall:
      - (i) Provide the additional documentation to the Comptroller within thirty (30) days of the notification of need for additional documentation; or
      - (ii) Request an extension beyond thirty (30) days to provide the additional documentation.
    2. The Comptroller has full discretion on whether to grant the extension.

3. An extension shall not exceed thirty (30) days.
- (d) 1. If the Comptroller requests additional documentation from the RHC, FQHC, or FQHCLA but does not receive additional documentation or an extension request within thirty (30) days, TennCare shall reimburse the RHC, FQHC, or FQHCLA as it reimburses primary care centers that are not an RHC, FQHC, or FQHCLA until:
- (i) The additional documentation has been received by the Comptroller; and
  - (ii) The Comptroller has established a final PPS or APM rate.
2. If an RHC, FQHC, or FQHCLA does not submit both a Medicare Cost Report and supplemental Medicaid Cost Report to the Comptroller, TennCare shall reimburse the RHC, FQHC, or FQHCLA as it reimburses primary care centers that are not an RHC, FQHC, or FQHCLA until the RHC, FQHC, or FQHCLA submits both a Medicare Cost Report and supplemental Medicaid Cost Report to the Comptroller.
- (e) The Comptroller may review an RHC's, FQHC's, or FQHCLA's paid claims listing for the period of time corresponding to the submitted cost report.
- (f) When an RHC, FQHC, or FQHCLA has submitted all necessary information to the Comptroller, within one hundred twenty (120) days, the Comptroller shall:
1. Establish a final PPS rate for the RHC, FQHC, or FQHCLA; and
  2. Notify the RHC, FQHC, or FQHCLA in writing of the RHC's, FQHC's, or FQHCLA's Final PPS or APM rate.
- (g) Upon setting the final rate, TennCare shall reconcile all quarterly settlements made under the interim rate to the final rate, adjusting payments upward or downward as necessary.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.05 Determination of a Reimbursable Visit.

- (1) RHCs, FQHCs, or FQHCLAs shall only be reimbursed for visits paid by a TennCare managed care contractor (MCC). This applies to both the PPS and APM methodologies. Claims for visits denied by an MCC that met all filing requirements of all state and federal laws and regulations, as well as the applicable MCC provider agreement, may be submitted to TennCare to be considered a reimbursable visit. Reimbursement determinations will be made at the discretion of TennCare upon consultation with the Comptroller. If TennCare determines a visit shall not be counted as a reimbursable visit based on the denied claim, the provider may appeal the determination pursuant to rule .12.
- (2) TennCare shall adopt or amend a list of CPT codes that will be published on the TennCare website. The list of CPT codes will be presumed reimbursable visits for both the PPS and APM methodologies and may be periodically updated with additions, deletions, or modifications. TennCare will post any amendments to the list on its website at least thirty (30) days prior to making any changes. When amendments to the CPT codes list become effective, any changes in payments to providers will also become effective on the same date.
- (3) If an encounter between an RHC, FQHC, or FQHCLA provider and a TennCare enrollee involves a CPT code that is not on the TennCare CPT codes list, the RHC, FQHC, or FQHCLA may request reimbursement for the CPT code. Requests for inclusion of a CPT code not on the TennCare codes list shall be made via the visit report and the decision regarding inclusion will be at the discretion of TennCare upon consultation with the Comptroller. If TennCare determines a requested CPT code will not be included for reimbursement, the provider may appeal the determination pursuant to rule .12.
- (4) An encounter for the sole purpose of medication therapy management, whether provided by a pharmacist or other provider, shall not be considered a reimbursable visit, as payment for this service is made outside of the PPS or APM methodology.

- (5) An encounter or service related to patient-centered medical home payments, including the activity payments, practice transformation payments, and outcome payments, shall not be considered a reimbursable visit, as payment for this service is made outside of the PPS or APM methodology.
- (6) An encounter or service related to Tennessee Health Link payments, including activity payments and outcome payments, shall not be considered a reimbursable visit, as payment for this service is made outside of the PPS or APM methodology.
- (7) An encounter or service related to any other types of payment reform initiatives that may be implemented by TennCare, structured as per member per month case rates or outcome payments based on established performance criteria, shall not be considered a reimbursable visit, as payment for this service is made outside of the PPS or APM methodology.
- (8) If an encounter includes both a medical visit and a mental health visit, the RHC, FQHC, or FQHCLA shall report it as two separate visits. This applies to both the PPS and APM methodologies. In addition, the RHC, FQHC, or FQHCLA shall be allowed to submit both a core visit and a non-core visit for the same patient on the same day.
- (9) An RHC, FQHC, or FQHCLA shall not report multiple CPT codes that comprised one (1) visit as multiple visits in a submission to the Comptroller, except when a minor child receives both a well-child visit and a sick visit at the same time, each visit may be billed separately for a maximum of two (2) allowable paid TennCare visits. This applies to both the PPS and APM methodologies.
- (10) Medicare Crossover claims are ineligible for being counted as visits in either the PPS or APM methodologies.
- (11) Each billed item for patient care must include an invoice date and at least one (1) CPT code for the visit to be considered a reimbursable visit in either the PPS or APM methodologies.
- (12) For both PPS and APM purposes, the RHC, FQHC, or FQHCLA must submit visits to the Comptroller using the template that will be posted at the TennCare website, in order for the visits to be reimbursed. All data elements on the template must be complete and in the requested format for a claim to be considered as a visit. TennCare may change the template after providing at least thirty (30) days prior notice.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.06 Determination of Reasonable Costs.

- (1) Only reasonable costs will be reimbursed under this chapter. It is within the Comptroller's discretion to determine what is a reasonable cost and if it may be reimbursed in accordance with this chapter.
- (2) The following factors will be considered in determining reasonable costs:
  - (a) Fees paid by an RHC, FQHC, or FQHCLA pursuant to any contract to pay contingency fees for consulting, accounting, bookkeeping or similar services, or any contract to pay the vendor a percentage of the fees recovered from TennCare, will be presumed unreasonable and will not be reimbursed.
  - (b) Imputed salaries will be presumed unreasonable. All salary amounts must be reported on an IRS Form W-2 or an IRS Form 1099 to be considered for reasonableness.
  - (c) Salaried or contracted costs shall be accompanied by an FTE calculation.
  - (d) Owner's compensation and compensation to any related parties claiming salary or wages from the RHC, FQHC, or FQHCLA will be indexed to the Tennessee Occupational Employment and Wage Rates or other sources as determined by the Comptroller and will be paid only in circumstances as described in this rule. Compensation exceeding the indexed amount will be presumed unreasonable.

- (e) For any employee or owner whose job functions include responsibilities other than direct patient care, the RHC, FQHC, or FQHCLA will be required to report the total number of hours the employee or owner spent performing functions that were not direct patient care.
  - (f) Administrative costs will be capped at thirty percent (30%) of the total costs, with imputed costs excluded. Total administrative costs exceeding 30% will be presumed unreasonable. Actual administrative costs must be established by each facility.
- (3) For reimbursement purposes, a reasonable allowance or compensation for services of an owner shall be subject to the following:
- (a) The services provided by the owner must be a necessary function, meaning that had the owner not rendered the services, the facility would have been required to employ another person to perform them. The services must be related to patient care or pertinent to the operation and sound management of the facility. TennCare shall be responsible for determining which services are related to patient care and pertinent to the operation and sound management of the facility, upon consultation with the Comptroller.
  - (b) Total compensation to owners must be listed on the Medicare Cost Report. Where these amounts include items other than salaries, a schedule must be attached that identifies the amounts and the method of assigning values to these benefits.
  - (c) The Comptroller's Office will review these amounts and compare them with allowable compensation ranges and make necessary adjustments. The Comptroller will consider the duties, responsibilities, and managerial authority of the owner as well as the services performed for other facilities and his engagements in other occupations. Only one-and-one-half (1.5) full-time positions, or the equivalent, will be allowed for each owner. Individual owner(s) and related party(ies) will be allowed no more than one (1.0) full-time position each, or the equivalent, for hours performing administrative functions. The duties performed, time spent, and compensation received by the owner must be substantiated by appropriate records.
- (4) The Comptroller may review any item in the cost report for reasonableness and to determine whether it should be an allowable cost.
- (5) This rule applies to both the standard PPS and APM methodologies.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.07 Change in Scope and Final PPS or APM Rate Adjustment.

- (1) (a) If an RHC, FQHC, or FQHCLA changes its scope of services after the base year rate is established, the Comptroller shall adjust its final PPS or APM rate if the change in scope qualifies for an adjustment under this rule, upon review and approval of the change in scope.
  - (b) An adjustment to a final PPS or APM rate resulting from a change in scope that occurred after an RHC's, FQHC's, or FQHCLA's base year rate is established shall be effective from the beginning of the quarter that the change in scope request was submitted.
- (2) A change in scope of service shall be restricted to:
- (a) A change in type: adding or deleting a Medicaid-covered ambulatory service; or
  - (b) A change in intensity: a change in the type or quality of services offered in an average visit such that the average patient receives a different array of services than the service mix patients received when the PPS or APM rate was last set. Examples include changes caused by new statutory or regulatory requirements or the introduction or expansion of specialty care; or
  - (c) A change in duration: a change in the average length of time it takes RHC, FQHC, or FQHCLA providers to complete an average patient visit due to changing circumstances such as the introduction of a health care delivery system transformation program or patient-centered care, or a

change in patient demographics including, but not limited to, populations with HIV or AIDS or other chronic diseases, homeless, elderly, migrant, or other special populations; or

- (d) A Change in amount: an increase or decrease in the quantity of services that an average patient receives in an average Medicaid-covered visit such as improvements to technology or facilities that result in increased services to the RHC's, FQHC's, or FQHCLA's patients; or
  - (e) A statutory or regulatory change that materially impacts the costs or visits of an RHC, FQHC, or FQHCLA.
- (3) The following items individually shall not constitute a change in scope:
- (a) A general increase or decrease in the costs of existing services;
  - (b) A reduction or an expansion of hours per day, days per week, or weeks per year;
  - (c) A wage increase;
  - (d) A renovation or other capital expenditure;
  - (e) A change in ownership; or
  - (f) An addition of a service that is not a TennCare covered service.
- (4)
- (a) The addition of a new category of service shall be restricted to the addition of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the RHC, FQHC, or FQHCLA by a licensed professional employed or contracted by the facility.
  - (b) The deletion of a category of service shall be restricted to the deletion of a licensed professional staff member who performed a Medicaid covered service that was being performed within the RHC, FQHC, or FQHCLA by the licensed professional staff member.
- (5) The Comptroller shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits at an RHC, FQHC, or FQHCLA if:
- (a) A government entity imposes a mandatory minimum wage increase and the increase was:
    - 1. Not included in the calculation of the final PPS or APM rate; or
    - 2. Not subsequently included in the MEI applied yearly; or
  - (b) A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification; or
  - (c) The state imposes new requirements on its managed care plans that are then passed down as obligations to the RHCs, FQHCs, or FQHCLAs, if the obligations result in an increase in clinic costs of at least five percent (5%).
- (6) A requested change in scope shall:
- (a) Increase or decrease the existing final PPS or APM rate by at least five percent (5%);
  - (b) Remain in effect at least twelve (12) months; and
  - (c) Be submitted to the Comptroller as a written detailed description including documentation of the service change.
    - 1. For the addition of a service: the description must include the service the RHC or FQHC is adding, the location(s) offering the service, the date the RHC or FQHC began providing the

service, and a brief description of how the new service will benefit the patient population.

2. For a change in intensity, duration, or amount: the description must include the service change, the location(s) where the change has occurred, a description of how the average visit has changed from when the RHC's or FQHC's rate was set, along with relevant supporting documentation, and how the change has benefitted the patient population.
- (7) (a) An RHC, FQHC, or FQHCLA that requests a change in scope shall submit the following documents to the Comptroller within twelve (12) months of the requested effective date of a change in scope:
1. A narrative describing the change in scope;
  2. A Medicare Cost Report for the affected fiscal year; and
  3. Relevant documentation including a trial balance, depreciation schedule, detailed general ledger, schedule listing allocations, total visit log, schedule of owner's compensation, a schedule of all employee's salaries by title, a list of related parties, documentation for reclassification, and adjustments.
- (b) If the Comptroller requests information from the provider and does not receive the required documentation within ninety (90) days, the change in scope shall be denied.
- (c) 1. The Comptroller shall:
- (i) Review the documentation listed in this rule; and
  - (ii) Notify the RHC, FQHC, or FQHCLA in writing of the:
    - (I) Approval or denial of the request for change in scope within ninety (90) days from the date the Comptroller received the request; or
    - (II) Need for additional documentation from the RHC, FQHC, or FQHCLA to establish a final PPS or APM rate associated with the change in scope.
2. If the Comptroller requests additional documentation to calculate the final PPS or APM rate for a change in scope, the RHC, FQHC, or FQHCLA shall:
- (i) Provide the additional documentation to the Comptroller within thirty (30) days of the request for additional documentation; or
  - (ii) Request an extension beyond thirty (30) days to provide the additional documentation.
3. (i) An extension shall not exceed thirty (30) days.
- (ii) The Comptroller shall have complete discretion regarding whether to grant or deny an extension.
4. If the Comptroller approves the request for a change in scope and receives all of the necessary documentation from an RHC, FQHC, or FQHCLA within the timelines established in this rule, the facility shall begin receiving the current PPS or APM rate for any newly approved service associated with the change in scope until a final rate can be set.
5. If an RHC, FQHC, or FQHCLA has submitted all necessary information to the Comptroller, within one hundred twenty (120) days, the Comptroller shall:
- (i) Establish a final PPS or APM rate for the RHC, FQHC, or FQHCLA; and
  - (ii) Notify the RHC, FQHC, or FQHCLA in writing of the RHC's, FQHC's, or FQHCLA's Final PPS or APM rate.

- (8) If an RHC, FQHC, or FQHCLA requests a change in scope and it is granted, all of the rates, including the Core Reimbursement Rate and other rates outside the Core Reimbursement Rate, will be rebased.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.08 Standard Reimbursement for an Existing RHC, FQHC, or FQHCLA.

- (1) Existing RHCs, FQHCs, or FQHCLAs are those providers which meet the definition for the provider type in rule .01 and either registered with TennCare prior to implementation of the moratorium on the registration of new facilities approved by CMS on October 25, 2017 or have a final PPS or APM rate established by the Comptroller.
- (2) For existing providers, for a visit by a recipient who is a TennCare enrollee, TennCare shall reimburse:
- (a) An RHC, FQHC, or FQHCLA: a quarterly settlement based on the final PPS or APM rate as required by 42 U.S.C. 1396a(bb); or
- (b) A satellite facility of an RHC, FQHC or FQHCLA: a quarterly settlement based on the final PPS or APM rate.
- (3) The Comptroller shall calculate a final PPS or APM rate for a new RHC, FQHC, or FQHCLA under rule .04.
- (4) The Comptroller shall adjust a final PPS or APM rate:
- (a) By the percentage increase in the MEI applicable to RHC services on July 1 of each year; or
- (b) By the market basket measure for FQHC and FQHCLA services; and
- (c) As permitted by rule .07:
1. Upon request and documentation by an RHC, FQHC, or FQHCLA that there has been a change in scope of services; or
  2. Upon review and determination by the Comptroller that there has been a change in scope of services; or
  3. If necessary as a result of a desk review or audit.
- (5) A final PPS or APM rate established under this rule shall not be subject to an end of the year cost settlement.
- (6) Upon both this chapter becoming effective and TennCare's corresponding State Plan Amendment being approved by CMS, the Comptroller will review all PPS rates using the cost data used to set those rates if available, or if not, using the newest available cost data of at least 12 months, in order to determine if the included costs are allowable costs according to the requirements in this chapter. If it is determined that some of the costs are not allowable costs according to this chapter, the RHC, FQHC, or FQHCLA will be offered the opportunity to change to an APM methodology and either:
- (a) Accept an APM methodology where the APM rate will equal the previous final rate established for the facility prior to the Comptroller's review. This APM rate will receive no annual inflationary adjustment until it is determined that the revised PPS rate plus annual inflationary adjustments has surpassed this APM rate. At that point, the APM rate will equal the PPS rate and receive annual inflationary adjustments as described in this rule; or
- (b) Accept the revised PPS rate established pursuant to the Comptroller's review under this paragraph.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.09 Alternative Payment Methodology for an RHC, FQHC, or FQHCLA.

- (1) TennCare may offer to an RHC, FQHC, or FQHCLA, for which a final PPS rate exists, an alternative payment methodology. The RHC, FQHC, or FQHCLA, at the RHC, FQHC, or FQHCLA's election, may receive the alternative payment methodology rate if it notifies TennCare in writing that it elects to receive the alternate reimbursement.
- (2) Establishment of base years and periodic rebasing.
  - (a) If the RHC, FQHC, or FQHCLA elects to use the alternative payment methodology, it will undergo establishment of a new base year. The Comptroller shall collect and review Medicare Cost Report data from the previous two (2) fiscal years, or if the provider has been in existence for fewer than two (2) years, then for as many months as are available, and use this data to compute a new PPS rate, which will be called the APM rate. A minimum of twelve (12) months data must be available in order to set an APM rate, and the rate must be rebased as soon as there are twenty-four (24) months of available cost report data.
  - (b) Following that rebase year, the APM rate for an RHC, FQHC, or FQHCLA shall be adjusted by the market basket measure applicable to FQHC and FQHCLA services on July 1 of each year.
  - (c) The factors included in rule .06 will be calculated into the APM rate.
  - (d) The Comptroller may perform a rebase of all RHCs, FQHCs, or FQHCLAs no more than one (1) time per fiscal year and no less than one (1) time every five (5) fiscal years, without prior notice and using the previous two (2) fiscal years of Medicare Cost Report data.
  - (e) The Comptroller may not offer, and an RHC, FQHC, or FQHCLA may not collect, the APM rate unless the APM rate is equal to or higher than the Standard PPS Rate, as calculated according to this chapter. When an APM rate is first implemented, or when it is rebased, TennCare will ensure that the APM rate is equal to or greater than the Standard PPS Rate as calculated according to the provisions in this chapter.
  - (f) The offer of the APM is valid for only the year in which the payment is offered. Entities that do not choose the APM in the year it is offered will be required to wait until APM is offered again. This will be a minimum of five (5) years.
- (3) If a facility elects to use the APM, it must use the APM for all rates, including the Core Reimbursement Rate and those rates outside of the Core Reimbursement Rate.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

#### 1200-13-10-.10 Auditing of Provider-Reported Data.

- (1) The cost reports and visit reports filed under this chapter by an RHC, FQHC, or FQHCLA, and all pertinent provider records shall be subject to audit by the Comptroller of the Treasury or his agents based on the criteria in this chapter or the Medicare regulations, as applicable.
- (2) The cost reports filed under this chapter must provide adequate cost and statistical data. This data must be:
  - (a) Based on and traceable to the provider's financial and statistical records; and
  - (b) Adequate, accurate and in sufficient detail to support payment made for services rendered to enrollees; and
  - (c) Available for and capable of verification by the Comptroller of the Treasury or his agents.
- (3) The provider shall permit the Comptroller or his agents to examine any records and documents necessary to ascertain information pertinent to the determination of the proper amount of program payments due.
- (4) Data reflected on the cost report which cannot be substantiated may be disallowed with reimbursement being required of the provider.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.11 PPS Rates Outside of Core Reimbursement Rate.

RHCs, FQHCs, or FQHCLAs are permitted to establish Non-Core Reimbursement Rates for services outside of the Core Reimbursement Rate, including but not limited to, dental, pharmacy, and optometry. In order to do this, a request must be submitted to the Comptroller to set these rates. All provisions in this rule apply to Non-Core Reimbursement Rates in the same way that they apply to Core Reimbursement Rates.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109 and 71-5-130.

1200-13-10-.12 Provider Appeals.

Information contained in a provider's cost and visit reports or supplemental filings required to be submitted to the Comptroller by this chapter is utilized by the Comptroller to determine reimbursement. Reimbursement rate determinations made by the Comptroller and implemented by the Bureau shall be appealable as set out in Chapter 1200-13-18. A provider may request review of Reimbursable Visit determinations pursuant to rule .05 paragraphs (1) and (3). A denial following review by TennCare shall be appealable pursuant to Chapter 1200-13-18.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109, 71-5-118 and 71-5-130.

1200-13-10-.13 Implementation of this Chapter.

It is the intention of TennCare that this Chapter 1200-13-10 shall become effective the later of the date of effectiveness assigned by the Secretary of State or the date the corresponding State Plan Amendment is approved by CMS.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-107, 71-5-109, 71-5-118 and 71-5-130.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare on 01/24/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/26/18

Rulemaking Hearing(s) Conducted on: (add more dates). 11/27/18

Date: 1/24/19

Signature: [Handwritten Signature]

Name of Officer: John G. Roberts

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 1/24/19

Notary Public Signature: Vicki L. Johnson

My commission expires on: May 17, 2021

MY COMMISSION EXPIRES:  
MAY 17, 2021

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-10

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

[Handwritten Signature]

Herbert H. Slatyer III  
Attorney General and Reporter

1/25/2019  
Date

**Department of State Use Only**

2019 JAN 29 PM 4:21  
STOPPED AT THE STATE

Filed with the Department of State on: 1/29/19

Effective on: 4/29/19

[Handwritten Signature]

Tre Hargett  
Secretary of State