

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Tennessee Real Estate Appraiser Commission

SUBJECT: Requirements for Real Property Appraiser Applicants

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-39-203

EFFECTIVE DATES: December 30, 2014 through June 28, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The emergency rules are being promulgated to ensure compliance with certain federal regulations concerning the educational requirements for certification as a real estate appraiser. The emergency rules require applicants applying for a state certified residential appraiser certification to have at least a bachelor's degree or higher. The prior rules required an associate's degree for certification. According to the Commission, these education changes are necessary to maintain the Commission's compliance with the most recent appraiser qualifications issued by the Appraisal Qualifications Board (AQB). The emergency rules add language regarding foreign education, which will be evaluated for equivalency for applicants applying for a state certified residential appraiser certification. The emergency rules require that all applicants applying for general certification obtain a bachelor's degree. The prior rules allowed an individual to apply without a bachelor's degree so long as they had thirty hours of courses in certain topics; however, this is no longer consistent with AQB requirements. The proposed rules add language to make requirements for a reciprocal license clearer.

Additionally, the emergency rules implement the requirements for fingerprinting for initial registration, licensure, or certification as required by T.C.A. 62-39-301.

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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission: Department of Commerce and Insurance
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Rule Type:
 Emergency Rule

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

Statement of Necessity:

The Tennessee Real Estate Appraiser Commission is subject to the enactment of 2014 Public Chapter 621, effective January 1, 2015, which allows fingerprinting for any applicant for initial registration, licensure, or certification, in order to meet statutory requirements set forth in the Act. The Tennessee Real Estate Appraiser Commission is subject to the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which allows the Appraisal Qualifications Board to establish the minimum education, experience, and examinations requirements for real property appraisers to obtain a state license or certification. States are required to implement appraiser licensing and certification requirements that are no less stringent than those issued by the Appraisal Qualifications Board. The Board established new criteria that becomes effective January 1, 2015. In order to be in Federal compliance, the Tennessee Real Estate Appraiser Commission must establish rules to implement this criteria by January 1, 2015. The implementation of these rules within the required time period to implement these rules precludes utilization of rulemaking procedures described in Tennessee Code Annotated, Title 4, Chapter 5, Part 2 for the promulgation of permanent 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 enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1255-01	General Provisions
Rule Number	Rule Title
1255-01-.02	Definitions
1255-01-.04	Application for Appraiser License or Certificate
1255-01-.05	Qualifications for State Licensed Appraiser
1255-01-.07	Qualifications for State Certified Residential Appraisers
1255-01-.08	Qualifications for General Certification
1255-01-.12	Registered Trainee
1255-01-.16	Fingerprinting

Chapter Number	Chapter Title
1255-06	Reciprocity
Rule Number	Rule Title
1255-06-.01	Reciprocal Agreements

Chapter 1255-01
General Provisions

Amendments

Rule 1255-01-.02 Definitions is amended by adding a new paragraph (9) which shall read as follows:

1255-01-.02 Definitions.

- (9) "Good Standing" means a person has not been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the appraiser's legal eligibility to engage in appraisal practice. An appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.

Authority: T.C.A. §§ 62-39-203 and 62-39-333.

Rule 1255-01-.04 Application for Appraiser License or Certificate is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.04 Application for Appraiser License or Certificate.

- (1) All new applicants for a real property appraiser credential who are not currently licensed or certified and in good standing in another jurisdiction must undergo a State and national background check. Applicants shall submit fingerprints of the individual applying for the credential, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation and/or any governmental agency or entity authorized to perform such background checks.
- ~~(4)~~(2) A person who wishes to file an application for a real estate appraiser trainee registration, license or certificate may obtain the required form upon request to the Commission.
- (3) At the time of filing an application for trainee registration, licensure or certification, each applicant shall sign a pledge to comply with the standards set forth in the Act and the Commission's rules and state that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against a registered trainee, state licensed or certified appraiser, as set forth in the Act.
- (4) Each applicant shall complete all application and examination requirements within one (1) year of the date the Commission grants approval for the applicant to take the required examination. An applicant may not take the required examination more than four (4) times within the one (1) year period following approval; thereafter, an applicant wishing to take the required examination shall reapply and submit a new application fee. The Commission may grant exceptions to the requirements set forth in this paragraph upon appropriate individual request.
- (5) Any person may apply for upgrade of an unexpired license or certificate by filing an application for the same on a form which may be obtained from the Commission. The appropriate application fee must be filed with the application.
- (6) Filing and Fees. Properly completed applications must be accompanied by the appropriate fees. Once the application has been filed and processed, the application fee may not be refunded. The following fees shall be charged:
- (a) Application for initial real estate appraiser license\$125.00

- (b) Application for initial real estate appraiser certificate \$125.00
- (c) License or certificate issuance fee\$350.00
- (d) Application for upgrade.....\$125.00
- (e) Letter of good standing\$25.00

(7) Payment of application fees shall be made by certified check, bank check or money order made payable to the State of Tennessee.

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-206, 62-39-307, 62-39-312, 62-39-315 and 62-39-333.

Rule 1255-01-.05 Qualifications for State Licensed Appraiser is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.05 Qualifications for State Licensed Appraiser

(1) An applicant for a state licensed real estate appraiser license who has satisfied the prerequisites for certification provided in rule 1255-01-.07 or rule 1255-01-.08 will also satisfy the requirements of this rule. All other applicants for a state licensed real estate appraiser license shall first register as a registered trainee with the Commission and complete the training requirements established in rule 1255-01-.12. An applicant shall then satisfy all of the following education, experience and examination requirements:

(a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for licensure as a state licensed real estate appraiser:

~~1. High school diploma or its equivalent. (An applicant who has not obtained a high school diploma or its equivalent may apply and have his or her educational background reviewed on an individual basis).~~

1. Applicants for the licensed Residential credential shall successfully complete thirty (30) semester hours of college-level education from an accredited college, junior college, community college, or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-level Examination Program® (CIEP) and examination(s) and issues a transcript for the exam showing its approval, it will be considered as credit for the college course.

2. Applicants holding an Associate degree, or higher, from an accredited college, junior college, community college, or university satisfy the thirty (30) hour college-level education requirement.

3. Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or

- (iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.
- (b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state licensed appraiser examination:
1. One hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal (hereinafter, "qualifying education requirement") which shall include:
 - (i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board,
 - (I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
 - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles,
 - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures,
 - (iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use,
 - (v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach,
 - (vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches, and
 - (vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies.
 2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
 3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and the individual successfully completes an examination pertinent to that educational offering.
 4. An applicant may obtain credit for the qualifying education requirement from any of the following educational providers:
 - (i) colleges or universities;
 - (ii) community or junior colleges;
 - (iii) real estate appraisal or real estate related organizations;

- (iv) state or federal agencies or commissions;
- (v) proprietary schools;
- (vi) other providers approved by the Commission; or
- (vii) The Appraisal Foundation or its Boards.

5. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of qualifying educational requirements.
6. In the event of a denial, an applicant for licensure may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for licensure is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tenn. Code Ann., Title 4, Chapter 5), and the applicant may then reapply for licensure.

(c) Experience. An applicant shall satisfy the following experience requirements as a prerequisite for licensure as a state licensed real estate appraiser:

1. An applicant shall complete a minimum of two thousand (2,000) hours of appraisal experience over a period of at least twenty-four (24) months preceding the date of the application to the Commission. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. An applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~
2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
 - (i) A minimum of twenty-four (24) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules established by the Commission.
3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period that the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:
 - (i) type of property;
 - (ii) date of report;

- (iii) address of appraised property;
 - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
 - (v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;
 - (vi) client name and address; and
 - (vii) signature and State certification number of the supervising appraiser, if applicable.
4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
5. There is no minimum number of hours that must be obtained in any one (1) twelve (12)-month period.
- (d) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Licensed Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of passing score on the exam.
- ~~(e) If, after passing the licensure examination, a registered trainee fails to meet any other requirements for licensure prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for licensure and retake the examination.~~
- ~~(f)(e) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for licensure. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.~~
- ~~(g) An applicant may complete the education, experience and/or the examination requirements for licensure before January 1, 2008 in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirements for licensure before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
- ~~1. An applicant completing the education segment of the qualification criteria prior to January 1, 2008 will be required to complete ninety (90) hours of qualifying education, which shall include:~~
- ~~(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board;~~
 - ~~(i) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform~~

~~Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~

- ~~(ii) Successful completion of a thirty (30) hour course in Appraisal Principles, and~~
- ~~(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~
- ~~(iv) The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-303, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.07 Qualifications for State Certified Residential Appraisers is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.07 Qualifications for State Certified Residential Appraisers

- (1) An applicant applying for a state certified residential real estate appraiser certification shall first register as a real estate appraiser trainee, or be a licensed or certified general real estate appraiser. The applicant shall then satisfy all of the following education, experience and examination requirements:
 - (a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for certification as a state certified residential real estate appraiser:
 - 1. ~~Associate Bachelor's degree or higher, or in lieu of a degree, a minimum of twenty one (21) college semester hours in all specified coursework as follows:~~
 - ~~(i) English composition,~~
 - ~~(ii) principles of economics (micro or macro),~~
 - ~~(iii) computers word processing/spreadsheets,~~
 - ~~(iv) finance,~~
 - ~~(v) business or real estate law,~~
 - ~~(vi) algebra, geometry, or higher mathematics, and~~
 - ~~(vii) statistics.~~
 - (b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified residential appraiser examination:
 - 1. Two hundred (200) classroom hours of courses in subjects related to real estate appraisal (hereinafter "qualifying education requirement"). These modules shall include:
 - (i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications

Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board,

- (I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
 - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles;
 - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;
 - (iv) Successful completion of a fifteen (15) hour course in Residential Market Analysis and Highest and Best Use;
 - (v) Successful completion of a fifteen (15) hour course in Residential Appraiser Site Valuation and Cost Approach;
 - (vi) Successful completion of a thirty (30) hour course in Sales Comparison and Income Approaches;
 - (vii) Successful completion of a fifteen (15) hour course in Residential Report Writing and Case Studies;
 - (viii) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;
 - (ix) Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and
 - (x) Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.
2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
 3. The Commission may grant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and an applicant successfully completes an examination pertinent to that educational offering.
 4. An applicant may obtain credit for the qualifying education requirement from any of the following:
 - (i) colleges or universities;
 - (ii) community or junior colleges;
 - (iii) real estate appraisal or real estate related organizations;
 - (iv) state or federal agencies or commissions;
 - (v) proprietary schools;
 - (vi) other providers approved by the Commission; or

(vii) The Appraisal Foundation or its Boards

5. The qualifying education requirement may include the one hundred fifty (150) hour qualifying education requirement for the state licensed real estate appraiser classification.
6. An applicant may refer to Chapter 1255-02 Evaluation of Education for further delineation of the qualifying education requirements.
7. In the event of a denial, an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of the applicant's education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tenn. Code Ann., Title 4, Chapter 5) and the applicant may then reapply for certification.

(c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified residential appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree-granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES), or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(e)(d) Experience. An applicant shall satisfy the following experience requirements as a prerequisite for certification as a state certified residential real estate appraiser:

1. An applicant shall complete a minimum of two thousand five hundred (2,500) hours of appraisal experience over a period of at least twenty-four (24) months. The Commission shall treat the hours accumulated over the twenty-four (24) months as cumulative. A registered trainee applicant shall complete the minimum of twenty-four (24) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~
2. The applicant may also obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
 - (i) A minimum of twenty-four (24) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all other requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.
3. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each

supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission which shall include the following information:

- (i) type of property;
 - (ii) date of report;
 - (iii) address of appraised property;
 - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
 - (v) number of actual work hours by the trainee/applicant on the assignment, ~~up to the maximum allotted by property type;~~
 - (vi) client name and address; and,
 - (vii) signature and State certification number of the supervising appraiser, if applicable.
4. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
5. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.
- ~~(d)~~(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified Residential Real Property Appraiser Examination. An applicant must obtain certification designation within twenty-four (24) months from the date of passing score on the exam.
- (e) ~~If, after passing the residential certification examination, a registered trainee fails to meet all other requirements for residential certification prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for certification and retake the examination.~~
- (f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
- (g) ~~An applicant may complete the education, experience, and/or the examination requirements for licensure before January 1, 2008, in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirement for certification before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
- ~~1. An applicant completing the education segment of the qualification criteria prior to January 1, 2008 will be required to complete one hundred twenty (120) hours of qualifying education of which shall include:~~

~~(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.~~

~~(i) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~

~~(ii) Successful completion of a thirty (30) hour course in Appraisal Principles, and~~

~~(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~

~~(iv) The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~

~~(g)(g) An applicant applying for a State Certified Residential Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Real Estate Appraiser credential by completing the following additional educational hours:~~

~~1. Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;~~

~~2. Successful completion of a fifteen (15) hour course in Advanced Residential Applications and Case Studies; and~~

~~3. Successful completion of twenty (20) hours of appraisal subject matter electives. These may include hours over the minimum shown above in other modules.~~

~~(h)(h) An applicant applying for a State Certified Residential Appraiser certification pursuant to subparagraph (g) must also satisfy the college-level educational requirements as specified in 1255-01-.07(1)(a).~~

Authority: T.C.A. §§62-39-203, 62-39-204, 62-39-311, 62-39-312, 62-39-313, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.08 Qualifications for General Certification is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.08 Qualifications for General Certification

(1) An applicant applying for a state certified general real estate appraiser license shall first register as a real estate appraiser trainee, or be a licensed or certified residential real estate appraiser, and complete the experience requirements established in rule 1255-01-.12 and shall then satisfy the following education, experience and examination requirements as a prerequisite for certification:

(a) General Education. An applicant shall satisfy the following general education requirements as a prerequisite for certification as a state certified general real estate appraiser:

1. ~~Bachelor's degree or higher, or in lieu of a degree, a minimum of thirty (30) college semester hours in all specified coursework as follows:~~
 - ~~(i) English composition,~~
 - ~~(ii) micro-economics and macro-economics,~~
 - ~~(iii) computers word processing/spreadsheets,~~
 - ~~(iv) finance,~~
 - ~~(v) business or real estate law,~~
 - ~~(vi) algebra, geometry, or higher mathematics,~~
 - ~~(vii) statistics, and~~
 - ~~(viii) electives in accounting, geography, agricultural economics, business management, or real estate.~~
- (b) Appraisal Education. An applicant shall satisfy the following appraisal education requirements as a prerequisite to sit for the state certified general appraiser examination:
 1. Three hundred (300) classroom hours of courses in subjects related to real estate appraisal. These modules shall include (hereinafter "qualifying education requirement"):
 - (i) Fifteen (15) hours of the three hundred (300) hours must include the successful completion of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.
 - (I) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when at least one of the course instructors is an AQB Certified USPAP Instructor who is also a state certified residential real estate appraiser or state certified general real estate appraiser.
 - (ii) Successful completion of a thirty (30) hour course in Appraisal Principles;
 - (iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures;
 - (iv) Successful completion of a thirty (30) hour course in General Appraiser Market Analysis and Highest and Best Use;
 - (v) Successful completion of a fifteen (15) hour course in Statistics, Modeling and Finance;
 - (vi) Successful completion of a thirty (30) hour course in General Appraiser Sales Comparison Approach;
 - (vii) Successful completion of a thirty (30) hour course in General Appraiser Site Valuation and Cost Approach;
 - (viii) Successful completion of a sixty (60) hour course in General Appraiser Income Approach;

- (ix) Successful completion of a thirty (30) hour course in General Appraiser Report Writing and Case Studies; and
 - (x) Successful completion of thirty (30) hours of appraisal subject matter electives. These may include hours over minimum shown above in other modules.
2. A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
 3. An applicant's qualifying education requirement may include the one hundred fifty (150) classroom hour requirement for the licensed real estate appraiser classification or the two hundred (200) hour requirement for the certified residential real estate appraiser classification.
 4. The Commission may grant an applicant credit toward the qualifying education requirement only where the length of the educational offering is at least fifteen (15) hours and the applicant successfully completes an examination pertinent to that educational offering.
 5. An applicant may obtain credit for the qualifying education requirement from the following:
 - (i) colleges or universities;
 - (ii) community or junior colleges;
 - (iii) real estate appraisal or real estate related organizations;
 - (iv) state or federal agencies or commissions;
 - (v) proprietary schools;
 - (vi) other providers approved by the Commission; or
 - (vii) The Appraisal Foundation or its Boards.
 6. An applicant should refer to Chapter 1255-02 Evaluation of Education for further delineation of educational requirements.
 7. In the event that an applicant is denied, then an applicant for certification may file a written request for reconsideration with the Commission, appealing the Commission's evaluation of his or her education. The Commission shall consider the filed written request for reconsideration and reevaluate the applicant's education. In the event that the applicant's application for certification is denied after the education reevaluation, then the denial shall not create a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5) and the applicant may then reapply for certification.
- (c) Foreign Education. An applicant seeking to satisfy the general education requirements for a state certified general appraiser credential with college level education from a foreign institution shall have their education evaluated for equivalency by an accredited, degree-granting domestic college or university, The American Association of Collegiate Registrars and Admissions Officers (AACRAO), a foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES) or a foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting

domestic college or university or by a state licensing board that issues credentials in another discipline.

(e)(d) Experience. An applicant must satisfy the following experience requirements as a prerequisite for certification as a state certified general real estate appraiser:

1. An applicant shall complete three thousand (3,000) hours of appraisal experience over a period of at least thirty (30) months preceding the date of the applicant's application to the Commission and the Commission shall treat the hours as cumulative. A registered trainee applicant shall complete the minimum of thirty (30) months of appraisal experience under the direct supervision of an appraiser certified by a real estate appraiser commission or board in any state. The experience must be sufficient to indicate to the Commission that the applicant is competent in the Uniform Standards of Professional Appraisal Practice. ~~Acceptable appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.~~
2. An applicant may obtain equivalent experience. The Commission shall determine what is considered equivalent experience, which demonstrates the applicant's competence in the Uniform Standards of Professional Appraisal Practice. Equivalent experience shall be limited to the following:
 - (i) A minimum of thirty (30) months of experience as a licensed or certified real estate appraiser in another state, territory or possession of the United States, or in any country; provided, that the applicant has otherwise met all requirements of Title 62, Chapter 39, and the rules promulgated by the Commission.
3. An applicant shall complete at least one thousand five hundred (1,500) hours of the total three thousand (3,000) hours in non-residential appraisal work. Residential means one (1) to four (4) residential units. An applicant shall ensure that his or her experience shall satisfactorily demonstrate competence in the cost, income capitalization and direct sales comparison approaches to value.
4. An applicant shall provide to the Commission a detailed listing of the types of real estate appraisal reports or file memoranda completed by the applicant for each twelve (12)-month period during which the applicant claims that he or she has gained experience. Separate appraisal logs shall be maintained for each supervisory appraiser, if applicable. The applicant shall provide verification for experience credit claimed on forms prescribed by the Commission, which shall include the following information:
 - (i) type of property;
 - (ii) date of report;
 - (iii) address of appraised property;
 - (iv) description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
 - (v) number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;
 - (vi) client name and address; and
 - (vii) signature and State certification number of the supervising appraiser, if applicable.

5. No experience credit will be granted that was obtained prior to January 30, 1989. An applicant shall submit sufficient recent experience to demonstrate the ability to apply the current Uniform Standards of Professional Appraisal Practice provisions.
 6. There is no minimum number of hours that must have been obtained in any one (1) twelve (12)-month period.
- (d)(e) Examination. An applicant shall successfully complete the Appraiser Qualifications Board endorsed Uniform State Certified General Real Property Appraiser Examination. An applicant must obtain licensure or certification designation within twenty-four (24) months from the date of passing score on the exam.
- ~~(e) If, after passing the general certification examination, a registered trainee fails to meet any other requirements for certification prior to the expiration of the trainee's registration and the trainee fails to renew such registration, then the trainee may reapply for certification and retake the examination.~~
- (f) Once the applicant has completed all of the required qualifying education and experience, then the applicant may submit his or her application for certification. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.
- ~~(g) An applicant may complete the education, experience, and/or the examination requirements for licensure before January 1, 2008, in accordance with the Real Property Appraiser Qualifications Criteria including all interpretations and supplementary information as of November 1, 2005, as promulgated by the Appraiser Qualifications Board. In the event that an applicant starts, but does not complete all of the education, experience, and/or examination requirement for certification before January 1, 2008, then the applicant must complete the incomplete component(s) in accordance with the Appraiser Qualifications Criteria which became effective on January 1, 2008.~~
- ~~1. An applicant completing the education segment of the qualification criteria prior to January 1, 2008, will be required to complete one hundred eighty (180) hours of qualifying education, which shall include:~~
- ~~(i) Successful completion of fifteen (15) hours of the National Uniform Standards of Professional Appraisal Practice Course or its equivalent. Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board,~~
 - ~~(i) The Commission shall grant an applicant credit toward the qualifying education requirement for the National Uniform Standards of Professional Appraisal Practice Course only when the course is instructed by an Appraiser Qualifications Board Certified Instructor(s), of which there must be at least one (1) state certified residential real estate appraiser or state certified general real estate appraiser.~~
 - ~~(ii) Successful completion of a thirty (30) hour course in Appraisal Principles, and~~
 - ~~(iii) Successful completion of a thirty (30) hour course in Appraisal Practice or Procedures.~~

~~(iv) The remaining hours selected from courses approved as qualifying education at the time the course was offered.~~

~~(g) An applicant applying for a State Certified General Appraiser certification who holds a current State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:~~

- ~~1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;~~
- ~~2. Successful completion of a thirty (30) hour General Appraiser Site Valuation and Cost Approach course;~~
- ~~3. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;~~
- ~~4. Successful completion of a thirty (30) hour General Report Writing and Case Studies course;~~
- ~~5. Successful completion of a fifteen (15) hour Statistics, Modeling and Finance course; and~~
- ~~6. Successful completion of a sixty (60) hour General Appraiser Income Approach course.~~

~~(h) An applicant applying for a State Certified General Appraiser Certification who holds a current State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional educational hours:~~

- ~~1. Successful completion of a thirty (30) hour General Appraiser Market Analysis and Highest and Best Use course;~~
- ~~2. Successful completion of a thirty (30) hour General Appraiser Sales Comparison Approach course;~~
- ~~3. Successful completion of a thirty (30) hour Site Valuation and Cost Approach course;~~
- ~~4. Successful completion of a sixty (60) hour General Appraiser Income Approach course; and~~
- ~~5. Successful completion of a thirty (30) hour General Appraiser Report Writing and Case Studies course.~~

~~(i) An applicant applying for a State Certified Residential Appraiser certification pursuant to subparagraph (g) must also satisfy the college-level educational requirements as specified in 1255-01-.08(1)(a).~~

Authority: T.C.A. §§ 62-39-203, 62-39-204, 62-39-311, 62-39-312, 62-39-313, 62-39-329, 62-39-333, and 62-39-337.

Rule 1255-01-.12 Registered Trainee is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1255-01-.12 Registered Trainee

- (1) Application. An applicant for registration as a real estate appraiser trainee shall successfully complete the following requirements prior to obtaining registration:
- (a) Obtain and complete the required application form from the Commission.
 - (b) Provide proof on the application form showing that he or she has obtained a high school diploma or its equivalent.
 - (c) Provide on the application form the name and certificate number of the certified real estate appraiser under whose direct supervision the applicant will serve.
 - (d) Provide the business address of his or her supervising appraiser and use that address as his or her business address. If an applicant has more than one (1) supervising appraiser, then the applicant shall use the business address of at least one (1) of his or her supervising appraisers.
 - (e) Complete an approved thirty (30)-hour course in Appraisal Principles, an approved thirty (30)-hour course in Practices and Procedures, and the fifteen (15)-hour National Uniform Standards of Professional Appraisal Practice Course.
 - (f) On or after January 1, 2015, registered trainees shall be required to complete a seven (7) hour course that, at a minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of Supervisory Appraisers and Trainee Appraisers. The course is to be completed by the registered trainee prior to application.
 - ~~(f)~~(g) Submit with the application a nonrefundable application and registration fee of one hundred twenty-five dollars (\$125.00).
- (2) Upon receipt of a properly completed application form with the required aforementioned documentation and the required fee, the Commission shall review the application to determine whether to issue the applicant a real estate appraiser trainee registration certificate and number.
- (3) Education. Before registration, an applicant for trainee registration shall complete seventy-five (75) hours of courses in subjects related to real estate appraisal, which shall include, but shall not be limited to coverage of the Uniform Standards of Professional Appraisal Practice (hereinafter, "course credit"). An applicant shall complete the required course credit as a prerequisite to applying for registration as a registered trainee. All applicants shall submit evidence of completion of a minimum of an approved thirty (30)-hour course in Appraisal Principles, an approved thirty (30)-hour course in Practices and Procedures, and the fifteen (15)-hour National Uniform Standards of Professional Appraisal Practice Course. An applicant shall also ensure that his or her course credit complies with the following:
- (a) A course hour is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.
 - (b) An applicant may obtain course credit only where the minimum length of the education offering is fifteen (15) hours and the individual successfully completes the examination pertinent to that educational offering.
 - (c) An applicant may obtain course credit from the following:
 - 1. colleges or universities;
 - 2. community or junior colleges;
 - 3. real estate appraisal or real estate related organizations;
 - 4. proprietary schools; or

5. other providers approved by the Commission.
- (d) An applicant shall obtain course credit within the five (5)-year period immediately preceding an applicant's submission of his or her application for registration as a registered trainee.
 - (e) The content for courses shall include, but is not limited to, coverage of the following real estate appraisal related topics:
 1. influences on real estate value;
 2. legal considerations in appraisals;
 3. types of value;
 4. economic principles;
 5. real estate markets and analysis;
 6. valuation process;
 7. property description;
 8. highest and best use analysis;
 9. appraisal statistical concepts;
 10. sales comparison approach;
 11. site value;
 12. cost approach;
 13. income approach;
 14. valuation of partial interests; and
 15. appraisal standards and ethics.
- (4) Experience.
- (a) There is no experience prerequisite for an applicant to become a registered trainee.
 - (b) A registered trainee may have more than one (1) supervising appraiser.
 - (c) A registered trainee shall be subject to direct supervision by a supervising appraiser who shall be a state certified residential real estate appraiser or a state certified general real estate appraiser in good standing.
 - (d) A registered trainee shall only appraise those properties which the supervising appraiser is permitted to appraise.
 - (e) If a trainee's registration has expired or the trainee is no longer under the supervision of a state certified residential or state certified general real estate appraiser, then the registered trainee shall not perform the duties as a registered trainee until he or she submits an affidavit on a form provided by the Commission which states that he or she has a supervising appraiser. The registered trainee's supervising appraiser shall sign the affidavit stating that he or she is the supervising appraiser responsible for the registered trainee.

- (f) A registered trainee shall maintain an appraisal log of his or her experience, shall maintain a separate appraisal log for each supervising appraiser, and shall, at a minimum, include the following in the appraisal log:
 - 1. type of property;
 - 2. date of report;
 - 3. address of appraised property;
 - 4. description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
 - 5. number of actual work hours by the trainee/applicant on the assignment, up to the maximum allotted by property type;
 - 6. client name and address; and
 - 7. signature and State certification number of the supervising appraiser.
 - (g) A registered trainee may conduct property inspections alone (without being accompanied by the supervising appraiser) only after completing five hundred (500) hours of acceptable experience. In order to conduct property inspections pursuant to this paragraph, the registered trainee shall submit a form to the Commission on which both the registered trainee and the supervising appraiser shall certify the experience.
 - (h) A registered trainee shall comply with the Uniform Standards of Professional Appraisal Practice.
- (5) Examination.
- (a) There is no examination prerequisite for an applicant to become a registered trainee.
 - (b) A registered trainee or applicant for registration as a registered trainee may apply to take the examination for a state licensed real estate appraiser license or a state certified residential appraiser; provided, that the applicant and/or registered trainee has completed all appropriate education requirements. An applicant for registration as a trainee and/or registered trainee may not apply to take the examination for a state certified general real estate appraiser until the trainee has completed all other requirements for general certification.
 - (c) If a registered trainee applies to take the examination prior to application for licensure and completion of the experience interview they shall remit a nonrefundable fee of fifty dollars (\$50.00) with his or her application to take the examination for a state licensed real estate appraiser or a state certified residential real estate appraiser. A registered trainee must obtain licensure or certification within twenty four (24) months of the examination date.
 - (d) A license or residential certificate will be issued to a registered trainee or applicant for registration as a registered trainee who passes the examination, only upon the registered trainee or applicant for registration as a registered trainee completing all requirements for licensure or residential certification. If all other requirements are not met prior to the expiration of a trainee's registration and the registered trainee fails to renew, then he or she loses credit for passing the examination.
 - (e) Once the registered trainee has completed all of the required qualifying education and experience, then the trainee may submit his or her application for registration. The Commission office shall not process an applicant's application if the required qualifying education and experience has not been satisfied or if the application is incomplete. The

Commission office shall keep an incomplete application active for six (6) months, unless the applicant requests an extension in writing to the Commission.

(6) Renewal.

- (a) A registered trainee's registration shall expire two (2) years after the date of issuance.
- (b) A registered trainee must renew his or her registration, at least thirty (30) days prior to its expiration, by filing the prescribed form with the Commission and paying a renewal fee of one hundred twenty-five dollars (\$125.00).
- (c) If a registered trainee fails to file the prescribed form and pay the renewal fee within thirty (30) days prior to its expiration, the registered trainee may, upon payment of a one hundred dollar (\$100.00) late renewal penalty in addition to the renewal fee, apply for renewal. No late renewal will be granted if more than six (6) months has passed since the expiration of the registered trainee's registration. The registered trainee may then reapply to be a registered trainee.

(7) Continuing Education.

- (a) A registered trainee who remains in the classification of registered trainee in excess of two (2) years shall be required to obtain a minimum of twenty-eight (28) classroom hours of instruction in courses, seminars, workshops or conferences approved by the Commission, prior to the next renewal period (hereinafter, "continuing education").
- (b) As part of a registered trainee's continuing education, a registered trainee shall complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Course at least once every two (2) years as defined and required by rule 1255-04-.01(2).
- (c) A classroom hour is defined as fifty (50) minutes of actual instruction for each sixty (60) minute segment.
- (d) The Commission may grant continuing education credit only where the length of the educational offering is at least two (2) hours.
- (e) An applicant may obtain continuing education credit from the following:
 - 1. colleges or universities;
 - 2. community or junior colleges;
 - 3. real estate appraisal or real estate related organizations;
 - 4. state or federal agencies or commissions;
 - 5. proprietary schools; or
 - 6. other providers approved by the Commission.
- (f) The Commission may grant continuing education credit for educational offerings which are consistent with the purpose of continuing education stated in subparagraph (g) below and cover real estate appraisal topics such as the following:
 - 1. ad valorem taxation
 - 2. arbitration
 - 3. business courses related to practice of real estate appraisal
 - 4. construction estimating

5. ethics and standards of professional practice
6. land use planning, zoning and taxation
7. management, leasing, brokerage and timesharing
8. property development
9. real estate appraisal (valuations/evaluations)
10. real estate law
11. real estate litigation
12. real estate financing and investment
13. real estate appraisal related computer applications
14. real estate securities and syndication
15. real property exchange

- (g) The purpose of continuing education is to ensure that a registered trainee participates in a program that maintains and increases his or her skill, knowledge and competency in real estate appraisal.
- (8) Each registered trainee shall notify the Commission of such registered trainee's current residence and principal place of business, all mailing and other addresses at which the registered trainee is currently engaged in the business of assisting in the preparation of real estate appraisal reports, and the name of the registered trainee's supervising appraiser(s). When a registered trainee changes any of the above addresses or supervising appraiser(s), the registered trainee shall notify the Commission, in writing, of such change within thirty (30) days thereafter.
- (9) No registered trainee may represent him or herself as a licensed or certified appraiser or use the appellation "State Licensed Real Estate Appraiser," "State Certified Residential Real Estate Appraiser," "State Certified General Real Estate Appraiser," or any form thereof, or do any other act which gives or is designed to give the impression that the registered trainee is a licensed or certified real estate appraiser.
- (10) Supervising Appraisers for Registered Trainees.
- (a) ~~Prior to serving as the supervising appraiser for a registered trainee, an appraiser shall have obtained a minimum of two (2) years experience as a state certified residential or state certified general real estate appraiser. However, in the event that a licensed appraiser upgrades to a certified general or certified residential, then that appraiser may supervise a registered trainee immediately after being upgraded, provided that he or she has a minimum of five (5) years of appraiser experience. Supervisory Appraisers shall be state-certified and in "good standing" in the jurisdiction in which the Trainee Appraiser practices for a period of at least three (3) years. Supervisory Appraisers shall not have been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice. A Supervisory Appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.~~
- (b) The supervising appraiser shall sign each written appraisal report, relating to real property in this state, which was prepared by a registered trainee under the supervising appraiser's direct supervision.

- (c) A supervising appraiser shall ensure that the appraisal reports prepared by the registered trainee are prepared under the supervising appraiser's direct supervision. "Direct Supervision" of a registered trainee means that a supervising appraiser shall:
1. Accompany the registered trainee and personally inspect each subject property with the registered trainee on all assignments until the trainee has complete five hundred (500) hours of acceptable appraisal experience, and accompany the registered trainee and personally inspect each subject property with the registered trainee on all assignments that are over fifty (50) miles from the supervising appraiser's office, even after the registered trainee has accumulated over five hundred (500) hours of acceptable appraisal experience;
 2. Review the registered trainee's appraisal report(s) to ensure the registered trainee's research of general and specific data has been adequately conducted and properly reported, that the registered trainee's application of appraisal principles and methodologies has been properly applied, that the registered trainee's analysis is sound and adequately reported, and that any analyses, opinions, or conclusions of the registered trainee are adequately developed and reported so that the appraisal report is not misleading;
 3. Review the registered trainee's work product and discuss with the registered trainee any edits, corrections, or modifications that need to be made to such work product, and make such edits, corrections, or modifications as are required to such work product; and
 4. Accept responsibility for the appraisal report by signing the appraisal report and certify that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice by:
 - (i) making a clear and prominent disclosure that the registered trainee has provided significant real property appraisal assistance in each appraisal report in accordance with Uniform Standards of Profession Appraisal Practice Standards Rule 2-2 and Standards Rule 2-3;
 - (ii) prohibiting the registered trainee from signing any appraisal report or other document involved in the appraisal which states or implies that said trainee is "licensed" or "certified" in any manner, and by prohibiting the registered trainee from engaging in any activity which is limited to licensed or certified appraisers, or which is designed to give third parties the impression that the registered trainee is a licensed or certified appraiser; and
 - (iii) ensuring that the registered trainee gains sufficient knowledge, skills, and abilities that will enable such trainee to accomplish all of the following:
 - (I) Define the appraisal problem, which requires the trainee to:
 - I. identify and locate the real estate;
 - II. identify the property rights to be valued;
 - III. identify the use of the appraisal;
 - IV. define value(s) to be estimated;
 - V. establish date(s) of value estimate(s);
 - VI. identify and describe the scope of the appraisal; and
 - VII. identify and describe limiting conditions.

- (II) Conduct preliminary analysis, and select and collect applicable data, which requires the trainee to:
 - I. Identify general data (regional, city, and neighborhood)-social, economic, governmental and environmental factors;
 - II. Identify specific data (subject and comparables)-site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and
 - III. Identify competitive supply and demand in the subject market (inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies).
 - (III) Conduct an analysis of the subject property, which requires a trainee to analyze:
 - I. Site improvements;
 - II. Size;
 - III. Costs;
 - IV. Elements of comparison; and
 - V. Units of comparison;
 - (IV) Conduct a highest and best use analysis (specified in terms of use, time, and market participants), which requires a trainee to analyze:
 - I. Land as if vacant and available; and
 - II. Property as improved (existing or proposed).
 - (V) Estimate land value, including on-site improvements.
 - (VI) Estimate value of the property using each of the three approaches to value-cost, sales comparison and income capitalization.
 - (VII) Reconcile each value indication and reconcile the final value estimate.
 - (VIII) Report estimate(s) of value(s) as defined.
- (d) A supervising appraiser may supervise a maximum of three (3) registered trainees at one time.
 - (e) A supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last. The supervising appraiser shall allow the registered trainee to have reasonable access to his or her appraisal reports that he or she prepared upon the registered trainee's request for copies of the reports.
 - (f) A supervising appraiser shall notify the board in writing if he or she is no longer the supervising appraiser for a registered trainee within thirty (30) days thereafter. If the disassociation is for cause, the cause shall be communicated to the Commission.
 - (g) On or after January 1, 2015, supervisory appraisers shall be required to complete a seven (7) hour course that, at a minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers. The course is to be completed by the supervisory appraiser prior to supervising a trainee appraiser.

- (g)(h) In any appraisal in which a registered trainee has inspected a subject property, the supervising appraiser is also required to disclose in the appraisal report whether the supervising appraiser has inspected the subject property both inside and out, and whether the supervising appraiser has made an exterior inspection of all ~~comparables~~ comparable sales relied upon in the appraisal.

Authority: T.C.A. §§62-39-203, 62-39-204, 62-39-316, 62-39-326, 62-39-333.

Chapter 1255-01
General Provisions

New Rules

Rule 1255-01-.16 Fingerprinting is added as a new rule to the Chapter and shall read as follows:

1255-01-.16 Fingerprinting

- (1) Any applicant for initial registration, licensure, or certification who is required to submit a complete and legible set of fingerprints for the purpose of obtaining a criminal background check pursuant to T.C.A. § 62-39-301 shall submit said fingerprints in an electronic format.
 - (a) An applicant for initial registration, licensure, or certification shall be deemed to have supplied the required set of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI to forward an electronic report based on that applicant's fingerprints to the Commission.
 - (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant for initial registration, licensure, or certification.
 - (c) The applicant for initial registration, licensure, or certification shall make the arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.
 - (d) All applicants for initial registration, licensure, or certification shall in all cases be responsible for paying application fees for registration, licensure, licensure as established by the Commission in addition to any fees required to submit a complete and legible set of fingerprints pursuant to T.C.A. § 62-39-102.
- (2) In the event that an applicant for initial registration, licensure, or certification furnishes unclassifiable fingerprints or fingerprints which are unclassifiable in nature, the Commission shall refuse to issue the requested registration, license, or certification.
 - (a) For the purposes of this rule "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints cannot be read and, therefore, cannot be used to identify the person.
 - (b) Should an applicant for initial registration, licensure, or certification's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.
- (3) The provisions of this rule shall apply to any applicant applying for initial registration, licensure, or certification on or after January 1, 2015.

Authority: 2014 Pub. Chap. 621, T.C.A. §§ 62-39-102, 62-39-203, 62-39-301.

Chapter 1255-06
Reciprocity

Amendments

Rule 1255-06-.01 Reciprocal Agreements is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

1255-06-.01 Reciprocal Agreements.

- (1) If, in the determination of the Commission, a state or territory of the United States is deemed to have established meaningful requirements for the licensure and certification of real estate appraisers, ~~and that state grants reciprocity to Tennessee licensees and certificate holders and is in compliance with the Appraisal Subcommittee,~~ then the Commission shall grant reciprocal rights to real estate appraiser licensees and certificate holders which are in "good standing" in that state.
 - a. For purposes of implementing the reciprocity policy, states with an Appraisal Subcommittee finding of "Poor" do not satisfy the "in compliance" provision for reciprocity.
- (2) A licensee or certificate holder who resides in another state, is currently credentialed in another state and is active on the National Registry in another state must show:
 - a. That the licensee or certificate holder has successfully completed one (1) seven (7) hour National USPAP Update Course, or its Appraisal Qualification Board-approved equivalent, within the past two (2) calendar years; and
 - b. That the licensee or certificate holder has met all continuing education requirements in the other state within the past two calendar years.
- (3) A licensee or certificate holder who became licensed or certified through reciprocity and now resides in Tennessee must comply with the continuing education requirements of this section regardless of how the license or certificate was obtained.
- ~~(2)~~(4) If, in the determination of the Commission, the requirements in paragraph (1) have been met, then upon receipt of a nonrefundable application fee of one hundred twenty-five dollars (\$125.00), a license or certificate issuance fee of three hundred fifty dollars (\$350.00) and a federal registry fee of ~~fifty dollars (\$50.00)~~ eighty dollars (\$80.00), the Commission shall grant to an applicant a reciprocal license or certificate to appraise real estate in the State of Tennessee.
- ~~(3)~~(5) If a licensee or certificate holder's out-of-state real estate appraiser license or certificate has been revoked, suspended, denied renewal or restricted, then the Commission may revoke, suspend, refuse to renew or restrict the licensee's or certificate holder's State of Tennessee real estate appraiser license or certificate.
- (6) An applicant for licensure or certification meeting the requirements of T.C.A. § 4-3-1304(d)(1) may be issued a reciprocal license pursuant to T.C.A. § 62-39-322 and Tenn. Comp. R. & Regs. § 1255-01-.05, § 1255-01-.07, or § 1255-01-.08 upon compliance with all terms therein, including application and payment of all fees required for the issuance of such reciprocal license.
- (7) Notwithstanding Paragraph (1) and (2), no license or certification shall be issued pursuant to this Rule to any person:
 - (a) Whose current license or certification as a real estate appraiser from a state that is not "in compliance" with Title XI (FIRREA) as determined by the Appraisal Subcommittee established thereunder; or
 - (b) Who does not hold a valid license or certification in "good standing".

Authority: §§62-39-203, 62-39-204, 62-39-206, 62-39-306, 62-39-325 and 62-39-333.

* 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)
Mark Johnstone				X	
Eric Collinsworth				X	
Timothy Walton	X				
Norman Hall	X				
Gary Standifer	X				
Rosemarie Johnson	X				
Nancy Point	X				
Randall Thomas	X				
Dr. Warren Mackara	X				

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

Date: 12/23/14

Signature: Keeling R. Baird

Name of Officer: Keeling R. Baird

Title of Officer: Assistant General Counsel



MY COMMISSION EXPIRES:
March 8, 2016

Subscribed and sworn to before me on: 12/23/14

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
12/29/2014
Date

Department of State Use Only

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Filed with the Department of State on: 12-30-14

Effective for: 180 *days

Effective through: 6-28-15

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

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Emergency Medical Services Board
<u>SUBJECT:</u>	Emergency Medical Services Equipment and Supplies
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 68-140-304 and 68-140-307.
<u>EFFECTIVE DATES:</u>	March 2, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>The rules replace the current list of specific equipment and supplies that must be carried on ambulances with a list of the general list of the types of equipment and supplies that must be carried on ambulances. The rules provide that future lists of specific equipment and supplies will be published on the Board's web site. The Board states that this change is necessary because new rules cannot be implemented quickly enough to keep up with the development of new supplies and equipment.</p> <p>The rules also change the terms "essential" to "critical" and "minimal" to "non-critical," and have been edited for clarity.</p>

Public Hearing Comments

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

No comments were received from the public.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

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

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

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

The proposed rules are clear, concise and lacking in ambiguity.

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

The compliance requirements contained in the proposed rules re the same for large or small businesses and are as flexible as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety and welfare of Tennessee residents,

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

The proposed rules do not contain any schedules or deadlines for compliance.

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

The compliance or reporting requirements contained in the proposed rules have been consolidated and simplified as much as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety and welfare of Tennessee residents.

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

The proposed rules do not establish performance, design or operational standards.

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

These proposed rules do not create unnecessary barriers to entry into business nor do they stifle entrepreneurial activity, curb innovation, or increase costs,

Statement of Impact to Small Businesses

Name of Board, Committee or Council: Emergency Medical Services Board

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

Licensed ambulance services, of which there are approximately 210 (188 ground, 10 air, 12 invalid) in the state of Tennessee, are the small business that would be affected by the proposed rules. It is anticipated that such services will neither bear any costs nor directly benefit from the proposed rules.

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

The proposed rules would not require any reporting, recordkeeping and other administrative costs in order to comply with them,

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

The proposed rules should have no effect on small businesses. Consumers, or patients, will benefit by having a higher standard of care.

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

The proposed rules are not burdensome, intrusive, or costly. To the extent that potentially burdensome or costly equipment or supplies may be required by the ambulance equipment, supplies and medications specifications adopted by reference under proposed Rule 1200-12-01-.03, such equipment, supplies and medications have historically been required as of a date years in the future, thereby allowing the affected small businesses time to budget for an acquire the new equipment or supplies.

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

The proposed rules have no specific federal or state counterparts.

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

If small businesses were exempted from the proposed rules, the proposed rules would be pointless, as most ambulance services are small businesses.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

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

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For Department of State Use Only

Sequence Number: 12-06-14
 Rule ID(s): 5843
 File Date: 12/2/14
 Effective Date: 3/2/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Health
Division:	Emergency Medical Services
Contact Person:	Keith D. Hodges
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Keith.D.Hodges@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-12-01	General Rules
Rule Number	Rule Title
1200-12-01-.03	Emergency Medical Services Equipment and Supplies

(Rule 1200-12-01-.02, continued)

- (d) Vehicles added to an existing fleet, requiring evidence of additional supplies and equipment to extend service, shall not be operated under temporary authorizations, but may be operated under a letter of approval filed by the Division's authorized representative following payment of fees to the Division's principal office, and evidence of satisfactory inspection by the authorized representative, pending the issuance of a permit.
- (e) A letter of approval from a Division representative shall not be substituted for a vehicle permit for any period exceeding ninety (90) days.
- (6) Upon inspection, any vehicle deemed unacceptable and failing an inspection shall be immediately removed from service until approved for return to service by the Division's authorized representative.

Authority: T.C.A. §§68-140-504, 68-140-506, 68-140-507, and 68-140-526. **Administrative History:** Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed May 27, 1988; effective July 11, 1988. Amendment filed March 7, 1989; effective April 21, 1989. Amendment filed November 27, 1990; effective January 11, 1991. Amendment filed August 11, 1993; effective October 25, 1993. Amendment filed June 1, 2007; effective August 15, 2007. Amendment 1200-12-01-.02(1)(o) filed August 7, 2009; withdrawn November 2, 2009. Amendment filed August 7, 2009; effective November 5, 2009. Amendment filed May 26, 2010; effective August 24, 2010.

~~1200-12-01-.03—EMERGENCY MEDICAL SERVICES EQUIPMENT AND SUPPLIES.—Each provider shall maintain the required equipment for the level of service to provide appropriate emergency care and where applicable, patient care during transport, on each vehicle permitted.~~

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- (1) ~~Definitions—~~as used in this rule, the following terms and abbreviations shall have these meanings:
 - (a) ~~(E)—~~"Essential device" shall mean any item critical for lifesaving patient care and which by its absence would jeopardize patient care.
 - (b) ~~(M)—~~"Minimal equipment or devices" shall mean such equipment and supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.
 - (c) ~~—~~"Optional equipment or devices" shall mean any item of elective use, which shall be operational and sanitary.
 - (d) ~~—~~"Specifications" shall refer to the federal standards and performance requirements for equipment and devices recognized within the emergency medical services industry and adopted by the board, which include the following:
 1. ~~—~~Federal Specification for Ambulances, KKK-A-1822E, dated June 1, 2002, or its successor.
 2. ~~—~~Standard Specification for Minimum Performance Requirements for EMS Ground Vehicles, F-1230-89, American Society of Testing and Materials, November, 1989, or its successor.
 3. ~~—~~Federal Motor Vehicles Safety Standards cited under 49 CFR Part 571.

(Rule 1200-12-01-.03, continued)

(2) Safety devices shall be provided to include:

(a) Fire extinguishers (E) — Two (2) ABC dry-chemical, multipurpose 5-lb. unit, in restraint brackets. One mounted in the driver/cab compartment or in a body compartment reachable from outside the vehicle. On ambulances an extinguisher shall be located in the patient compartment or in a cabinet within the patient compartment.

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(b) Three (3) bi-directional reflective triangles (E) — approved per FMVSS 125, for any transport vehicle.

(c) Flashlights (M) — 4.5-volt or better, three-cell or lantern type for scene use, one accessible to the driver and one provided for technician use. At least one flashlight shall be provided for a first responder unit.

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(3) Oxygen inhalation, ventilation, and airway management devices shall be supplied providing:

(a) Resuscitation and airway devices including:

1. Adjuncts for ventilation: (If disposable or single-use devices are furnished, a spare unit shall be supplied on all ambulances.)

(i) bag-valve device (E) — with a bag volume of at least 1600 milliliters with oxygen reservoir for adult use.

(ii) bag-valve device (E) — with a bag volume of 450 milliliters with oxygen reservoir for pediatric use.

(iii) bag-valve device (E) — infant size with oxygen reservoir.

(iv) resuscitation masks (E) — in adult, pediatric (child) and infant sizes.

(v) oropharyngeal airways (M) — in at least five different sizes.

(vi) nasopharyngeal airways (M) — in at least five different sizes.

(vii) dual-lumen airway device (such as the Combitube or Pharyngeal-Tracheal Lumen Airway) that has been approved by the EMS Board. (M).

(viii) end-tidal carbon dioxide (CO₂) detectors, for adult and pediatric use. (E).

2. Oxygen delivery devices:

(i) An installed oxygen supply (E) — with a capacity of at least 2,000 liters of oxygen shall be supplied on all ambulances.

(I) Cylinders shall be restrained in an approved manner.

(II) Pressure regulator and flow meters shall comply with 3.12.1.1, Federal Specifications for Ambulances and automatically supply a line pressure of 50 psi.

(III) At least two distribution outlets and flow meters shall be operable in the compartment.

(Rule 1200-12-01-.03, continued)

- (ii) ~~Portable oxygen (E) shall be provided with at least 300-liter, or "D" size cylinders.~~
 - (I) ~~The oxygen unit and spare cylinders shall be restrained in an approved manner.~~
 - (II) ~~Pressure regulator and flow meter shall comply with 3.12.2, Federal Specifications for Ambulances.~~
 - (III) ~~A full spare cylinder (M) shall be provided except on first responder units.~~
- (iii) ~~Administration devices shall include at least two of each item: (E) for items, (M) for amounts.~~
 - (I) ~~Oxygen supply tubing of at least 48 inches length.~~
 - (II) ~~Oxygen Masks including, adult non-rebreathing high concentration, pediatric non-rebreathing high concentration, and an infant medium concentration.~~
 - (III) ~~Adult nasal cannula.~~
 - (IV) ~~Humidifiers shall be optional, but when supplied shall be single patient use.~~
- 3. ~~Endotracheal intubation devices shall be supplied on advanced life support units, to include: (E) for items, (M) for amounts.~~
 - (i) ~~Laryngoscope handles with operable batteries in adult and pediatric sizes, appropriate for use with (ii).~~
 - (ii) ~~Laryngoscope blades in sizes:~~
 - (I) ~~0, straight;~~
 - (II) ~~1, straight;~~
 - (III) ~~2, straight;~~
 - (IV) ~~2, curved;~~
 - (V) ~~3, straight;~~
 - (VI) ~~3, curved;~~
 - (VII) ~~4, straight;~~
 - (VIII) ~~4, curved.~~
 - (iii) ~~Endotracheal tubes, individually packaged in a sanitary sealed envelope or plastic package in:~~
 - (I) ~~Uncuffed sizes in the pediatric range, one of each size 2.5 to 6.0mm. (2.5, 3.0, 3.5, 4.0, 4.5, 5.0, 5.5, 6.0 mm)~~

(Rule 1200-12-01-.03, continued)

- (ii) ~~Cuffed sizes in the adult range, one of each size 6.5 to 8.5 millimeters. (6.5, 7.0, 7.5, 8.0, and 8.5 mm)~~
 - (iv) ~~Six packets of sterile surgical lubricant or equivalent.~~
 - (v) ~~Stylets, adult and pediatric.~~
 - (vi) ~~Syringe for cuff inflation, 10cc, with plain Luer tip.~~
 - (vii) ~~Magill forceps in adult and pediatric sizes.~~
 - (viii) ~~Esophageal detection device~~
- (b) ~~Suction devices and supplies shall include the following items:~~
1. ~~Installed suction (E) with vacuum gauge, a control, and collection bottle as specified in 3.12.3, Federal Specifications for Ambulances.~~
 - (i) ~~At least two sets of suction tubing, six feet in length shall be supplied. (E) for item, (M) for amount.~~
 - (ii) ~~Suction tubing and adapters (E) shall be provided for endotracheal aspiration of meconium allowing direct connection of suction to the endotracheal tube. (E)~~
 2. ~~A portable suction aspirator (E) shall be supplied as specified in 3.12.4, Federal Specifications for Ambulances.~~
 - (i) ~~A collection bottle (disposable preferred) of at 500 milliliters shall be provided.~~
 - (ii) ~~At least two sets of suction tubing, two feet or more in length shall be provided. (E) for items, (M) for amount.~~
 3. ~~Suction supplies (M) shall include rigid and flexible tips.~~
 - (i) ~~At least two rigid, Yankauer style tips shall be provided.~~
 - (ii) ~~Two sets of suction catheters shall be provided by BLS transport and ALS units; each set to consist of size 6, 8, 10, 14 and 16 French catheters.~~
- (4) ~~Diagnostic and assessment devices shall include:~~
- (a) ~~Sphygmomanometer with inflation bulb and gauge with: (E)~~
 1. ~~Adult blood pressure cuff (E) on all units.~~
 2. ~~Pediatric blood pressure cuff (E) except on first responder units.~~
 3. ~~Adult large or thigh blood pressure cuff (E) except on first responder units.~~
 - (b) ~~Stethoscope (E)~~
 - (c) ~~Bandage shears (M)~~

(Rule 1200-12-01-.03, continued)

~~(d) Items (b) and (c) may be carried as personally assigned equipment, provided the service has a posted policy regarding supply of these devices.~~

~~(e) Pulse oximeter with sensors for use with adult and pediatric patients.~~

(5) Bandages and dressing material shall include:

(a) Two (2) rolls of surgical adhesive tape (M), at least one inch in width.

(b) Six (6) rolls of conforming gauze roller bandage (M), at least three inches in width.

(c) Six (6) triangular bandages (M) with a minimum base at least forty-two (42) inches.

(d) Twenty-five (25) sterile 4" by 4" dressings (M).

(e) Eight (8) composite pad sterile compresses, abdominal (ABD)/combine dressings (M).

(f) Two sterile occlusive dressings of white petrolatum-coated gauze or plastic membrane film at least 3" by 3" (M).

(g) Two burn sheets (M) separately packaged, sterile or clean, at least 60 by 60 inches.

(h) Saline solution or sterile water for irrigation (M), in plastic containers sufficient to supply 2000 milliliters on each transport vehicle.

(6) Immobilization devices provided on all units except first responder units:

(a) Two long spinal immobilization devices or backboards (E) — whole body splints, or approved devices capable of immobilizing a patient with suspected spinal injuries.

1. Straps or restraints which immobilize the patient at or about the chest, pelvis, and knees shall be provided.

2. Wooden devices shall be sealed with finishes to prevent splintering and aid decontamination.

(b) One short spinal immobilization device consisting of a clam-shell, wrap-around type vest. (E)

1. Device shall provide spinal immobilization for the seated patient.

2. Device shall include affixed restraint straps, head straps and integral padding.

3. Device with straps and accessories shall be maintained in a separate case or carrier bag.

(c) Two cervical spinal immobilization devices or head immobilizers designed to prevent lateral head movement of the restrained patient. (M)

1. Four disposable or plastic covered foam blocks with tape or restraint straps may be provided to fulfill this requirement.

2. Commercial devices shall include accompanying straps or restraint materials.

(Rule 1200-12-01-.03, continued)

3. ~~Sand bags shall not fulfill this requirement due to the potential for weight shifts of the fill material.~~
- (d) ~~Two sets of cervical collars (E) shall be provided in the following sizes (Combinations of adjustable type collars are acceptable to provide at least two adult collars and at least one pediatric):~~
1. ~~Pediatric~~
 2. ~~Small adult~~
 3. ~~Medium adult~~
 4. ~~Large adult~~
- (e) ~~Upper extremity splints (E) shall include at least two devices or sets of fabricated splints for immobilization of arm injuries. Devices must be suitable to immobilize fractures in pediatric patients.~~
1. ~~Board splints, when provided, shall be padded and at least fifteen inches length.~~
 2. ~~Inflatable splints shall not fulfill this requirement.~~
- (f) ~~Lower extremity splints (E) shall include at least two devices or sets of fabricated splints for immobilization of leg injuries. Devices must be suitable to immobilize fractures of both lower extremities in pediatric patients.~~
1. ~~Board splints, when provided, shall be padded and at least thirty six inches length.~~
 2. ~~Inflatable splints shall not fulfill this requirement.~~
- (g) ~~Lower extremity traction splints (E) shall be provided with necessary attachments to achieve immobilization of femoral fractures involving both lower extremities in an adult. A traction splint shall also be provided to immobilize a femoral fracture in a pediatric patient.~~
- (7) ~~Immobilization devices on first responder units shall include one set of cervical collars, as identified in (6)(d) and at least one set of upper and lower extremity splints as identified in (6)(e) and (6)(f).~~
- (8) ~~Patient care supplies shall include:~~
- (a) ~~Containers for human waste and emesis with a bedpan, urinal, and emesis basin or suitable substitute on all patient transport vehicles. (M)~~
 1. ~~Tissues shall be provided for secretions and toilet use.~~
 2. ~~At least two emesis containers shall be provided.~~
 - (b) ~~Blankets or protective patient covers with thermal insulating capabilities.~~
 1. ~~Two blankets for adults (M)~~

GENERAL RULES

CHAPTER 1200-12-01

(Rule 1200-12-01-.03, continued)

2. ~~One baby blanket and head covering (Cloth or non-woven fabric) (E)~~
- (c) ~~Four sheets (M) of linen or disposable material for cot and patient covers.~~
- (d) ~~An obstetrical emergencies pack or O.B. kit (E) shall provide the following items, but shall not be required on first responder units:~~
 1. ~~Drape towel or underpad,~~
 2. ~~Gauze dressings,~~
 3. ~~Sterile gloves,~~
 4. ~~Bulb syringe or aspirator,~~
 5. ~~Cord clamps and/or umbilical ties,~~
 6. ~~Plastic bags and ties for placental tissues,~~
 7. ~~Infant receiving blanket or swaddling materials, and~~
 8. ~~A head covering shall be provided.~~
- (9) ~~Infection control supplies shall include:~~
 - (a) ~~Appropriate personal protective equipment (M) conforming to Occupational Safety and Health Administration rules including, but not limited to, the following:~~
 1. ~~Disposable gloves sized for the crew,~~
 2. ~~Fluid proof gowns or lab coats,~~
 3. ~~Two face masks (NIOSH approved to at least N-95 standards)~~
 4. ~~Eye shields or protective face shields, and~~
 5. ~~Protective footwear or shoe covers.~~
 - (b) ~~Materials for decontamination and disposal of potentially infected waste (M) to include:~~
 1. ~~Red plastic bags or trash bags labeled for biohazard, with at least two bags 24" by 30".~~
 2. ~~A puncture resistant container shall be supplied for sharps disposal in a locking style bracket or in a locked compartment within the ambulance. Sheath style or single use containers shall be disposed of in larger approved containers.~~
 3. ~~Antiseptic hand cleaner and an Environmental Protection Administration approved hospital grade disinfectant for equipment application.~~
- (10) ~~Intravenous therapy supplies shall be required on all ambulances as follows: (E) for items, (M) for amounts.~~

(Rule 1200-12-01-.03, continued)

- (a) ~~Fluid administration sets;~~
 - 1. ~~Macro drip, ten to twenty drops per milliliter, three (3) each.~~
 - 2. ~~Micro drip, sixty drops per milliliter, three (3) each~~
 - (b) ~~Antiseptic wipes twelve (12) each.~~
 - (c) ~~Catheters, over the needle type, four (4) sets in each gauge size 14, 16, 18, 20, 22 and 24.~~
 - (d) ~~Three liters of intravenous solutions, two of which will be crystalloid fluids.~~
 - (e) ~~Disposable (non-latex) venous tourniquets, sufficient for adult and pediatric use.~~
 - (f) ~~Intraosseous infusion needles, a minimum of an 18 gauge size shall be required on ALS units.~~
- (11) ~~Cardiac defibrillators and monitors shall be provided for use by appropriately trained personnel as follows:~~
- (a) ~~Advanced life support units shall be equipped with a cardiac monitor, electrocardiographic recorder, and defibrillator. (E)~~
 - 1. ~~Cardiac monitoring leads (E) shall be provided:~~
 - (i) ~~Six electrodes for adults.~~
 - (ii) ~~Six electrodes for pediatrics.~~
 - 2. ~~A biphasic waveform shall be required on any cardiac monitor/defibrillator purchased for ambulances after the effective date of this rule, and the defibrillator shall provide a minimum setting of ten (10) joules.~~
 - (b) ~~An automated external defibrillator shall be provided on each staffed ambulance, except those otherwise staffed and equipped to provide advanced life support as identified in paragraph (a).~~
 - (c) ~~Automated external defibrillators shall be an optional device for first responder units.~~
- (12) ~~Medications and required drugs for all ambulance and advanced life support providers shall include: (E) for items, (M) for amounts. Medications must be packaged and stored in accordance with pharmacologic guidelines for sterility, cleanliness, dosage, and expiration.~~
- (a) ~~Medications for use by basic emergency medical services on all ambulances shall include:~~
 - 1. ~~An anaphylaxis kit of Epinephrine 1:1,000 in a preloaded syringe of 0.3ml per dose, or a Tuberculin syringe with a minimum 5/8 inch, 25 gauge needle, with a sufficient quantity of Epinephrine 1:1,000 to administer two (2) doses to two patients.~~
 - 2. ~~Aspirin or therapeutic equivalent for administration to suspected cardiac patients.~~

(Rule 1200-12-01-.03, continued)

3. ~~Beta-adrenergic agonist (albuterol, etc.) or therapeutic equivalent with appropriate administration devices for acute pulmonary distress.~~
 4. ~~Nitroglycerine, 1/150 grain (0.4 mg) bottle of thirty (30) tablets or sublingual spray, or therapeutic equivalent.~~
- (b) ~~Medications for use in definitive and cardiac care shall be provided on advanced life support units. Medications used on advanced level ambulances shall be compatible with current standards as indicated by the American Heart Association's Emergency Cardiovascular Care Committee to include:~~
1. ~~Cardiovascular medications~~
 - (i) ~~Adenosine, 6 mg/2ml, sufficient to administer successive doses up to 18 milligrams, or therapeutic equivalent.~~
 - (ii) ~~Atropine sulfate, at least four (4) prefilled syringes of 1.0mg/10ml, or therapeutic equivalent.~~
 - (iii) ~~Antiarrhythmic agents to include sufficient amounts for two successive doses of either lidocaine for cardiac arrhythmia (at least four (4) prefilled syringes of 100 mg in 5 milliliters), or Amiodarone (in ampules of 150 to 300 mg to total at least 450 mg), or therapeutic equivalent. Admixtures or premixed solutions shall be provided for a maintenance drip.~~
 - (iv) ~~Magnesium sulfate, 1 gm sufficient to administer 2 gm in successive doses with dilution, or therapeutic equivalent.~~
 - (v) ~~Sodium chloride for injection and dilution of medications.~~
 2. ~~Analgesics, such as morphine, meperidine hydrochloride, nalbuphine (Nubain), butophanol (Stadol), Nitrous oxide, or therapeutic equivalent.~~
 3. ~~Benzodiazepine anticonvulsant, diazepam (at least two (2) vials or prefilled syringes of ten (10) milligrams/2ml or other benzodiazepine in equivalent amounts sufficient to administer two successive maximum doses, or therapeutic equivalent.~~
 4. ~~Vasopressor agents, such as Epinephrine 1:10,000, at least four (4) prefilled syringes of 1.0 mg/ml or therapeutic equivalent.~~
 5. ~~Hypoglycemic countermeasures~~
 - (i) ~~Glucose testing devices for semi-quantitative blood glucose determinations, with media, calibration strips, and lancets.~~
 - (ii) ~~Dextrose 50% in water, at least two (2) prefilled syringes of 25 grams in 50 milliliters, or therapeutic equivalent.~~
 - (iii) ~~Dextrose 25% in water, at least two (2) prefilled syringes of 12.5 grams in 50 milliliters, or therapeutic equivalent.~~
 6. ~~Narcotic antagonist, Narcan (naloxone). At least two (2) ampules or prefilled syringes of 1mg/ml, or therapeutic equivalent.~~

(Rule 1200-12-01-.03, continued)

- 7. ~~Alkalinizing agents, sodium bicarbonate, at least two (2) syringes of 50 mEq in 50 milliliters, or therapeutic equivalent.~~
 - 8. ~~Systemic diuretics, furosemide, 10 mg/ml, ampules, vials, or prefilled syringes to total 80 milligrams, or therapeutic equivalent.~~
 - 9. ~~Antinauseant, such as promethazine, 25mg/ml, or therapeutic equivalent.~~
 - 10. ~~Antihistamine, diphenhydramine, 50 mg, or therapeutic equivalent.~~
 - (c) ~~Syringes for drug administration shall be supplied in at least 1 cc, 3 cc, and 10 cc sizes with needles.~~
 - (d) ~~A length-based drug dosage tape for pediatric resuscitation shall be supplied. (2002 Broselow™ or successor edition.)~~
- (13) ~~Air ambulances shall provide equipment as required in Rule 1200-12-01-.05.~~
- (14) ~~Equipment requirements as detailed in (3) to (12) shall not apply to vehicles used solely for neonatal critical care transport. Neonatal transport equipment and supplies shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Maternal and Child Health Section, September, 2004, or the successor publication.~~
- (15) ~~Inspections of equipment and supplies reflecting deficiencies in essential (E) items or multiple deficiencies of minimum (M) items shall be grounds for failure of inspection. Five or fewer deficiencies or shortage of supplies termed minimal (M) shall receive a warning. Conditional acceptance during inspection may be recognized by the Division's representative when good faith efforts are demonstrated by the provider to acquire or repair minimal equipment, subject to a recheck of any conditional device within forty-five (45) days of the initial inspection.~~
- (16) ~~Equipment cited for Emergency Medical First Responder vehicles shall be in addition to minimal supplies cited in Rule 1200-12-01-.16.~~

1200-12-01-.03 Emergency Medical Services Equipment, Medications and Supplies. Each provider shall maintain the required equipment, medications and supplies for the level of service to provide appropriate emergency care and, where applicable, patient care during transport, on each permitted vehicle. It is anticipated that changes in equipment, medications and supplies may be necessary from time to time. This rule hereby adopts the Ambulance Equipment, Medications and Supplies Specifications posted on the Division's web page at <http://health.state.tn.us/ems/index.htm>, or at any successor web address, and incorporates those specifications into this rule as if they were fully set out and stated herein.

(1) Definitions – as used in this rule, the following terms and abbreviations shall have the following meanings:

- (a) "Critical" (C) means any equipment, medications or supplies critical for lifesaving patient care and which by its absence would jeopardize patient care.
- (b) "Non-Critical" (N) means such equipment, medications or supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.

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(Rule 1200-12-1-.03, continued)

(c) "Optional" (O) means any equipment, medications or supplies of elective use, which shall be operational and sanitary.

(d) "Specifications" refers to the federal standards and performance requirements for equipment, medications and supplies recognized within the emergency medical services industry and adopted by the board. The current "Ambulance Equipment, Medications and Supplies Specifications" can be found at <http://health.state.tn.us/ems/index.htm>.

- (2) A written or electronic copy of protocols must be available for inspection on each ambulance.
- (3) Safety equipment is required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (4) Oxygen, inhalation, ventilation, and airway management devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (5) Diagnostic and assessment devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (6) Bandages and dressing material are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (7) Immobilization devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (8) Patient care supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (9) Infection control supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (10) Intravenous therapy supplies are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (11) Cardiac defibrillators and monitors are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (12) Medications and required drugs are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications. Medications must be packaged and stored in accordance with pharmacological guidelines for sterility, cleanliness, dosage, and expiration.
- (13) A triage system that can be used in mass casualty situations/incidents is required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (14) Air ambulances are required to have the equipment, medications and supplies specified under Rule 1200-12-01-.05.
- (15) Equipment, medications and supplies requirements as detailed in paragraphs (3) to (12) shall not apply to vehicles used solely for neonatal critical care transport.
- (16) Neonatal transport equipment and supplies shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Maternal and Child Health Section, Sixth Edition, 2014, or successor publication.

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(Rule 1200-12-1-.03, continued)

(17) Ambulances found to be lacking any critical (C) equipment, medications or supplies, or lacking six or more non-critical (N) equipment, medications or supplies, will fail their inspection. Ambulances found to be lacking five or fewer non-critical (N) equipment, medications or supplies will receive a warning. Conditional acceptance during inspection may be granted by the Division's representative when good faith efforts to acquire or repair non-critical equipment are made by the provider, subject to recheck of any deficiencies within forty-five (45) days of the initial inspection.

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Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-505, 68-140-506, and 68-140-507.

Administrative History: Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed August 22, 1985; effective September 21, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed March 7, 1989; effective April 21, 1989. Repeal and new rule filed January 7, 1997; effective March 23, 1997. Repeal and new rule filed November 16, 2005; effective January 30, 2006. Amendment filed December 16, 2005; effective March 1, 2006. Amendment filed August 7, 2009; effective November 5, 2009. Amendments filed May 26, 2010; effective August 24, 2010.

1200-12-01-.04 EMERGENCY MEDICAL TECHNICIAN (EMT). All persons desiring licensure as an Emergency Medical Technician pursuant to T.C.A. Title 68, Chapter 140 must comply with the following requirements and standards.

- (1) Emergency Medical Technician Licensure Requirements
 - (a) Must be at least eighteen (18) years of age.
 - (b) Be able to read, write, and speak the English language.
 - (c) Must possess an academic high school diploma or a general equivalency diploma (G.E.D).
 - (d) Must have no history within the past three years of habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as an emergency medical technician.
 - (e) Must present evidence to the Division of Emergency Medical Services of a medical examination certifying physical health sufficient to conduct activities associated with patient care, including, but not limited to, visual acuity, speech and hearing, use of all extremities, absence of musculoskeletal deformities, absence of communicable diseases, and suitable emotional fitness to provide for the care and lifting of the ill or injured. This information shall be provided on a form approved by the Board and shall be consistent with the provisions of the Americans with Disabilities Act and the requirements of National Registry of Emergency Medical Technicians.
 - (f) Must successfully complete an approved basic Emergency Medical Technician course including all license examinations.
 1. Written Examination
 - (i) Achieve a passing score on a Board approved written examination with a minimum score as established by the Board.
 - (ii) Applicants who fail to pass the examination shall be eligible to reapply for examination.
 2. Practical Examination

* 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)
Timothy Bell	X				
Dr. Christopher Brooks	X				
Jeffery L. Davis	X				
Richard Holiday	X				
Larry Hutsell	X				
Kevin Mitchell	X				
Dennis W. Parker	X				
James E. Ross	X				
Sullivan K. Smith	X				
Stephen Sutton	X				
Robert W. Thurman Jr.		X			
Robert A. Webb	X				
Tyler White	X				

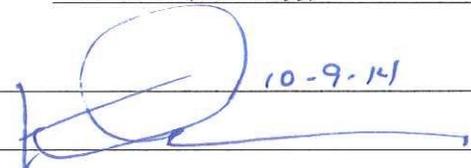
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Emergency Medical Services Board (board/commission/ other authority) on 06/26/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/06/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/26/13 (mm/dd/yy)

Date: 10-9-14

Signature: 

Name of Officer: Keith D. Hodges

Assistant General Counsel

Title of Officer: Department of Health

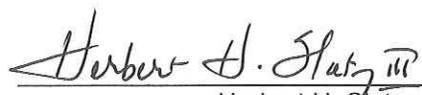
Subscribed and sworn to before me on: 10-9-14

Notary Public Signature: 

My commission expires on: APRIL 10, 2015



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


 Herbert H. Slatery III
 Attorney General and Reporter
11/25/2014
 Date

Department of State Use Only

Filed with the Department of State on:

12/2/14

Effective on:

3/2/15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED

2014 DEC -2 PM 3:50

OFFICE OF
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Board of Physical Therapy

SUBJECT: The Practice of Physical Therapy

STATUTORY AUTHORITY: T.C.A. §§ 63-13-304 and 63-13-318(l)

EFFECTIVE DATES: March 2, 2015 to June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules clarify who may sit for an examination as either a physical therapist or physical therapy assistant, remove a procedural inconsistency concerning the closure of an incomplete application, and combine the process for approval of continuing education courses on the topics of ethics and jurisprudence.

Public Hearing Comments

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

Scott Newton, a representative of the Tennessee Physical Therapy Association, addressed the Board with support for the rule amendments. He also requested the Board to combine ethics and jurisprudence in its amendments to continuing education.

The Board accepted this request and included the amended language into the proposed rules.

Regulatory Flexibility Addendum

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

REGULATORY FLEXIBILITY ANALYSIS

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

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

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

These rules exhibit clarity, conciseness and lack of ambiguity.

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

The rules do establish flexible compliance and/or reporting requirements for small business. The only change affecting the reporting requirements of physical therapists regards the approval process for the therapist's continuing education hours in ethics. This amendment alleviates the need of the Board to approve those hours, thus eliminating one step for therapists seeking approval for continuing education hours.

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

These rules do not establish schedules or deadlines for compliance.

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

The rules simplify the reporting requirements for small business by removing one step in the approval process for continuing education classes.

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

These rules do not establish performance standards or design or operational standards for small businesses.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Physical Therapy

Rulemaking hearing date: TBD

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

Those engaging in the practice of physical therapy are subject to these rule amendments. Those businesses will bear the cost of, and/or directly benefit from the proposed rule.

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

These rule amendments do not require any additional reporting, recordkeeping, or any other administrative costs for compliance. In fact, these rule amendments will reduce the recordkeeping duties of the Board as it will be removed from the approval process for closing abandoned licenses, which will now automatically be deemed closed.

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

The rules may have an economic impact by prohibiting those who have graduated from physical therapy school and failed the physical therapy exam from entering the profession by becoming physical therapist assistants as an alternative. However, given the small number of people who fall into this category, the department anticipates any such impact to be minimal.

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

There is no less burdensome, less intrusive or less costly alternative methods of achieving the purposes of these rules.

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

Federal: None

State: These rule amendments would follow the application closing policies and continuing education policies of the other various health-related boards.

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

These rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

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

**Department of State
Division of Publications**

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Nashville, TN 37243
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Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 12-05-14
Rule ID(s): 5842
File Date: 12/2/14
Effective Date: 3/2/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Board of Physical Therapy
Division:	Department of Health
Contact Person:	Grant Mullins Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Grant.Mullins@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.04	Qualifications for Licensure
1150-01-.07	Application Review, Approval and Denial
1150-01-.12	Continuing Competence

(Rule 1150-01-.03, continued)

practice of physical therapy without being credentialed or expressly exempted by the laws are in violation of T.C.A. §63-1-123.

- (4) No other person shall hold himself out to the public by a title or description of services incorporating the words "physical therapist" or "physical therapist assistant" nor shall state or imply that he is licensed as such unless that person is licensed or expressly exempted pursuant to T.C.A. §§63-13-301, et seq.
- (5) Licensee Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Physical Therapist" or "Physical Therapist Assistant" as applicable, and to use the acronyms "P.T." or "P.T.A." as applicable, and to practice physical therapy, as defined in T.C.A. § 63-13-103. Any person to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 1150-01-.13 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the licensee to disciplinary action pursuant to T.C.A. § 63-13-312 (3) and (14).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-123, 63-1-145, 63-1-146, 63-13-102, 63-13-103, 63-13-108, 63-13-301, 63-13-302, 63-13-304, 63-13-306, 63-13-307, 63-13-308, 63-13-310, 63-13-312 and 63-13-315. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981. Amendment filed April 28, 1983; effective May 31, 1983. Repeal rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed September 24, 2009; effective December 23, 2009.

1150-01-.04 QUALIFICATIONS FOR LICENSURE.

- (1) To qualify for licensure by examination, a Physical Therapist or a Physical Therapist Assistant must:
 - (a) Be of good moral character; and
 - ~~(b) Be a graduate of a school of physical therapy accredited by CAPTE or a school for physical therapist assistants accredited by CAPTE; and~~
 - (b) If sitting for the physical therapist examination, be a graduate of a school of physical therapy accredited by CAPTE; or, if sitting for the physical therapist assistant examination, be a graduate of a school for physical therapist assistants accredited by CAPTE; and
 - (c) Pass to the satisfaction of the Board an examination conducted by it to determine fitness for practice as a physical therapist or physical therapist assistant.
- (2) To qualify for licensure by reciprocity a physical therapist or physical therapist assistant must possess a current and unrestricted license from another U.S. jurisdiction and comply with either (a), (b) or (c) below.
 - (a) Credentials required for individuals who attained certification, registration or licensure in another state or country from July, 1995, to date:
 1. Be of good moral character;
 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE and approved by the Board of Physical Therapy;

(Rule 1150-01-.04, continued)

3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a criterion referenced passing point.
- (b) Credentials required for applicants who attained certification, registration, or licensure in another state or country from December 29, 1981 to July, 1995.
1. Be of good moral character;
 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE and approved by the Board of Physical Therapy;
 3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a minimum converted score of seventy-five (75), based on one point five (1.5) sigma below the national mean for the examination. This applies to the score of each individual part as well as the total score.
- (c) Credentials required for applicants who attained certification, registration or licensure in another state or country from July 1, 1976 to December 28, 1981:
1. Be of good moral character;
 2. Graduate from a physical therapist or physical therapist assistant program accredited by CAPTE or a physical therapist or physical therapist assistant program approved by the American Medical Association;
 3. Pursuant to Rule 1150-01-.07, obtain verification of licensure status from all states in which he holds or has held a license; and
 4. Candidates qualifying for licensure by reciprocity must have passed the licensing examination with a minimum converted score of seventy-five (75), based on one point five (1.5) sigma below the national mean for the examination. This applies to the score of each individual part as well as the total score.
- (d) Credentials required for applicants who were registered, certified or licensed as a PT or PTA in another state or country prior to July 1, 1976, must comply with the applicable provisions of T.C.A. §63-13-307(c).
- (3) Internationally Educated. In addition to meeting the requirements outlined either in Rule 1150-01-.04(1) except 1150-01-.04(1)(b), or 1150-01-.04(2) except 1150-01-.04(2)(b)2, international graduates must:
- (a) Have submitted directly to the Board's administrative office a validly issued and error-free "Comprehensive Credential Evaluation Certificate for the Physical Therapist" (Type 1 Certificate) from the Foreign Credentialing Commission on Physical Therapy (FCCPT) for the purpose of evaluating and verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE.
 1. Submitting the "Visa Credential Verification Certificate," also issued by the FCCPT, will not constitute meeting this requirement.

(Rule 1150-01-.04, continued)

2. Applicants who cannot obtain a Type 1 Certificate from the FCCPT based on their ineligibility to sit for the Test of English as a Foreign Language internet Based Test (TOEFL iBT) must submit all other components of the Type 1 Certificate directly to the Board's administrative office, for the purpose of evaluating and verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE; or
- (b) Have submitted directly to the Board's administrative office a validly issued and error-free certification from any agency verifying that the applicant's education is substantially equivalent to a curriculum approved by CAPTE.
 1. The agency must evaluate the curriculum in a manner similar to the FCCPT educational credentials review.
 2. The result or outcome of the evaluation is the issuance of certification that the Board considers to be equivalent to the "Comprehensive Credential Evaluation Certificate for the Physical Therapist" (Type 1 Certificate) from the FCCPT.
 - (c) Submit proof of United States or Canada citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include notarized copies of birth certificates, naturalization papers or current visa status.
 - (d) Have credentials that comply with the applicable provisions of T.C.A. § 63-13-307 (d) if the applicant was registered, certified, or licensed as a physical therapist or physical therapist assistant in another state or country prior to July 1, 1976.
 - (e) After receiving written approval from the Board regarding the credentials in subparagraph (a), have participated in and successfully completed a Board-approved supervised clinical practice period to provide a broad exposure to general physical therapy skills, pursuant to guidelines approved and issued by the Board.
 1. The supervised clinical practice period shall be four hundred and eighty (480) hours and shall be accomplished at a rate of no more than forty (40) hours or no less than ten (10) hours per week.
 2. The supervising licensed physical therapist shall submit the evaluation form contained in the guidelines supplied by the Board to the Board's administrative office upon completion of the supervisory period.
 3. If the Board determines the supervised clinical period has not been successfully completed, the Board may require additional time in supervised clinical practice, additional coursework, and/or and oral examination.
 4. Supervision provided by the applicant's parents, spouse, former spouse, siblings, children, cousins, in-laws (present or former), aunts, uncles, grandparents, grandchildren, stepchildren, employees, present or former physical therapist, present or former romantic partner, or anyone sharing the same household shall not be acceptable toward fulfillment of licensure requirements. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payments for the actual supervisory hours.

(4) Electrophysiologic studies

(Rule 1150-01-.04, continued)

- (a) Applicants for licensure as a Physical Therapist who seek to conduct diagnostic electromyography (invasive needle study of multiple muscles for diagnosis of muscle and nerve disease), pursuant to rule 1150-01-.02 (See Practice of Physical Therapy), while practicing must submit to the Board's administrative office documented evidence of possessing current ECS certification from the American Board of Physical Therapy Specialties.
 - (b) Applicants for licensure as a Physical Therapist who seek to conduct surface electrophysiological studies (motor and sensory conduction, and somatosensory evoked potentials), and kinesiological studies (invasive needle study of the muscles to determine the degree and character of a muscle during certain movements) pursuant to rule 1150-01-.02 (See Practice of Physical Therapy), while practicing must submit to the Board's administrative office documented evidence of possessing the theoretical background and technical skills for safe and competent performance of such studies.
 - (c) Supervision - The supervision of applicants who seek to conduct diagnostic electromyography, surface electrophysiological studies, and kinesiological studies shall be consistent with sound medical practice.
- (5) In determining the qualifications of applicants for licensure as a physical therapist or physical therapist assistant, only a majority vote of the Board of Physical Therapy shall be required.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-304, 63-13-306 and 63-13-307.

Administrative History: Original rule filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Amendment filed January 31, 2000; effective April 15, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed June 3, 2004; effective August 17, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendment filed September 22, 2005; effective December 6, 2005. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010.

1150-01-.05 PROCEDURES FOR LICENSURE.

- (1) Procedures for all applicants. To become licensed as a physical therapist or physical therapist assistant in Tennessee, a person must comply with the following procedures and requirements.
 - (a) An application packet shall be requested from the Board's administrative office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and these rules to the Board's administrative office. It is the intent of these rules that all steps necessary to accomplish the filing of the required documentation be completed prior to filing either the application for licensure or the application for examination.
 - (c) Applications will be accepted throughout the year.
 - (d) An applicant shall pay the nonrefundable application fee, the State regulatory fee and, if applicable, the reciprocity fee as provided in Rule 1150-01-.06 when submitting the application.

(Rule 1150-01-.06, continued)

April 8, 2003; effective June 22, 2003. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed December 27, 2011; effective March 26, 2012.

1150-01-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

- (1) An application packet shall be requested from the Board's administrative office.
- (2) Applications for licensure will be accepted throughout the year.
- (3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director. The Board will ratify licensure action taken by the Unit Director or designated Board member.
- (4) If an application for licensure is incomplete when received in the Board's administrative office, the applicant will be notified of such deficiency. The individual will not be deemed eligible to take the examination until the application is judged to be complete and accurate by the administrative office.
- (5) The Board may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the Board wishes additional information.
- (6) If a completed application has been denied and ratified as such by the Board, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*) to contest the denial and the procedure necessary to accomplish that action.
 - (c) An applicant has a right to a contested case hearing if the licensure denial was based on subjective or discretionary criteria.
 - (d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the Board's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal may be requested. Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial.
- (7) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to sit for the examination or if the applicant has already been licensed before the falseness of such information has been made known to the Board, such license shall be subject to suspension or revocation by the Board.
- (8) If the Board finds it has erred in the issuance of a license, the Board will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from date of receipt of the notification.
- (9) Abandonment of Application

(Rule 1150-01-.07, continued)

- (a) An application shall be deemed abandoned and closed if:
1. The application has not been completed by the applicant within twelve (12) months after it was initially reviewed by the Board; or
 2. The applicant fails to sit for the written exam, if applicable, within six (6) months after being notified of eligibility.

~~(b) Whenever the applicant fails to complete the application process as stated in (a) above, written notification will be mailed to the applicant notifying him that the file has been closed. The determination of abandonment must be ratified by the Board. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.~~

(b) Whenever the applicant fails to complete the application process as stated in (a) above, written notification will be mailed to the applicant notifying him that the file has been closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.

- (10) If an applicant requests an entrance for licensure and, after Board review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, e.g., reciprocity to examination.
- (11) An applicant shall submit an original letter of recommendation from a physical therapist or physical therapist assistant licensed in the United States that attests to the applicant's good moral character. The letter cannot be from a relative of the applicant.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-301, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-307, and 63-13-312. **Administrative History:** Original rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000.

1150-01-.08 EXAMINATIONS. In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

- (1) The Board adopts as its examination for physical therapists and physical therapist assistants the National Physical Therapy Examinations endorsed by the Federation of State Boards of Physical Therapy or successor examinations.
- (2) Examination Application
- (a) All applicants for examination shall apply for admission directly with the Federation of State Boards of Physical Therapy (FSBPT) by contacting:

Federation of State Boards of Physical Therapy	Telephone	(703) 299-3100
509 Wythe Street	Fax	(703) 299-3110
Alexandria, VA 22314	Internet	www.fsbpt.org

Application forms and instructions will be provided by the Board's administrative office.

- (b) All educational requirements must be completed prior to filing an application for licensure or examination.

(Rule 1150-01-.11, continued)

or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed physical therapist or physical therapist assistant; or

- (c) Submit a letter, which has been signed and notarized, requesting his license to be placed in retirement. Such letter must contain a statement indicating that the licensee understands that he can not practice or in any way indicate or imply that he holds an active Tennessee license or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed PT or PTA.
- (3) License holders whose licenses have been retired may reactivate their licenses in the following manner:
 - (a) Submit a written request for licensure reactivation to the Board's administrative office including a statement describing all relevant experiences education during the period of retirement or inactivity; and
 - (b) Pay the current licensure renewal fees and State regulatory fee as provided in Rule 1150-01-.06. If retirement reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will additionally require payment of the reinstatement fee as prescribed in Rule 1150-01-.06.
 - (c) Complete the continuing competence requirements, as provided in Rule 1150-01-.12.
 - (4) Licensure reactivation applications shall be treated as licensure applications and review and decisions shall be governed by Rule 1150-01-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-308, and 63-13-309. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003.

1150-01-.12 CONTINUING COMPETENCE. Continuing Competence. On January 1, 2003, the Board shall begin to notify applicants for renewal of continuing competence requirements as provided in T.C.A. §63-13-304(6). The Board shall require each licensed physical therapist and physical therapist assistant to participate in a minimum number of experiences to promote continuing competence for the twenty – four (24) months that precede the licensure renewal month. Beginning January 1, 2005, all applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.

- (1) The requirements for continuing competence are defined as planned learning experiences which occur beyond the entry level educational requirements for physical therapists and physical therapist assistants. Content of the experience must relate to physical therapy whether the subject is intervention, examination, research, documentation, education, management, or some other content area. The purpose of this requirement is to assist in assuring safe and effective practices in the provision of physical therapy services to the citizens of Tennessee.
- (2) For applicants approved for initial licensure by examination, successfully completing the requirements of Rules 1150-01-.04, .05, and .08, as applicable, shall be considered proof of sufficient competence to constitute compliance with this rule for the initial period of licensure except for the ethics and jurisprudence education requirements of paragraph (4). Applicants approved for initial licensure by examination must successfully complete four (4) hours of ethics and jurisprudence education during their initial period of licensure
- (3) Twenty-four (24) Month Requirement – Continuing competence credit is awarded for the clock hours spent in an activity as provided in paragraphs (5) and (6). Except as provided in

(Rule 1150-01-.12, continued)

paragraph (4), all required hours may be met through Class I activities. Except as provided in paragraph (4), any Class I activity without a stated maximum number of hours may be used to accrue all required hours.

- (a) Physical Therapist – Thirty (30) hours are required for the twenty-four (24) months that precede the licensure renewal month.
 1. At least twenty (20) hours of the thirty (30) hour requirement must be from Class I activities as provided in paragraph (5).
 2. Up to ten (10) of the thirty (30) hour requirement may be from Class II activities as provided in paragraph (6).
 - (b) Physical Therapist Assistant – Twenty (20) hours are required for the twenty-four (24) months that precede the licensure renewal month.
 1. At least ten (10) hours of the twenty (20) hour requirement must be from Class I activities as provided in paragraph (5).
 2. Up to ten (10) hours of the twenty (20) hour requirement may be from Class II activities as provided in paragraph (6).
- (4) Four (4) of the hours required in parts (3) (a) 1. and (3) (b) 1. consist of ethics and jurisprudence education courses. These four (4) hours are required every other twenty-four (24) month period.

~~(a) Jurisprudence – This course shall be a minimum of two (2) hours, shall be Class I continuing competence as provided in paragraph (5), and shall as a minimum include education in:~~

- ~~1. The Occupational and Physical Therapy Practice Act (Tennessee Code Annotated, Title 63, Chapter 13, Parts 1 and 3);~~
- ~~2. General Rules Governing the Practice of Physical Therapy (Official Compilation, Rules and Regulations, Chapter 1150-01);~~
- ~~3. Board of Physical Therapy Policy Statements;~~
- ~~4. Licensure process;~~
- ~~5. Scope of practice;~~
- ~~6. Licensure renewal;~~
- ~~7. Disclosures to patients;~~
- ~~8. Offenses that may lead to disciplinary action;~~
- ~~9. Supervision of Physical Therapist Assistants;~~
- ~~10. Supervision of Physical Therapy assistive personnel; and~~
- ~~11. Supervision of others (students, volunteers).~~

(Rule 1150-01-.12, continued)

(a) Ethics and Jurisprudence – The Tennessee Physical Therapy Association (TPTA) is the sole approval entity for ethics and jurisprudence courses. All ethics and jurisprudence courses approved by the TPTA shall be deemed approved by the Board. Any ethics and jurisprudence course not approved by the TPTA will fail to meet the requirements of this rule. The TPTA shall only approve courses that are a minimum of two (2) hours each in duration. They shall be Class I continuing competence as provided in paragraph (5), and shall as a minimum include education in:

1. Ethics:

- (i) APTA Code of Ethics;
- (ii) APTA Guide for Professional Conduct;
- (iii) APTA Standards for Ethical Conduct for the Physical Therapist Assistant;
- (iv) APTA Guide for Conduct of the Physical Therapist Assistant;
- (v) Model for ethical decision making; and
- (vi) Case analysis.

2. Jurisprudence:

- (i) The Occupational and Physical Therapy Practice Act (Tennessee Code Annotated, Title 63, Chapter 13, Parts 1 and 3);
- (ii) General Rules Governing the Practice of Physical Therapy (Official Compilation, Rules and Regulations, Chapter 1150-01);
- (iii) Board of Physical Therapy Policy Statements;
- (iv) Licensure process;
- (v) Scope of practice;
- (vi) Licensure renewal;
- (vii) Disclosures to patients;
- (viii) Offenses that may lead to disciplinary action;
- (ix) Supervision of Physical Therapist Assistants;
- (x) Supervision of Physical Therapy assistive personnel; and
- (xi) Supervision of others (students, volunteers).

~~(b) Ethics – This course shall be a minimum of two (2) hours, shall be Class I continuing competence as provided in paragraph (5), and shall as a minimum include education in:~~

- ~~1. APTA Code of Ethics;~~

(Rule 1150-01-.12, continued)

- ~~2. — APTA Guide for Professional Conduct;~~
- ~~3. — APTA Standards of Ethical Conduct for the Physical Therapist Assistant;~~
- ~~4. — APTA Guide for Conduct of the Physical Therapist Assistant;~~
- ~~5. — Model for ethical decision-making; and~~
- ~~6. — Case analysis.~~

(b) Course approval – Aside from ethics and jurisprudence courses approved under subparagraph (a) above, the Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6) of this rule. It is the licensee's responsibility, using his/her professional judgment, to determine if the courses being taken are applicable, appropriate, and meet the requirements of this rule. However, TPTA must seek the Board's approval for offering ethics and jurisprudence courses by submitting the following information to the Board's office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:

1. Course description or outline;
2. Names of all lecturers;
3. Brief resume of all lecturers; and
4. How certification of attendance is to be documented.

Each course approved by TPTA must be approved every twelve (12) months.

~~(c) Course approval – The Board does not pre-approve Class I and Class II continuing competence courses, programs, and activities required by paragraphs (3), (5) and (6). It is the licensee's responsibility, using his/her professional judgment, to determine if the courses being taken are applicable, appropriate, and meet the requirements of this rule. However, an ethics and jurisprudence course provider must seek the Board's course approval by submitting the following information to the Board's administrative office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:~~

- ~~1. — Course description or outline;~~
- ~~2. — Names of all lecturers;~~
- ~~3. — Brief resume of all lecturers;~~
- ~~4. — Date of course; and~~
- ~~5. — How certification of attendance is to be documented.~~

- (5) Class I acceptable continuing competence evidence shall be any of the following:
- (a) External peer review of practice with verification of acceptable practice by a recognized entity, e.g., American Physical Therapy Association. Continuing competence credit is

(Rule 1150-01-.12, continued)

- twenty (20) hours per review with a maximum of one (1) review each twenty-four (24) month period.
- (b) Internal peer review of practice with verification of acceptable practice. Continuing competence credit is two (2) hours per review with a maximum of two (2) reviews during each twenty-four (24) month period.
 - (c) Courses, seminars, workshops, and symposia attended by the licensee which have been approved for continuing education units (CEUs) by appropriate CEU granting agencies.
 - (d) Courses, seminars, workshops, and symposia attended by the licensee and approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., Chattanooga State Technical Community College, East Tennessee State University, etc.).
 - (e) Home study courses or courses offered through electronic media approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., U.T. Center for the Health Sciences, Volunteer State Community College), and that include objectives and verification of satisfactory completion.
 - (f) University credit courses - Continuing competence credit is twelve (12) hours per semester credit hour.
 - (g) Participation as a presenter in continuing education courses, workshops, seminars or symposia which have been approved by recognized health-related organizations. Continuing competence credit is based on contact hours and may not exceed twenty (20) hours per topic.
 - (h) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review. Continuing competence credit is ten (10) hours per event with a maximum of two (2) events each twenty-four (24) month period.
 - (i) Teaching a physical therapy or physical therapist assistant credit course when that teaching is an adjunct responsibility and not the primary employment. Continuing competence credit is based on contact hours not to exceed twenty (20) hours. If the same course is taught more than once, contact hours may only be counted once.
 - (j) Certification of clinical specialization by the American Board of Physical Therapy Specialties (ABPTS). Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which certification or recertification is awarded.
 - (k) Certification of clinical specialization by organizations other than the ABPTS (e.g. the McKenzie Institute, the Neuro Developmental Treatment Association, the Ola Grimsby Institute, etc.) may be recognized as continuing competence credit for up to twenty-six (26) hours, in the twenty-four (24) month period in which certification or recertification is awarded. The number of continuing competence credit hours awarded is determined by the Board.
 - (l) Awarding of an advanced degree from an accredited University. Continuing competence credit is twenty-six (26) hours and is recognized only in the twenty-four (24) month period in which the advanced degree is awarded.

(Rule 1150-01-.12, continued)

- (m) Participating in a clinical residency program. Continuing competence credit is five (5) hours credit for each week of residency with a maximum of twenty-six (26) hours per program.
- (6) Class II acceptable continuing competence evidence shall be any of the following
- (a) Self-instruction from reading professional literature. Continuing competence credit is limited to a maximum of one (1) hour each twenty-four (24) month period.
 - (b) Attendance at a scientific poster session, lecture, panel or symposium that does not meet the criteria for Class I. Continuing competence credit is one (1) hour per hour of activity with a maximum of two (2) hours credit each twenty-four (24) month period.
 - (c) Serving as a clinical instructor for an accredited physical therapist or physical therapist assistant educational program. Continuing competence credit is one (1) hour per sixteen (16) contact hours with the student(s).
 - (d) Acting as a clinical instructor for physical therapist participating in a residency program or as a mentor for a learner for a formal, nonacademic mentorship. Continuing competence credit is one (1) hour per sixteen (16) contact hours.
 - (e) Participating in a physical therapy study group consisting of two (2) or more physical therapists or physical therapist assistants. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.
 - (f) Attending and/or presenting in-service programs. Continuing competence credit is one (1) hour per eight (8) contact hours with a maximum of four (4) hours credit each twenty-four (24) month period.
 - (g) Serving the physical therapy profession as a delegate to the APTA House of Delegates, on a professional board, committee, or task force. Continuing competence credit is limited to a maximum of one (1) hour credit each twenty-four (24) month period.
- (7) Unacceptable activities for continuing competence include, but are not limited to:
- (a) Attending courses regarding:
 - 1. Regulations of the United States Department of Labor's Occupational Safety and Health Administration (OSHA);
 - 2. Regulations of the Tennessee Department of Labor and Workforce Development's Division of Occupational Safety and Health (TOSHA);
 - 3. Cardiopulmonary resuscitation (CPR); and
 - 4. Safety;
 - (b) Meetings for purposes of policy decisions;
 - (c) Non-educational meetings at annual association, chapter or organization meetings;
 - (d) Entertainment or recreational meetings or activities; and
 - (e) Visiting exhibits.

(Rule 1150-01-.12, continued)

- (8) Documentation of compliance
- (a) Each licensee must retain documentation of completion of all continuing competence requirements of this rule for a period of five (5) years from when the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.
 - (b) The licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing competence activities.
 - (c) Any licensee who fails to complete the continuing competence activities or who falsely certifies completion of continuing competence activities may be subject to disciplinary action pursuant to T.C.A. §§ 63-13-304, 63-13-312, 63-13-313, and 63-13-315.
 - (d) Examples of documentation
 1. A signed peer review report or an official program or outline of the course attended or taught or copy of the publication which clearly shows that the objectives and content were related to physical therapy and shows the number of contact hours, as appropriate. The information also should clearly identify the licensee's responsibility in teaching or authorship.
 2. A CEU certificate or verification of completion of home study which identifies the sponsoring entity, or a copy of the final grade report in the case of a University credit course(s), or specialization certificate, or proof of attendance with a copy of the program for the other acceptable Class I or II activities, or documentation of self-instruction from reading professional literature.
- (9) Reinstatement/Reactivation of an Expired or Retired License
- (a) Expired or retired for three (3) years or less – An individual whose license has expired or has been retired for three (3) years or less shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 - (b) Expired or retired more than three (3) years
 1. An individual whose license has expired or has been retired for more than three (3) years shall submit the appropriate application for reinstatement or reactivation, along with documentation of continuing competence (see examples in paragraph (8)), which must have been initiated and completed within two (2) years prior to submission of the application for reinstatement or reactivation.
 2. The Board may, at its discretion, require additional education, supervised clinical practice, successful passage of examinations, or issue a provisional license.
- (10) The Board, in cases of documented illness, disability, or other undue hardship, may waive the continuing competence requirements and/or extend the deadline to complete continuing competence requirements. To be considered for a waiver of continuing competence requirements, or for an extension of the deadline to complete the continuing competence requirements, a licensee must request such in writing with supporting documentation before the end of the twenty-four (24) month period in which the continuing competence requirements were not met.

(Rule 1150-01-.12, continued)

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-304, 63-13-308, 63-13-309, and 63-13-311.

Administrative History: Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed January 16, 2003; effective April 1, 2003. Amendment filed September 22, 2005; effective December 6, 2005. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed August 18, 2006; effective November 1, 2006. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed August 19, 2010; effective November 17, 2010.

1150-01-.13 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning physical therapy services, the importance of the interests affected by the choice of a physical therapist and the foreseeable consequences of unrestricted advertising by physical therapists which is recognized to pose special possibilities for deception, require that special care be taken by physical therapists to avoid misleading the public. The physical therapist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by physical therapists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a physical therapist who is licensed to practice in Tennessee.
 - (b) Licensee - Any person holding a license to practice physical therapy in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of physical therapists to serve his or her particular needs.
 - (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Fees and Services
 - (a) Fixed Fees. Fixed fees may be advertised for any service. It presumed unless otherwise stated in advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.

* 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)
Brigina T. Wilkerson	X				
Brandon K. Hollis	X				
David Harris				X	
David Finch	X				
Minty R. Ballard				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 02/07/2014 (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: 11/01/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 02/07/14 (mm/dd/yy)

Date: 11/17/14

Signature: [Handwritten Signature]

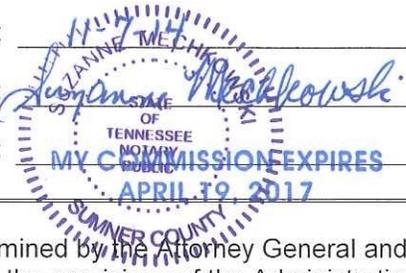
Name of Officer: Grant Mullins
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: [Handwritten Signature]

My commission expires on: _____



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

[Handwritten Signature]
Herbert H. Slattery III
Attorney General and Reporter
November 24, 2014
Date

Department of State Use Only

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Filed with the Department of State on: 12/2/14

Effective on: 3/2/15

[Handwritten Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Board of Funeral Directors and Embalmers

SUBJECT: Removal Services Program

STATUTORY AUTHORITY: Tennessee Code Annotated, § 62-5-318

EFFECTIVE DATES: March 3, 2015 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules restore the requirements of emergency rules that expired July 3, 2014, which effectuates the purposes of Public Chapter 437 of the Public Acts of 2013 for the registration of removal services.

Public Hearing Comments

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

There were no comments.

Regulatory Flexibility Addendum

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

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

There is no foreseeable impact specifically affecting small businesses in general. The proposed rules would apply equally to all removal services located in the state of Tennessee, regardless of size, unless they are exempt through T.C.A. §§ 62-5-203 and 62-5-318. Small businesses would have to pay the registration and renewal fees and insurance under the rules. These requirements are necessary, however, to achieve the purpose of the statute. Currently, there are about nineteen companies registered as a removal service under the emergency rules. The majority of these companies are small businesses, but the costs do not seem to be a hurdle to these 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;

Any reported, recordkeeping and /or other administrative costs resulting from these proposed rules is necessary to protect the citizens of the State of Tennessee, which is accomplished by the removal service registration program authorized by T.C.A. §§ 62-5-203 and 62-5-318. Under the statutes and the rules, the Board staff will do the necessary recordkeeping and reporting, and associated administrative costs will apply.

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

There is no foreseeable substantial effect on small businesses by the imposition of these rules. Removal services are already required to be registered in accordance with T.C.A. §§ 62-5-203 and 62-5-318. These rules are designed to carry out the statutory scheme. The projected effect on consumers is to create more confidence in relying on these companies for the transport of their loved ones.

- (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 businesses;

The proposed rules appear to be the least burdensome, least intrusive and least costly methods of achieving the purpose and objectives of the rules and T.C.A. §§ 62-5-203 and 62-5-318.

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

There are no federal counterparts to the issues addressed by these rules.

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

Exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

Impact on Local Governments

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

There is no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 12-07-14
Rule ID(s): 5844, 5845
File Date: 12/3/2014
Effective Date: 3/3/2015

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Funeral Directors and Embalmers
Division:	Department of Commerce and Insurance, Division of Regulatory Board
Contact Person:	Ellery Richardson
Address:	Office of Legal Counsel 500 James Robertson Parkway Davy Crockett Tower Nashville, Tennessee 37243
Phone:	615-741-8689
Email:	Ellery.Richardson@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0660-03	Fees
Rule Number	Rule Title
0660-03-.11	Removal Service Fees

Chapter Number	Chapter Title
0660-12	Removal Service
Rule Number	Rule Title
0660-12-.01	Removal Service

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

New Rules

Chapter 0660-03
Fees

Rule 0660-03 Fees

0660-03-.11 Removal Service Fees

- (1) An application for registration as a removal service shall be submitted on a form prescribed by the Board and shall be accompanied by proof of liability insurance in the amount of one million dollars (\$1,000,000.00) and a nonrefundable fee in the amount of three hundred fifty dollars (\$350.00).
- (2) The Board may renew a certificate of registration provided that an application for renewal, accompanied by proof of liability insurance in the amount of one million dollars (\$1,000,000.00) and a nonrefundable fee in the amount of two hundred fifty dollars (\$250.00), is received by the Board no later than the date of expiration.

Authority: T.C.A. §§ 62-5-203 and 62-5-318

Chapter 0660-12
Removal Service

Rule 0660-12 Removal Service

Rule 0660-12-.01 Removal Service

- (1) No removal service, as defined in T.C.A. Title 62, Chapter 5, Part 1, shall operate in this state without first registering with the Board as a removal service.
- (2) An application for registration as a removal service shall be submitted on a form prescribed by the Board and shall be accompanied by a nonrefundable fee as set by the Board and proof of liability insurance in an amount set by the Board.
- (3) The Board may renew a certificate of registration provided that an application for renewal, accompanied by a nonrefundable fee set by the Board and proof of liability insurance in an amount set by the Board, is received by the Board no later than the date of expiration.

Authority: T.C.A. §§ 62-5-203 and 62-5-318

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Wayne Hinkle	X				
Robert Helms	X				
David Neal	X				
W.T. Patterson				X	
Jane Gray Sowell	X				
Robert Starkey	X				
Anita Taylor	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Funeral Directors and Embalmers on 9/9/2014, and it 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: 7/14/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 9/9/2014

Date: 9-30-14

Signature: Ellery Richardson

Name of Officer: Ellery Richardson

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: Sept 30, 2014

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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
November 25, 2014
 Date

Department of State Use Only

Filed with the Department of State on: 12/3/2014

Effective on: 3/3/2015

SECRETARY OF STATE
 OFFICE OF
 2014 DEC -3 PM 1:57

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: Hearings, mediations, and ombudsman services

STATUTORY AUTHORITY: Tennessee Code Annotated, § 50-6-118, Public Chapter 289 of 2013, and Public Chapter 837 of 2013.

EFFECTIVE DATES: March 22, 2015 through June 30, 2015

FISCAL IMPACT: Minimal.

STAFF RULE ABSTRACT: These rules make housekeeping changes to the existing rules, including updating an incorrect address, clarifying that hearing officers will issue “final” rather than “initial” orders, and clarifying that access to the workers’ compensation ombudsman’s services is not a privilege.

Regulatory Flexibility Addendum

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Ombudsman program which would be counter-productive.

Impact on Local Governments

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

These proposed rules will ensure access to the ombudsman program by employees of state and local governments but will otherwise have little, if any, impact on these entities.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 12-21-14
Rule ID(s): 5852-5853
File Date: 12/22/14
Effective Date: 3/22/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Department of Labor and Workforce Development
Division: Workers' Compensation
Contact Person: Troy Haley
Address: 220 French Landing Drive Side 1-B, Nashville, Tennessee
Zip: 37243
Phone: (615) 532-0719
Email: troy.haley@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-02-13	Penalty Program
Rule Number	Rule Title
0800-02-13-.09	Representation at the Hearing
0800-02-13-.14	Determinations Pursuant to the Hearing
0800-02-13-.15	Review of Initial Order

Chapter Number	Chapter Title
0800-02-21	Mediation and hearing procedures
Rule Number	Rule Title
0800-02-21-.04	Ombudsman

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

Amendments

Chapter 0800-02-13 Penalty Program

Rule 0800-02-13-.09: Representation at the Hearing is amended by deleting paragraph (3) of the rule in its entirety and substituting instead the following:

~~(3) All notices of appearance shall be delivered to the Commissioner or mailed to:~~

~~Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
Andrew Johnson Tower, Second Floor
740 James Robertson Parkway
Nashville, TN 37243-0661~~

(3) All notices of appearance should be sent to the Commissioner by regular mail at the following address:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
220 French Landing Drive, 1-B
Nashville, TN 37243

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.14: Determinations Pursuant to the Hearing is amended by deleting every mention of the language "Initial Order" in each paragraph of the Rule and substituting instead that language "Final Order".

(1) If the Commissioner determines that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner shall issue an **Initial Final** Order that all civil penalties assessed against the employer or insurer are void.

(2) If the Commissioner determines that the employer or insurer either does not owe to an employee any workers' compensation benefits or has timely paid all workers' compensation benefits owed to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an **Initial Final** Order that all civil penalties assessed against the employer or insurer are void.

(3) If the Commissioner determines that the employer or insurer has either not paid or not timely paid all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an **Initial Final** Order that a civil penalty equal to twenty-five percent (25%) of the unpaid or untimely paid benefits due to the employee under the Workers' Compensation Law be paid by the employer or insurer directly to the employee to whom the unpaid or untimely paid benefits are/were owed.

Authority: T.C.A. § 50-6-118.

Rule 0800-02-13-.15: Review of Initial Order is repealed.

Chapter 0800-02-21 Mediation and Hearing Procedures

Rule 0800-02-21-.04: Ombudsman is amended by deleting the language of paragraph (6) in its entirety and substituting instead the following:

~~(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division. The Division shall assign an ombudsman to assist the person or entity qualified to receive the services of an ombudsman. Access to the services provided by an ombudsman is a privilege, not a right, and the Division has sole authority to determine whether a person or entity qualifies for ombudsman services and the nature of the services to be provided by the ombudsman.~~

(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division and the Division shall assign an ombudsman to assist the person or entity so long as the Division determines that the person or entity is qualified to receive the services of the ombudsman. The Division shall retain sole authority to determine the nature of the services to be provided by the ombudsman, pursuant to T.C.A. § 50-6-216(a).

Authority: T.C.A. § 50-6-216.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 11/05/2014 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: November 5, 2014

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: November 5, 2014

Notary Public Signature: Darlene Carver McDonald

My commission expires on: May 8, 2017

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/17/2014
 Date

Department of State Use Only

SECRETARY OF STATE
 RECEIVED
 2014 DEC 22 PM 2:01

Filed with the Department of State on: 12/22/14

Effective on: 3/22/15

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: General Administration

STATUTORY AUTHORITY: Tennessee Code Annotated, § 48-1-116

EFFECTIVE DATES: March 23, 2015, through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules make housekeeping changes to Chapter 0780-04-01 of the Tennessee Securities Rule concerning the general administration of the securities laws.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A.

§ 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-01 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

Impact on Local Governments

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

These proposed rules will not impact local governments.

**Department of State
Division of Publications**

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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 12-28-14
Rule ID(s): 5858
File Date: 12/23/14
Effective Date: 3/23/15

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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0780-04-01	General Administration
Rule Number	Rule Title
0780-04-01-.01	Retained Powers
0780-04-01-.02	Short Title
0780-04-01-.03	Definitions
0780-04-01-.04	Administration of the Act
0780-04-01-.05	No Action Letters and Interpretive Opinions
0780-04-01-.06	Repealed

Amendment

Chapter 0780-04-01 General Administration is amended by deleting the Chapter in its entirety and replacing it with the following language:

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-04-01
GENERAL ADMINISTRATION

TABLE OF CONTENTS

0780-04-01-.01 Retained Powers
0780-04-01-.02 Short Title
0780-04-01-.03 Definitions
0780-04-01-.04 Administration of the Act

0780-04-01-.05 No-Action Letters and Interpretive Opinions
0780-04-01-.06 Repealed

Amendment

Chapter 0780-04-01 General Administration is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-01-.01 RETAINED POWERS.

It is the express intent of these rules that such powers as are herein delegated by the Commissioner are also retained and may be exercised by the Commissioner at the Commissioner's election.

Authority: T.C.A. §§48-1-115 and 48-1-116~~(a)~~.

0780-04-01-.02 SHORT TITLE.

These rules may be cited as the Tennessee Securities Rules.

Authority: T.C.A. §§48-1-115 and 48-1-116~~(a)~~.

0780-04-01-.03 DEFINITIONS.

- (1) When used in these rules and in the Tennessee Securities Act of 1980, as amended, unless the context otherwise requires:
 - (a) "Act" shall mean Chapter 866 of the Public Acts of 1980, otherwise known as the Tennessee Securities Act of 1980, as amended, and its codification in the Tennessee Code Annotated.
 - (b) "Assistant Commissioner" shall mean the Assistant Commissioner for the Securities Division of the Department of Commerce and Insurance of the state of Tennessee, or any successor person authorized to exercise similar functions.
 - (c) "CRD System" shall mean the NASAA/FINRANASD Central Registration Depository System, commonly known as "CRD" and/or "Web CRD".
 - (d) "Division" shall mean the Assistant Commissioner, staff, employees, and agents of the Securities Division of the Department of Commerce and Insurance of the state of Tennessee or such other agency as shall administer the Act or any successor statute.
 - (e) "FINRA" shall mean the Financial Industry Regulatory Authority.

- (fe) "Government Securities Broker-Dealer" shall mean a broker-dealer who effects transactions only in securities issued or guaranteed by the United States ~~of America~~ or an instrumentality thereof.
 - (gf) "IARD" shall mean the Investment Adviser Registration Depository as operated by the ~~FINRA~~NASD in cooperation with NASAA, other states, and the United States ~~of America~~.
 - (hg) "NASAA" shall mean the North American Securities Administrators Association, Inc.
 - (ih) "NASD" shall mean the National Association of Securities Dealers, Inc. and/or the National Association of Securities Dealers Regulation, Inc. (now known as FINRA).
 - (ji) "Nasdaq National Market" shall mean a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.
 - (k) "Rules" shall mean the Rules of the Department of Commerce and Insurance, Securities Division, as set forth in Chapter 0780-04.
 - (lj) "SEC" shall mean the Securities and Exchange Commission of the United States ~~of America~~ or its staff, as appropriate.
 - (mk) "Security" shall include the practice of "equity funding", "security funding", or "life funding" whereby mutual fund shares and insurance contracts are sold as a package with mutual fund shares being pledged as collateral for loans, the proceeds of which are used to pay the premium on life insurance policies.
 - (nl) "State" shall mean any state, territory, or possession of the United States ~~of America~~, the District of Columbia, and Puerto Rico.
 - (om) "Substantially all of the voting securities of the bank or other bank holding company" as used in T.C.A. §48-1-103(b)(10) shall mean eighty percent (80%) or more of each class of such voting securities.
 - (pR) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. §4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these ~~f~~Rules.
- (2) In construing terms used in these ~~f~~Rules and in the Act, the ~~C~~ommissioner, to the extent consistent with the purposes fairly intended by the policy and provisions of the Act, will consider definitions, case law, SEC rules, and interpretive releases under the following federal statutes:
- (a) The Securities Act of 1933 (the "1933 Act");
 - (b) The Securities Exchange Act of 1934 (the "1934 Act");
 - (c) The Trust Indenture Act of 1939 (the "Trust Indenture Act");
 - (d) The Investment Company Act of 1940 (the "Investment Company Act"); and
 - (e) The Investment Advisers Act of 1940 (the "Investment Advisers Act").
- (3) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these ~~f~~Rules.

Authority: T.C.A. §§~~48-1-103(b)(10)~~, 48-1-115, 48-1-116~~(a)~~, and Public Acts of 2001, Chapter 61.

0780-04-01-.04 ADMINISTRATION OF THE ACT.

(1) General.

(a) The ~~C~~ommissioner delegates to the ~~A~~ssistant ~~C~~ommissioner all of the power and duties granted to and imposed upon the ~~C~~ommissioner by the Act, except the power:

1. To impose any sanction pursuant to T.C.A. §§~~48-1-104~~, 48-1-108, ~~48-1-109~~, 48-1-112, ~~or 48-1-116~~, or 48-1-121 in any contested case, as such term is defined in the UAPA;
2. To adopt any rule as such term is defined in the UAPA;
3. To grant immunity to any person pursuant to T.C.A. §48-1-118(d); and
4. To appoint any investigative agent pursuant to T.C.A. §48-1-118~~(e) and (f)~~.

(b) Without limiting the foregoing delegation, the ~~A~~ssistant ~~C~~ommissioner is expressly empowered to:

1. Issue orders of investigation pursuant to T.C.A. §48-1-118(a);
2. Conduct investigations as provided by T.C.A. §48-1-118(b);
3. Issue exemption orders pursuant to T.C.A. §48-1-103(b)(11);
4. Issue orders of effective registration, orders of denial, and other orders not involving any sanctions; and
5. Accept, on behalf of the ~~C~~ommissioner, settlement agreements reached between the Division and any person pursuant to T.C.A. §4-5-105.

(c) The Division's office hours shall be between 8:00 a.m. and 4:30 p.m. (Central Time) on weekdays, except legal holidays. Normally, appointments will not be made before 8:30 a.m. or after 4:00 p.m.

(d) Unless expressly required or requested otherwise, only the original executed copy of each form is required. If a document or form pertains to more than one security, subject, or application, a separate copy and transmittal letter for each security, subject, or application shall be filed, except as expressly provided otherwise elsewhere in these ~~R~~ules.

(2) Filing Fees.

(a) All fees required by the Act that are submitted directly to the Division shall be made by check payable to the order of the Tennessee Department of Commerce and Insurance. Certified checks are not required.

(b) Pursuant to T.C.A. §48-1-107(b), the minimum non-refundable filing fee for all applications for securities registration shall be three hundred dollars (\$300). If an application is withdrawn prior to effectiveness or before a pre-effective stop order is entered, the Division shall retain the minimum filing fee and refund the remainder, if any, to the applicant in accordance with subparagraph (2)(c) of this Rule below.

- (c) Refunds of refundable fees will not be made unless a written request is filed with the Division specifying the following:
1. The name of the applicant;
 2. The law under which the application was filed and the approximate date of filing; and
 3. The amount of the funds claimed as due and the grounds upon which the claim is made.

(3) Filing Requirements.

- (a) Applications, reports, and registration statements, including exhibits, shall be filed on good quality white paper, eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size. Tables, charts, maps, and financial statements may be on larger paper if folded to those sizes and the final prospectus may be on smaller paper if the registrant so desires.
- (b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying and/or scanning.
- (c) Exhibits may be attached or filed separately, properly marked or identified.
- (d) Each copy of registration statements, prospectuses, offering circulars, and offering memoranda must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.
- (e)
1. All applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information required or requested pursuant to the Act or these ~~Tennessee Securities~~ Rules may be submitted to the Division in the paper format prescribed in this paragraph (3) or through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.
 2. Applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division shall be in clear, easily accessible, and readable formats which shall be suitable for reproduction on good quality white paper eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size.
 3. Upon conversion and preservation through the CRD System or the Division's electronic data gathering, access, and retrieval methods, all original applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed in the paper format prescribed in this paragraph (3) may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.

(4) Forms.

(a) An application shall be prepared in accordance with the form prescribed thereof as in effect on the date of filing. An application shall be deemed filed on the proper form unless objection to the form is made by the Division prior to the effective date of the application. The following forms, as in effect at the time of use, are approved for filing with the Division:

1. ["Form U-1"](#), Uniform Application to Register Securities;
2. ["Form U-2"](#), Uniform Consent to Service of Process (naming the Commissioner of Commerce and Insurance as the party to be served);
3. ["Form U-2A"](#), Uniform Form of Corporate Resolution;
4. ["Form U4"](#), Uniform Application for Securities Industry Registration or Transfer;
5. ["Form U5"](#), Uniform Termination Notice for Securities Industry Registration;
- ~~6. ["Form U-7"](#), Registration Form for Small Corporate Offerings;~~
- ~~67. ["Form BD"](#), Uniform Application for Broker-Dealer Registration;~~
- ~~78. ["Form BDW"](#), Uniform Request for Broker-Dealer Withdrawal;~~
- ~~89. ["Form ADV"](#), Uniform Application for Investment Adviser Registration;~~
- ~~910. ["Form ADV-EH"](#), Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser-Application for a Temporary or Continuing Hardship Exemption;~~
104. ["Form ADV-W"](#), Notice of Withdrawal From Registration as [an](#) Investment Adviser;
112. ["Form D"](#), Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption;

~~123. [IN-0555](#), Surety Bond for Securities Dealers or Investment Advisers, or a Uniform Surety Bond as adopted by NASAA;~~

- ~~1324. ["IN-0911"](#), Application for Registration as an Oil and Gas Issuer-Dealer;~~
- ~~1435. ["Form NF"](#), Uniform Investment Company Notice Filing;~~
- ~~1546. ["IN-1460"](#), Form for Accredited Investors Notice Filing; ~~and~~~~
- ~~1657. ["IN-1461"](#), Form for Employee Stock Option/Purchase Plan Notice Filing; ~~and~~~~
- ~~176. ["IN-1493"](#), Designation of Accountant.~~

(b) All instructions on the above named forms are applicable, except as expressly provided elsewhere in these [Rules](#), and are adopted verbatim and incorporated herein by reference.

(c) In cases where ~~athe~~ form, [as set out in this subparagraph \(4\)\(a\)](#), directly or indirectly requires the maintenance of certain books and records, the registrant shall maintain

adequate books and records to comply with the filing requirements of the form and all books and records requirements as provided in the Act and the Rules.

(5) Division Records.

- (a) In compliance with the Tennessee Public Records Act, T.C.A. §10-7-503(a)(2)(A-B), the Division shall make available to the public for inspection any part of an application to register securities, notice filing, or a filing pursuant to a claim of exemption from securities registration, except as set forth in subparagraph (5)(f) of this Rule below.
- (b) 1. The Division shall make available to the public for inspection in connection with any registered broker-dealer or investment adviser or applicant for broker-dealer or investment adviser registration or notice filing by an investment adviser:
- (i) The current Form BD or the current Form ADV and all schedules and exhibits thereto; and
 - (ii) Financial statements filed pursuant to these ~~R~~Rules within the preceding five (5) years.
2. Any Nonnoncurrent Form BD's filings, noncurrent Form ADV's filings, noncurrent schedules and exhibits to such forms and financial statements filed pursuant to these ~~R~~Rules prior to the preceding five (5) years may be preserved by the Division in paper or electronic format for public inspection or may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.
- (c) With respect to any registered agent or investment adviser representative or application for an agent's or investment adviser representative's registration, the Division shall make available to the public for inspection the Form U4 and Form U5 of such agent or investment adviser representative, together with all exhibits.
- (d) The Division shall not make available to the public for inspection any document or other material it obtains in connection with any matter which is the subject of a private investigation or that it obtains for the purpose of determining whether to commence a private or public investigation until such time, if ever, such document or other material is used in litigation or in a contested case.
- (e) Any document which is available for inspection shall also be available for copying (including electronic reproduction through the CRD System or otheran electronic data gathering, access, and retrieval method acceptable to the Division) upon payment of the cost of copies as determined by the Division from time to time.
- (f) Requests for Confidentiality.
1. Introduction. Upon the grant of a request made pursuant to part (5)(f)2. of this Rule below, the ~~A~~Assistant ~~C~~Commissioner will withhold from public inspection, for such time as in the ~~A~~Assistant ~~C~~Commissioner's judgment is necessary, information received in connection with a registration statement, application, or report, if the ~~A~~Assistant ~~C~~Commissioner finds that such information is reasonably shown to be:
- (i) Proprietary information that is in fact confidential, including, but not limited to, trade secrets, the release of which would be damaging or prejudicial to the business concerned; or

- (ii) Financial information that is in fact confidential, the release of which would be damaging or prejudicial to the person concerned.
2. Request for Confidentiality. A request for confidential treatment of any information received in connection with any registration statement, application, or report submitted to the Assistant Commissioner should accompany the submission of such information and such information must be submitted separately from other parts of the filing and marked "Confidential Treatment Requested". The request for confidentiality will itself be available for public inspection and should not contain information for which confidential treatment is requested. Such request must be signed by the person filing the registration statement, application, or report and contain the following:
- (i) A statement identifying the information which is the subject of the request and the registration statement, application, or report relating thereto;
 - (ii) A statement of the grounds upon which the request is made, including a statement as to the confidentiality of the information and the measures taken to protect its confidentiality, and a statement of the adverse consequences which are expected to result if the information is disclosed through the public records of the Division;
 - (iii) A statement of the specific time for which confidential treatment of the information is necessary and the basis for such conclusions; and
 - (iv) A statement of the extent to which such information has been or will be disclosed to present or proposed investors, franchisees, lenders, or other persons.
3. Denial of Request. Material for which confidential treatment is requested shall not be deemed filed unless the request is granted, and may be withdrawn by the applicant if the request is denied, unless (i) the Assistant Commissioner has already taken an official action in reliance on such information prior to receiving the request for confidential treatment, (ii) the Assistant Commissioner determines that the withdrawal of such information is otherwise contrary to the public interest or the protection of investors, or (iii) the material for which confidential treatment is requested is otherwise required to be filed with the Division elsewhere in these Rules. If withdrawn, such information will not be considered by the Assistant Commissioner in connection with the registration statement, application, or report.
4. Granting Request. If a request for confidential treatment is granted, the person making such request will be notified in writing, the information will be marked "confidential" and kept separate from the public file, and the registration statement, application, or report will be noted with substantially the following legend: "Additional portions of this filing have been granted confidential treatment and are contained in a separate confidential file."
5. Disclosure of Confidential Information.
- (i) Information held confidential pursuant to part (5)(f)4. of this Rule~~-above~~ may be disclosed by the Assistant Commissioner, at any time and in the Assistant Commissioner's sole discretion, whether on the Assistant Commissioner's own motion or upon the request of any person.

- (I) To other state or federal regulatory agencies, in accordance with law;
- (II) When necessary or appropriate in any proceeding or investigation pursuant to the law under which the information was filed; or
- (III) Upon a determination by the ~~A~~assistant ~~C~~ommissioner that continued confidential treatment is no longer justified because the reasons therefore no longer exist or because public interest in disclosing such information outweighs the public interest in not doing so. If the ~~A~~assistant ~~C~~ommissioner concludes that the disclosure of such information is necessary and in the public interest and that it is impractical under the circumstances to give notice to the person who requested confidential treatment of the information, the information may be disclosed without notice. Otherwise, the person who requested confidential treatment of such information will be given notice that the release of such information is under consideration and the reasons therefore, and an opportunity to make written representations promptly, within not more than five (5) business days, regarding the continued need and justification for continued confidentiality.

- (ii) Requests to Inspect Confidential Information. A request to inspect confidential information pursuant to subitem (5)(f)5.(i)(III) of this Rule should be in writing, signed by the person making the request, and must state the justification for the request. A copy of the request for inspection will ordinarily be forwarded to the person who requested confidential treatment of the information in accordance with subitem (5)(f)5.(i)(III) of this Rule. If a request for inspection should be held confidential, the reasons therefore must be stated in such request, in accordance with part (5)(f)2. of this Rule~~above~~.
- (iii) Nothing contained herein shall be interpreted as affording any person a right to withdraw information once it has been received by the ~~A~~assistant ~~C~~ommissioner, except as provided in part (5)(f)3. of this Rule~~above~~.

6. All documents described in paragraph (5) of this Rule may be maintained or submitted to the Division through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.

Authority: T.C.A. §§48-1-103(b)(11), 48-1-104, 48-1-107(b), 48-1-108, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115(f), 48-1-116(a), 48-1-117, 48-1-117(c), 48-1-117(d), 48-1-118, 48-1-121, 48-1-125, 48-1-125(a), 4-5-105, 10-7-503(a)(2)(A-B), Public Acts of 1997, Chapter 164, §8, and Public Acts of 2001, Chapter 61.

0780-04-01-.05 NO-ACTION LETTERS AND INTERPRETIVE OPINIONS.

- (1) In case of any question concerning the Act, the Division staff may in its sole discretion entertain a request for a no-action letter or interpretive opinion. If issued, a no-action letter or an interpretive opinion only expresses the current position of the Division staff with respect to enforcement, and is not binding on the ~~C~~ommissioner or third parties. A request for a no-action letter or interpretive opinion must be in writing and in the format described in SEC Release No. 33-6269.
- (2) The Division will maintain an index, chronologically and by statutory section, of all no-action letters and interpretive opinions issued. Copies of such letters may be reviewed in the

Division's office and copies thereof obtained upon payment of reasonable costs of duplication.

| Authority: T.C.A. §§48-1-115~~7(e)~~, ~~and 48-1-116(a)~~, and 48-1-117(e).

0780-04-01-.06 REPEALED.

Authority: Public Acts of 1980, Chapter 866, §16(a).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10-13-14 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 10-13-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 10-13-14

Notary Public Signature: Denise M Lewis

My commission expires on: 2-15-16

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

Herbert H. Statory III
 Herbert H. Statory III
 Attorney General and Reporter
12/22/2014
 Date

Department of State Use Only

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

Tre Hargett
 Tre Hargett
 Secretary of State

SECRETARY OF STATE
 RECEIVED
 2014 DEC 23 PM 4:25

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: Securities Registration and Exemptions

STATUTORY AUTHORITY: Tennessee Code Annotated, § 48-1-116

EFFECTIVE DATES: March 23, 2015, through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules make housekeeping changes to Chapter 0780-04-02 of the Tennessee Securities Rules concerning securities registration and exemptions.

Regulatory Flexibility Addendum

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

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-02 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

Impact on Local Governments

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

These proposed rules will not impact local governments.

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

For Department of State Use Only

Sequence Number: 12-29-14
Rule ID(s): 5859
File Date: 12/23/14
Effective Date: 3/23/15

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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0780-04-02	Securities Registration and Exemptions
Rule Number	Rule Title
0780-04-02-.01	Registration by Coordination
0780-04-02-.02	Registration by Qualification
0780-04-02-.03	Securities Registration Generally
0780-04-02-.04	Advertising and Sales Literature
0780-04-02-.05	Renewals
0780-04-02-.06	Standards of Fairness and Reasonableness
0780-04-02-.07	Non-Profit Exemption
0780-04-02-.08	Uniform Limited Offering Exemption
0780-04-02-.09	Successor Corporate Issuers
0780-04-02-.10	NASDAQ/NMS Exemption
0780-04-02-.11	Reserved

0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.14	Notice Filings for Securities Sold to Accredited Investors
0780-04-02-.15	Bank Holding Company Exemption
0780-04-02-.16	Unsolicited Transaction Exemption

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES**

**CHAPTER 0780-04-02
SECURITIES REGISTRATION AND EXEMPTIONS**

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0780-04-02-.08	Uniform Limited Offering Exemption	0780-04-02-.15	Bank Holding Company Exemption
		0780-04-02-.16	Unsolicited Transaction Exemption

AMENDMENT

Chapter 0780-04-02 Securities Registration and Exemptions is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-02-.01 REGISTRATION BY COORDINATION.

- (1) Securities may be registered by coordination with SEC registration. A registration statement and a prospectus for such securities shall be filed with a completed and properly executed Form U-1, including all applicable exhibits thereto, a Form U-2, a Form U-2A (if applicable), and the appropriate filing fee computed in accordance with T.C.A. §48-1-107(b). The registrant shall also provide, or in Item 8(k) of the Form U-1 undertake to provide promptly if unavailable on the date of filing:
 - (a) Any additional exhibits included in Part II of the applicable SEC registration statement;
 - (b) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and
 - (c) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the registration statement does not include any untrue statement of a material fact required to be stated therein or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.
- (2) Only those offerings registered by coordination in this state on Forms 1-A, S-1, S-2, S-3, S-4, S-11, SB-1, and SB-2, or any successors to these forms, are subject to review under the applicable portions of **Rule** 0780-04-02-.06.
- (3) Until such time as an applicant has complied with all filing requirements and Division comments, the applicant may waive automatic concurrent effectiveness by written notice to the Division. Once an applicant has fully complied with the filing requirements set forth in the Act and in these **Rules**, and has satisfied all outstanding comments issued by the Division, the **Commissioner** shall make the application to register effective or conditionally clear the application to register until notification of SEC effectiveness, subject to any condition or limitations imposed by the Division. The Division shall give notice by mail of the effective date of registration to each registrant, but such notice shall be conditioned upon the

Division's receipt of notice from the applicant of the date that its registration statement was made effective by the SEC.

- (4) Every registration statement covering securities registered by coordination is effective for one (1) year from the effective date. Renewals of registrations by coordination may be made in accordance with ~~Rule~~ [Rule 0780-04-02-.05](#).

Authority: T.C.A. §§ 48-1-105, 48-1-107, [48-1-115](#), and 48-1-116(a).

0780-04-02-.02 REGISTRATION OF QUALIFICATION

- (1) An application filed pursuant to T.C.A. §48-1-106 shall contain, at a minimum, all of the information and the documents specified in Schedule A of the 1933 Act to the extent applicable, unless filed pursuant to a registration statement or notice filing format prescribed by the SEC ~~or filed on the Form U-7~~.
- (2) A prospectus or offering circular shall be submitted with a completed and properly executed Form U-1 and the appropriate filing fee computed in accordance with T.C.A. §48-1-107(b), and shall contain or be accompanied by the following information;
 - (a) The Uniform Consent to Service of Process on Form U-2 required by T.C.A. §48-1-124(e);
 - (b) The Uniform Form of Corporate Resolution on Form U-2A, if applicable;
 - (c) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and
 - (d) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the prospectus or offering circular does not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.
- (3) All notices, circulars, advertisements, sales literature, or communications required to be filed by T.C.A. §48-1-106(b)(5) shall be filed according to the terms and conditions set forth in ~~Rule 0780-04-02-.04 of these rules~~.
- (4) All offerings registered by qualification are subject to review under the applicable portions of ~~Rule 0780-04-02-.06~~.
- (5) Every registration statement covering securities registered by qualification is effective for one (1) year from the effective date. Renewals of registrations by qualification may be made in accordance with ~~Rule 0780-04-02-.05~~.

Authority: T.C.A. §§ 48-1-106, 48-1-107, [48-1-113](#), [48-1-115](#), and 48-1-116(a), [48-1-121\(c\)](#), [48-1-124\(e\)](#), and [Public Acts of 2001, Chapter 61](#).

0780-04-02-.03 SECURITIES REGISTRATION GENERALLY.

- (1) Review Procedures for Registrations.
 - (a) At the time an application to register securities that is subject to review under either [paragraph \(3\) of Rule 0780-04-02-.01](#) ~~(3)~~ or ~~rule-paragraph (4) of Rule 0780-04-02-.02~~ ~~(4)~~ is filed and the proper fee is received, the Division may in its sole discretion

make a preliminary review of the application to determine which of the following review procedures will be employed in connection with the filing:

1. **Deferred Review.** If the Division staff has determined after an initial analysis that the application is so deficient or presents problems so serious that the Division could not justify spending more time in reviewing the application, review will be deferred and the applicant will be promptly notified. Detailed comments will not be prepared or issued and it will be the responsibility of the applicant to consider whether to withdraw or amend the application.
 2. **Summary Review.** This category of review involves notification to an applicant that the Division staff has made only a summary review of the application and only such comments as may arise from such review will be made. In such cases, applicants may be required to furnish as supplemental information certain representations on behalf of the issuer, including representations that the issuer is aware that the Division staff has made only a summary rather than a detailed full review of the application.
 3. **Full Review.** In the final category of review, applications will receive a more complete accounting, financial, and legal review. The Division staff will undertake to provide timely comments regarding the application for registration, which may include requirements for additional exhibits or supplemental data. Upon satisfactory compliance with any comments, the Division shall declare the application effective or conditionally clear the application pending notice of SEC effectiveness without a receipt of representation letters ~~from~~ the persons mentioned in the preceding part (1)(a)2.
- (b) Notwithstanding the type of review performed, the burden of compliance with the Act and these ~~R~~Rules remains with the issuer and as a matter of law cannot be shifted to the Division's staff.
- (2) **Post Effective Reports.**
- (a) The ~~A~~assistant ~~C~~ommissioner may as a condition to registration require the person who filed the application for registration to file specified current financial information on a periodic basis. The ~~A~~assistant ~~C~~ommissioner may also as a condition to registration require the filing of periodic reports on the use of proceeds. Such information may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or ~~any~~ state securities agency.
 - (b) The person who filed the application for registration shall file a final sales report of the dollar amount and number of securities sold in this state, provided, however, that no final sales report shall be due with respect to any twelve (12) month period covering an initial registration or a renewal pursuant to which the maximum filing fee was paid pursuant to T.C.A. §48-1-107(b). Unless an extension is granted by the ~~A~~assistant ~~C~~ommissioner, such report shall be filed within thirty (30) days after the expiration of the effectiveness of the registration statement or the termination or completion of the offering of the securities covered by the registration statement, whichever is earlier. The report may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or any state securities agency.
- (3) **Legend Requirement.**
- (a) Offering documents for securities to be registered in this state and registered or to be registered with the SEC under the 1933 Act shall contain on the cover page

substantially the following legend in capital ~~and~~ letters and, if printed, in boldface roman type at least as high as ten- (10) point modern type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

- (b) Offering documents for securities to be registered in this state that will not be registered with the SEC under the 1933 Act shall contain on the cover page substantially the following legend in capital letters and, if printed, in boldface roman type at least as high as ten (10)-point modern type:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN REGISTERED WITH THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE. SUCH REGISTRATION DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF ANY SECURITY, NOR HAS THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(4) Prospectuses.

- (a) Preliminary Prospectuses. The publication and distribution of preliminary prospectuses in connection with proposed offerings to Tennessee residents shall be permitted if such preliminary prospectuses:

1. Are used for the purpose of obtaining indications of interest (as distinguished from firm commitments to purchase) in the proposed securities;
2. Are filed with the Division no later than the date of first use in this state; and
3. Contain the legend required by the SEC, if applicable, or substantially the following legend in capital letters and, if printed, in at least as high as ten (10) - point modern boldface roman type on the cover:

AN APPLICATION TO REGISTER THESE SECURITIES HAS BEEN FILED WITH THE TENNESSEE COMMISSIONER OF COMMERCE AND INSURANCE. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION BECOMES EFFECTIVE.

- (b) Any person filing a registration statement pursuant to T.C.A. §48-1-105 that is described in paragraph (2) of Rule 0780-04-02-.01(2) or pursuant to T.C.A. §48-1-106 shall promptly file with the Division all amendments to each registration statement (other than amendments which merely delay the effective date of the registration statement) and all supplements to each addition or deletion to the offering material made in the amendment.

- (c) After the effective date of an application to register securities, no prospectus shall be used in this state unless it contains all supplements to the prospectus as of the date of its use.
- (5) Abandonment. If an application to register securities has been on file with the Division for more than one (1) year without becoming registered, or if no written communication addressing offering terms in response to comments or a substantive amendment is received in connection with the application for a period of six (6) months, the Division may, in its discretion, determine whether the application for registration has been abandoned by the following procedure:
- (a) Notice will be sent to the correspondent designated on the Form U-1, as amended, by certified mail, return receipt requested, at the correspondent's most recent address designated on the Form U-1. Such notice will inform the correspondent that the application for registration is out of date and must either be updated or withdrawn within thirty (30) days after the date of such notice.
- (b) If the correspondent fails to respond to such a notice by filing a substantive update or withdrawing the application for registration, the Division may enter an order declaring the application for registration abandoned.
- (c) If applicable, the applicant may request a return of the refundable portion of the registration fee pursuant to subparagraph (2)(c)-) of Rule 0780-04-01-.04-(2)(e).
- (6) Blank-Check Offerings.
- (a) This subparagraph (6) is not intended to apply to offerings to be registered where the type of business or property is identified in the registration statement but the specific property or investment has not been identified. Specifically, this subparagraph (6) shall not be applied to non-specified blind-pool offerings with adequate disclosure of investment objectives.
- (b) An issuer must disclose with specificity, in the registration statement, its business plan and its intended use of net proceeds from an offering to be registered. The description of the issuer's business plan and use of net proceeds must enable offerees to know with reasonable certainty what types of business or industry -the issuer will be engaged in, the types of products or services the issuer will manufacture, sell, or provide, and the identity and experience of the principal managers of the business to be acquired or developed.
- (c) An offering of securities by a development stage company that commits less than seventy-five percent (75%) of the net proceeds of an offering for use in a specific business to be acquired or developed shall be considered a blank-check offering. The Commissioner shall deem the registration statement of a blank-check offering to be one that omits to state a necessary material fact under T.C.A. §48-1-121(a)(2) and the blank-check offering itself as one that would work, or tend to work, a fraud on purchasers, and may take any action authorized by law, including but not limited to the issuance of an order pursuant to T.C.A. §§48-1-108 and 48-1-116 denying, suspending, or revoking registration or the use of any exemption, which order may name the issuer, its controlling persons, and any underwriter or seller of the securities.
- (d) For purposes of this subparagraph (6), the terms below shall have the following meanings;
1. "Development stage company" shall mean any issuer devoting substantially all of its efforts to establishing a new business and either: (i) planned principal

operations have not commenced; or (ii) planned principal operations have commenced, but there has been no significant revenue therefrom.

2. "Net proceeds" shall mean the amount of offering proceeds remaining after payment of selling commissions and expenses and all other expenses paid or payable in connection with the offer and sale of securities, such as printing, legal, accounting, and filing fees.

(7) Multiple Securities Under Single Registration Statement.

Any issuer filing an initial or renewal application for registration of more than one security pursuant to a single registration statement may file:

- (a) A single Form U-1 if that form is completed to clearly enumerate each security and the proposed dollar amount of each security for which the application for registration is being made; and
- (b) A single check combining the filing fees payable for the securities listed on the Form U-1.

Authority: T.C.A. §§[48-1-105](#), [48-1-106](#), 48-1-107, [48-1-108](#), 48-1-[115](#), [48-1-116\(a\)](#), and 48-1-[116\(e\)](#)[21](#).

0780-04-02-.04 ADVERTISING AND SALES LITERATURE.

- (1) All advertising and sales literature of any kind to be used directly or indirectly in connection with the offer or sale of securities registered or subject to registration in this state, whether through written, radio, or television medium, except advertising and sales literature described in SEC Rule 134 (17 C.F.R. §230.134), shall be filed with the Division prior to the proposed use date or circulation date.
- (2) For purposes of this Rule, the term "advertising and sales literature" shall be deemed to include any communication distributed or made available to prospective investors or the public by any person to offer to sell or to induce the sale of securities other than a prospectus, a preliminary prospectus, or any prospectus supplements that have been filed with the Division as part of an application for registration. The sales material shall present a balanced discussion of both risk and reward. The contents of advertising and sales literature shall be consistent with representations in the prospectus.
- (3) No advertising or sales literature of any kind shall contain:
 - (a) Any untrue statement of material fact or any omission to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
 - (b) Any statement or implication that the securities offered are without risk, that returns are assured, or that failure or loss of the investment is not possible.
- (4) All advertising or sales literature of any kind used in connection with offerings registered or to be registered shall contain:
 - (a) The name of the issuer and of the person circulating or publishing the same.
 - (b) A statement showing the relationship between the issuer or dealer and every person whose name is used or from whom quotations are made.

- (c) A statement clearly indicating the source and authority of all reports, statements, or claims used in whole or in part or in any manner referred to therein.
- (d) 1. Substantially the following legend:
- "THIS IS NEITHER AN OFFER TO SELL NOR A SOLICITATION OF AN OFFER TO BUY THE SECURITIES DESCRIBED HEREIN. AN OFFERING IS MADE ONLY BY THE PROSPECTUS".
2. If printed, the legend shall appear on the face of the advertising or sales literature in type as large as that used generally in the body thereof.
- (5) Oral statements made by salesmen or other persons in connection with the purchase or sale of a security registered or to be registered supplementing, interpreting, or explaining any advertising or sales literature or made in connection with sales meetings or seminars shall be consistent with representations in the prospectus.
- (6) The Commissioner may notify the filer in writing if he/she determines that the advertising and sales literature submitted in accordance with paragraph (1) of this Rule fails to conform with the provisions of this Rule, or the Act, or has been otherwise determined to be unfair or deceptive. Such notice shall specify the reason(s) for the Commissioner's determination and shall afford the filer a right to a hearing in compliance with the UAPA Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.
- (7) After notice and a hearing, the Commissioner may order any person to cease and desist from using any advertising and sales literature that is determined to violate this Chapter.
- (8) Failure of the Commissioner to issue a notice pursuant to paragraph (6) of this Rule shall not relieve any person of responsibility for compliance with this chapter, nor will this failure waive any right of the Commissioner to bring an action against a person for violation of this Chapter.
- (9) The provisions of paragraphs (1) through (8) of this Rule shall not apply to advertising or sales literature of any kind meeting the requirements of SEC Rules 134 (17 C.F.R. §230.134), 156 (17 C.F.R. §230.156), and 482 (17 C.F.R. §230.482) or any successor rules relating to advertising and sales literature used in the sale of investment company shares registered pursuant to the Investment Company Act of 1940, unless such advertising or sales literature is not filed with and is not subject to review by the NASD-FINRA or the SEC.

Authority: T.C.A. §§ ~~48-1-105, 48-1-106, 48-1-107, 48-1-113, 48-1-115, 48-1-116(a), and 48-1-116~~ 121(a), 17 C.F.R. §230.134, 17 C.F.R. §230.156, and 17 C.F.R. §230.482.

0780-04-02-.05 RENEWALS.

Registration statements are effective for a period of one (1) year ~~(1)~~ from the date of effectiveness and may be renewed, unless a more specific rule regulating a certain type of security states to the contrary, for additional periods of one (1) year by filing an application for registration by qualification not later than twenty (20) days prior to the expiration of effectiveness, to include the following:

- (1) A completed Form U-1 designating that the application is being made pursuant to T.C.A. §48-1-106, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate, unless the Division specifically requests that such exhibits be filed;
- (2) One (1) copy of the most recent prospectus;

- (3) One (1) copy of each statement of additional information or supplement to the most recent prospectus, if any;
- (4) If the issuer has changed its name since the most recent prior filing, a completed Form U-2, unless such form reflecting the amended name change has been previously filed with the Division; and
- (5) The appropriate filing fee computed in accordance with T.C.A. §48-1-107(b).

Authority: T.C.A. §§[48-1-106](#), 48-1-107, [48-1-115](#), and ~~48-1-116(a)~~, and [Public Acts of 2001, Chapter 61](#).

0780-04-02-.06 STANDARDS OF FAIRNESS AND REASONABLENESS.

(1) General Rule.

All securities covered by this ~~f~~Rule shall be offered upon such terms and conditions that the potential rewards to the investors and to the promoter or issuer of the securities bear a reasonable relation to the risks assumed by each.

(2) Applicability.

(a) Unless different criteria for a specific type of security are set forth elsewhere in these ~~R~~rules, this ~~f~~Rules shall apply to:

1. All offerings filed for registration in this state pursuant to T.C.A. §48-1-105, except as provided in [paragraph \(3\) of R](#)rule 0780-04-02-.01~~(3)~~; and
2. All offerings filed for registration in this state pursuant to T.C.A. §48-1-106.

(b) With respect to offerings registered by coordination or by qualification, if there is any conflict between the disclosure or accounting requirements of this ~~f~~Rule and those of the SEC, the Division may accept compliance with the SEC requirements in lieu of compliance with this ~~f~~Rule.

(3) Variances.

The standards set forth in this ~~f~~Rule are intended to furnish guidelines for the determination that an application for registration meets the requirement of paragraph (1) ~~above of this Rule~~. These standards are not meant to preclude the application of more liberal or more stringent standards if the circumstances of a particular application for registration so justify. The Division may modify or waive any of the standards set forth in paragraph- (4) of this ~~f~~Rule where good cause is shown or where the goal sought to be achieved by these guidelines can be accomplished by other means. Good cause may be shown by a demonstration of adequate alternative safeguards built into a particular offering that bring that offering within the spirit of paragraph (1) of this ~~f~~Rule.

(4) Standards.

(a) An offering which meets the applicable provisions of this paragraph (4) will be deemed to meet the standard of paragraph (1) of this ~~f~~Rule.

(b) The following definitions shall apply to this ~~f~~Rule except as expressly provided otherwise herein:

1. "Earnings Per Share" means net profits determined on a per share basis after taxes but before extraordinary items, calculated in accordance with generally accepted accounting principles consistently applied on a fully diluted basis.
2. "Equity Investment of Promoters" means the total of all cash, together with the reasonable value of all assets contributed to the issuer as determined by qualified independent appraisals acceptable to the Assistant Commissioner, and may be adjusted by the earned surplus or deficit of the issuer subsequent to the dates of contribution.
3. "Equity Security" means any common stock or similar security; or any instrument convertible, with or without consideration, into such a security, or carrying a warrant, option, or right to subscribe to or purchase such a security, or any such warrant, option, or right.
4. "Firm Market" means a market in which quoted prices are those at which a security can actually be bought and sold currently, and are not quotes that are merely based on historical prices.
5. "Person" means any individual, corporation, partnership, trust, or other legal entity, or any unincorporated association or organization, and includes the following: (i) any relative, spouse, or relative of the spouse of the specified person; (ii) any trust or estate in which the specified person or any of the persons specified in (i) collectively own five percent (5%) or more of the total beneficial interest or of which any of such persons serve as trustee, executor, or in any similar capacity; and (iii) any corporation or other organization (other than the issuer corporation) in which the specified person or any of the persons specified in (i) are the beneficial owners collectively of five percent (5%) or more of any class of equity securities or five percent (5%) or more of the equity interest.
6. "Promoter" means: (i) any person who, acting alone or in conjunction with one (1) or more persons, directly or indirectly, takes the initiative in founding and organizing the business or enterprise of a corporation; (ii) any person who, in connection with the founding or organizing of the business or enterprise of a corporation, directly or indirectly, receives in consideration of services or property or both services and property five percent (5%) or more of any class of equity security of the corporation or five percent (5%) or more of the proceeds from the sale of any class of equity security of the corporation; provided, however, that a person who receives such securities or proceeds solely as underwriting commissions shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; (iii) any person who is an officer, director, or who beneficially owns, directly or indirectly, more than five percent (5%) of any class of equity security of a corporation, excluding any unaffiliated institutional investor that purchased its shares more than two (2) years prior to the filing date of the proposed offering; and (iv) any person who is an affiliate of a person specified under clause (i), (ii), or (iii), of this part 6.
7. "Promotional or Development Stage Corporation" means a corporation which has no public market for its shares and has no significant earnings. All other corporations shall be deemed "Seasoned Corporations".
8. "Promotional Shares" means those equity securities which were issued within three (3) years prior to the filing date or are to be issued to promoters for a consideration valued at less than eighty-five percent (85%) of the proposed public offering price excluding the number of such securities calculated by

dividing eighty-five percent (85%) of the public offering price per share into the total consideration paid by promoters for their shares. Equity securities which were, or are to be, issued for services rendered, patents, copyrights, or other intangibles are presumed to be promotional shares unless the value of such intangibles has been established to the satisfaction of the Division. In determining the consideration paid or the value of property under this definition, the Division may recognize as consideration any property, including patents, copyrights, or other intangibles (except goodwill) to the extent that the fair market value of such assets is established to the Division's satisfaction. Consideration for equity securities may include the fair market value of such assets if the fair market value can be determined by an independent appraisal (according to recognized standards of valuation) that is acceptable to the Division and may also include verifiable out-of-pocket development or marketing expenses (excluding promoters' salaries) paid by promoters to the extent such expenses are not reimbursed by the issuer. Excluded from this definition shall be any shares issued to promoters at the same price paid by unaffiliated persons in offerings made pursuant to SEC Regulation D.

EXAMPLE: Calculations of number of promotional shares.

	# of shares	Total Price Paid Per Share
Shares Held by Promoters	100	\$1.00
Public Offering Price Per Share		\$10.00
Total Paid by Promoters		<u>\$100.00</u>
Public Offering Price Per Share x .85		<u>\$10x.85</u>
Fully Paid Shares		<u>\$100.00</u>
		<u>\$8.50 = 11.77*</u>
Shares Held by Promoters	100	
- Fully Paid Shares	-12*	
Number of Promotional Shares	88	

*Rounded

9. "Public Market" means, with respect to the equity securities of an issuer, that one of the following criteria is met:
 - (i) The security is traded on a national or regional stock exchange registered under the ~~Securities Exchange Act of 1934~~ [Act](#);
 - (ii) The security is designated on the Nasdaq National Market; or
 - (iii) Each of the following criteria is met:

- (I) There were at least three hundred (300) holders of the security at the beginning and end of the six (6) ~~th~~-month period preceding the date of the filing;
 - (II) At least two hundred thousand (200,000) shares of the security are publicly outstanding (exclusive of securities held by officers, directors, and five percent (5%) holders);
 - (III) At least two (2) broker-dealers regularly make a market in the security;
 - (IV) At least one (1) financial publication regularly quotes the market price;
 - (V) Trading of the security in the six (6) -month period preceding the date of the filing averaged at least one hundred (100) transactions or at least five percent (5%) of the outstanding securities (not including securities held by officers, directors, and five percent (5%) security holders) per month; and
 - (VI) The bid price and the asking price represent quotations in a firm market.
10. "Significant Earnings" shall be deemed to exist if the corporation's earnings record over the last five (5) years (or such shorter period of the corporation's existence, but in no event less than three (3) years) demonstrates that it would have met either of the earnings tests set forth in items (4)(f)4.(i)~~(I)~~ and ~~(II)~~ of this ~~R~~Rule based upon its shares outstanding immediately before the proposed public offering.
11. "Unaffiliated Institutional Investor" includes any unaffiliated: bank; investment company registered under the Investment Company Act ~~of 1940~~ or a business development company as defined in ~~s~~Section 2(a)(48) of the Investment Company Act ~~of 1940~~; small business investment company licensed by the U.S. Small Business Administration under ~~s~~Section 301 of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974; insurance company; private business development company as defined in Section 202-(a)(22) of the Investment Advisers Act ~~of 1940~~ or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which owns less than twenty percent (20%) of the securities to be outstanding at the completion of the proposed public offering.

(c) Options and Warrants.

The amounts and kinds of options and warrants to purchase securities issued or sold, other than ratably in connection with a proposed offering of equity securities or securities convertible into equity securities, shall be reasonable. The amounts and kinds of options and warrants are presumed to be reasonable if they satisfy the following conditions:

1. With respect to options or warrants to underwriters:
 - (i) The options or warrants are issued to the managing underwriters under a firm commitment underwriting agreement only after the entire issue has been sold, provided that the options and warrants are not assignable or

transferable except among or to the partners, or officers and directors of the managing underwriters;

- (ii) The exercise price of the options or warrants is at least equal to the public offering price with a step-up of the exercise price of either seven percent (7%) each year such options and warrants are outstanding, or in the alternative, an over-all twenty percent (20%) step-up at any time after one (1) year from the date of issuance. The step-up shall commence twelve (12) months after the grant of the options or warrants. The election as to either step-up alternative must be made by the underwriters at the time that the options or warrants are issued;
 - (iii) The options or warrants are issued by a relatively small company other than a seasoned issuer with a public market, or where it appears from all of the facts and circumstances that the issuance of options or warrants is necessary to obtain competent investment banking services, provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be in the absence of such options and warrants;
 - (iv) The securities covered by the options and warrants consist solely of securities of the same class and of the same issuer as those securities proposed to be sold to the public in the offering under consideration;
 - (v) The number of shares covered by all options or warrants does not exceed twelve percent (12%) of the securities proposed to be sold to the public in the offering under consideration;
 - (vi) The options or warrants do not exceed five (5) years in duration and are exercisable no sooner than one (1) year after issuance; and
 - (vii) The value of the options or warrants shall be included in the computation of underwriting commissions and discounts. The market value of such options or warrants, if any, shall be used, and where no market value exists, a presumed fair value of not less than twenty percent (20%) of the public offering price of the stock to which the options or warrants relate shall be used, unless evidence indicates that a different value exists.
2. With respect to options or warrants issued to persons other than underwriters in connection with financing arrangements made by the issuer, the options or warrants are issued as a result of bona_fide negotiations between the issuer and persons not affiliated with the issuer, and upon terms and conditions which are reasonable in light of the proposed public offering.
 3. The total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding those issued in connection with acquisitions, does not exceed either twelve percent (12%) of the shares to be outstanding upon completion of the offering or twelve percent (12%) of the shares outstanding during the twelve (12) month period commencing with the effective date of the registration. The number of options and warrants issued or reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective with the Division.
 4. All options and warrants except those issued to financing institutions other than underwriters shall be issued at not less than eighty-five percent (85%) of fair

market value on the date of issuance, or where no market exists, at not less ~~that~~ than eighty-five percent (85%) of book value on the date of issuance, and the exercise price shall not be subject to change by the issuer except in accordance with anti-dilution provisions in effect on the date of issuance.

(d) Offering Price.

1. The offering price of equity securities of seasoned corporations may be deemed unfair to the purchasers unless at least one (1) of the following conditions is met:
 - (i) The price for the equity security does not exceed thirty-three (33) times the issuer's net earnings per share for the last twelve (12) months, or does not exceed ~~thirty-three~~ (33) times its average annual net earnings per share for the last three (3) years prior to the proposed offering date;
 - (ii) The price of the equity security is based on a public market; or
 - (iii) If there is no public market, the issuer may show that the proposed price-earnings ratio is justified in relation to price earnings ratios of comparable companies by means of published industry guides that include key business ratios. Comparable companies shall mean companies similar in terms of size, history of operations, industry and products, and other relevant factors. Key business ratios include but are not limited to liquidity ratios, activity ratios, leverage ratios, profitability ratios, and common stock ratios.
2. The offering price of equity securities of promotional or development stage corporations shall be reasonably related to the price paid for the stock by promoters or controlling persons of the issuer except as permitted by subparagraph (4)(f) of this ~~Rule~~ regarding promotional shares. Facts and circumstances to be considered shall include, but are not limited to, the following: the price paid for the equity securities by promoters or controlling persons of the issuer in transactions effected within three (3) years prior to the public offering; the book value of the equity security; the market value of the corporation's assets; and the sophistication of the proposed purchasers.

(e) Selling Commissions and Expenses.

1. The aggregate amount of underwriters' and sellers' discounts, commissions, and other compensation shall be reasonable. Such compensation is presumed reasonable if the total of all underwriters' or sellers' compensation and other expenses in connection with the offering does not exceed fifteen percent (15%) of the gross proceeds of the offering, except that in the case of securities which qualify for registration on Forms S-B1 or S-B2 under the ~~Securities Act of 1933~~ Act or which qualify for exemption pursuant to Regulation A under the ~~Securities Act of 1933~~ Act, the total underwriters' and sellers' compensation and all other expenses will be presumed reasonable if not in excess of twenty percent (20%) of the gross proceeds of the offering. See also subpart (4)(c)1.(vii) of this ~~Rule~~.
2. Compensation to be received by underwriters or sellers shall include, but is not limited to, the following:
 - (i) Underwriter's discounts, commissions, or concessions;
 - (ii) Non-accountable expense allowances;

- (iii) Expenses incurred by an underwriter or related person payable by the issuer or from the proceeds of the offering to or on behalf of an underwriter or related person;
 - (iv) Finder's fees known to be payable at the commencement of the offering;
 - (v) Wholesaler's fees;
 - (vi) Financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value which are connected with or related to the offering unless an ongoing financial consulting or advisory relationship between the proposed issuer or affiliate and the proposed underwriter or related person has been established at least twelve (12) months prior to the filing of the registration statement;
 - (vii) Stock, options, warrants, and other securities, the options and warrants to be valued in accordance with subpart (4)(c)1.(vii) ~~above of this Rule~~;
 - (viii) Special sales incentive items;
 - (ix) A right provided to an underwriter or related person to require the issuer upon demand to register securities on behalf of the underwriter or person in the future at the expense of the issuer, which shall be valued at one percent (1%) of the gross proceeds of the offering, unless the demand is for only one (1) such registration in which event the right to demand registration shall be valued at one-half of one percent (.5%) of the gross proceeds of the offering; provided, however, that a right to "piggyback" on a non-demand registration shall be valued at one-quarter of one percent (.25%) of the gross proceeds of the offering unless the underwriter agrees to pay its pro rata share of offering expenses incurred as a result of such securities being included in the offering;
 - (x) Commissions, expense reimbursements, or other compensation to be received by an underwriter or related person as a result of the exercise of the conversion within twelve (12) months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering; and
 - (xi) If promotional shares are issued to an underwriter, the difference between the consideration paid and the public offering price shall be considered compensation to the underwriters.
3. All underwriter compensation set forth in part (4)(e)2-~~above~~ of this Rule, when added to all other marketing expenses, such as printing costs, registration fees, filing fees, issuer's attorneys and accounting fees, fees and expenses of underwriters' counsel, accountable expense allowances paid to underwriters, and miscellaneous marketing expenses, shall not exceed the limit imposed in part (4)(e)1. ~~of this Rule-~~ above.
 4. If the securities are sold under a deferred or installment plan, the underwriters' or sellers' commissions payable in cash shall be payable pro rata over the life of the plan.
 5. In the case of the sale to the public of outstanding securities held by existing security holders to be sold alone or in conjunction with the sale of securities by

the issuer, the selling security holders shall pay, as the case may be, all of their equitable portion of the selling commissions and expenses.

(f) Promotional Shares.

1. Maximum Amount of Promotional Shares. If the maximum amount of promotional shares exceeds thirty-three percent (33%) of the outstanding shares of stock of the issuer after the completion of the offering, the promotional shares will be subject to part (4)(f)3. of this Rule.~~below.~~
2. Mergers, Recapitalizations, Reorganizations, and Stock Splits.
 - (i) If the maximum amount of dilution to public investors exceeds seventy-five percent (75%) of the public offering price after the completion of the offering, the promotional shares will be subject to part (4)(f)3. of this Rule below; and
 - (ii) Even if the amount of dilution to public investors does not exceed seventy-five percent (75%) of the public offering price after the completion of the offering, all shares owned by officers, directors, and parties owning five percent (5%) or more of the outstanding shares of the corporation before the public offering that cause dilution in excess of forty percent (40%) of the public offering price after the completion of the offering shall be subject to escrow pursuant to part (4)(f)3. of this Rule.
3. Escrow of Promotional Shares. The ~~A~~assistant ~~C~~ommissioner may require as a condition of registration that all or part of any promotional shares be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors.
4. Release Provisions.
 - (i) Promotional shares which are to be escrowed shall remain in escrow until the sixth anniversary of the effective date of the registration. On the sixth, seventh, eighth, and ninth anniversary dates, twenty-five percent (25%) of each promoter's shares shall be released ~~from~~ escrow. Shares may also be released from escrow upon the achievement by the issuer of any of the following tests during the escrow period:
 - (I) After two (2) consecutive fiscal years ~~from~~ the date of effectiveness, during which the issuer has minimum average annual earnings per share equal to six percent (6%) of the public offering price.
 - (II) After five (5) fiscal years from the date of effectiveness, the average earnings per share are equal to five percent (5%) or more of the public offering price.
 - (III) After one (1) year, for a term of at least ninety (90) consecutive trading days following such one (1) -year period, and for the thirty (30) trading days prior to the requested termination date of the escrow, the shares of the issuer are trading in a reliable public market at a price at least one-hundred seventy-five percent (175%) of the initial public offering price.

- (ii) A request for termination of an escrow based on satisfaction of either of the tests set forth in items ~~s (4)(f)4.(i)-(l) and (II)~~ above of this Rule shall be accompanied by an earnings per share calculation audited and reported on by an independent certified public accountant.

5. Terms of Escrow.

- (i) The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings without the consent of the ~~A~~assistant ~~C~~commissioner, but in all such cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate; otherwise, the escrowed shares may not be pledged to secure a debt. The securities in escrow may be transferred by gift to family members, provided that the shares remain subject to the terms of the escrow agreement.
- (ii) The shares required to be held in escrow as a condition to registration of a public offering shall not have any right, title, interest, or participation in the assets of the issuer in the event of dissolution, liquidation, merger, consolidation, reorganization, sales of assets, exchange, or any other transaction or proceeding which contemplates or results in the distribution of the assets of the issuer, until the holders of all shares not escrowed have received, or had irrevocably set aside for them, an amount equal to the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the holders of the escrowed shares shall be entitled to receive an amount per share equal to the amount received by or set aside for the holders of the non-escrowed shares, on a per share basis, plus any dividends and interest set aside for the escrowed shares, to the extent any such cash dividends plus interest are not necessary to meet the issuer's obligation of payment to holders of shares not escrowed, and thereafter all shares shall participate on a pro rata basis. However, a merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.
- (iii) Shares held in escrow shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets available for distribution as provided under subpart (4)(f)5.(ii) of this Rule. The escrow agent shall place any cash dividends in an interest bearing account. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from escrow. All certificates representing stock dividends and shares resulting from stock splits of escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.
- (iv) A summary of the terms of the escrow shall be included in the prospectus and, during the term of the escrow agreement and until the release of all shares from escrow, in subsequent prospectuses, annual reports to shareholders, proxy statements, or other disclosure materials used by shareholders or investors in making decisions with respect to the issuer.

- (v) The escrow agent must be satisfactory to the ~~A~~assistant ~~C~~ommissioner and may not be affiliated with any promoter of the ~~corporation~~ issuer. The ~~corporation~~ issuer shall not bear any of the fees or expenses associated with the escrow.
- (g) Promoters' Investment. The offering of an issuer that is a promotional or development stage corporation shall be presumed unfair unless the equity investment of the promoters equals at least ten percent (10%) of the tangible net worth of the issuer adjusted for the proposed offering.
- (h) Alternative Guidelines for Promotional Shares and Promoters' Investment:
1. In lieu of the guidelines set forth above in part (4)(d)2. and subparagraphs ~~(d)(2)-, (f) and (g); (4)(f-g) of this Rule.~~ an issuer may comply with the standards of this subparagraph (4)(h).
 2. An offering of equity securities of a promotional or a development stage corporation may be deemed to be unfair if the ratio of equity capital to equity ownership of the public investors buying pursuant to the proposed offering on a per share basis is more than ten (10) times the ratio of the equity capital to equity ownership of promoters, on a per share basis. For purposes of this ~~sub~~part:
 - (i) With respect to public investors, "equity capital" shall mean the tangible consideration paid by the public investors.
 - (ii) With respect to promoters, "equity capital" shall mean the greater of the tangible consideration contributed to the equity of the issuer on a fully diluted basis, or the net worth of the issuer demonstrated by the most recent audited balance sheet furnished by the issuer in the registration statement and all interim unaudited balance sheets.
 - (iii) With respect to promoters, "equity ownership" shall mean the total number of shares owned on a fully diluted basis.
 - (iv) With respect to public investors, "equity ownership" shall mean the total number of shares to be offered to the public.

EXAMPLE: Calculation of the Ratio of Equity Capital to Equity Ownership on a Per Share Basis.
 (The example assumes that there are no outstanding options, warrants, or convertible securities.)

	<i>Total # of Shares</i>	<i>Issuer's Net Worth</i>	<i>Proposed Price Per Share</i>	<i>Total Tangible Consideration</i>
Promoters'	880,000	\$500,000		\$300,000
Public Investors'	200,000		\$10.00	\$2,000,000

Totals	1,080,000	\$500,000	<u>\$2,300,000</u>
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Public Investor's
Equity Capital

-----	= \$2,000,000	
Equity Ownership	<u>200,000</u>	== \$10.00

Promoters'
Equity Capital

-----	= \$300,000	
Equity Ownership	<u>880,000</u>	== .34090; .34 x 10 = \$3.40

Promoters'
Net Worth

-----	= \$500,000	
Equity Ownership	<u>880,000</u>	== .56818; .57 x 10 = \$5.70

CONCLUSION : THE ALTERNATIVE TEST IS NOT MET.
\$10.00 > \$3.40 OR 5.70

(i) Voting Rights

1. Unless either preferential treatment as to dividends and liquidation is provided with respect to the publicly offered securities or a public market exists for the securities, the offering of equity securities of an issuer having more than one class of equity securities outstanding will be deemed unfair to public investors if the class of equity securities offered to the public has no voting rights or less than equal voting rights in proportion to the number of shares of each class outstanding in all matters, including the election of members to the board of directors of the issuers.
2. If at the time of a proposed offering the issuer has authorized preferred stock issued or issuable with rights, preferences, or privileges to be determined by the issuer's board of directors without further action by stockholders, the offering document shall include a disclosure to the effect that a subsequent determination by the board of directors with respect to the rights, preferences, or privileges of the preferred stock may adversely affect the rights of common stockholders.

(j) Preferred Stock and Debt Securities

1. The net earnings of the issuer for its last fiscal year prior to the offering or for the average of its last three (3) fiscal years prior to the offering must be sufficient to cover adequately the dividends and redemption requirements, if any, on the preferred stock proposed to be offered. Net earnings shall be determined exclusive of non-recurring items and shall be adjusted for any debt securities or preferred stock to be redeemed with the proceeds of the offering, less applicable income tax effects.

2. The net earnings of the issuer for its last fiscal year prior to the offering, or for the average of its last three (3) fiscal years prior to the offering, must be sufficient to cover adequately its debt service requirements on all debt securities issued subsequent to its last fiscal year (including all securities proposed to be offered). Net earnings shall be determined before taxes, depreciation, and extraordinary items and shall be adjusted for any debt securities to be redeemed with the proceeds of the offering and for applicable tax effects.
3. Upon completion of the offering, the total amount of debt of the issuer must be reasonable in proportion to the amount of equity of the issuer. Reasonableness is to be determined in relation ~~of~~ to the prevailing debt-equity ratios for comparable companies in the issuer's se' industry.
4. If the issuer has made or proposes to make any material acquisitions subsequent to the last year specified in parts (4)(i)1.-3. of this Rule, the earnings for each year shall be restated on a pro-forma basis to reflect such acquisition.
5. The sale of preferred stock or debt securities by promotional or development stage corporations is presumed not to meet the standard in paragraph (1) of this ~~R~~Rule unless a variance is granted pursuant to paragraph (3) of this ~~R~~Rule.
6. The issuer may not bind itself to purchase debt securities or preferred stock at the request of the holder prior to maturity except pursuant to sinking fund provisions or pursuant to some other reasonable method fully disclosed in the prospectus.

(k) Loans to Company Officials

1. The sale of securities by an issuer may be deemed unfair if the issuer or its affiliates have made, or may make, loans or forbearances to company officers, directors, or controlling persons, other than as described below:
 - (i) Advances for travel, business expense, relocation, and similar ordinary operating expenditures.
 - (ii) Any other loans or forbearances for specific purposes directly related to the ordinary course of the issuer's business, or for bona fide personal emergencies, provided the loans or forbearances are approved by a majority of disinterested members of the issuer's board of directors.
 - (iii) Any other loans or forbearances approved by a majority of disinterested shareholders (excluding all company officials and controlling persons) pursuant to a proxy solicitation conforming to the ~~Securities and Exchange Commission's~~ proxy rules set by the SEC.
 - (iv) An issuer or affiliate whose primary business is that of making loans may make loans to the officers, directors, or controlling persons of the issuer or affiliate provided that the loans:
 - (I) Will be evidenced by a promissory note naming the lender as payee, and contain an annual percentage rate which is reasonably comparable to that normally charged to non-affiliates by other commercial lenders for similar loans made in the lender's locale;
 - (II) Will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by

other commercial lenders for similar loans made to non-affiliates in the lender's locale.

- (III) Will be made only if credit reports and financial statements, or other reasonable investigation appropriate in the light of the nature and terms of the loan and which meet the loan policies normally used by other commercial lenders for similar loans made to non-affiliates in the lender's locale show the loan to be collectible and the borrower a satisfactory credit risk; and
- (IV) The purpose of the loan and the disbursement of proceeds are reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale.

2. All loans except those described in part (4)(k)1. above of this Rule shall be repaid in full prior to the offering. The Division may waive this requirement if:

- (i) The issuer is a going concern and repayment of such loan will be made pursuant to appropriate amortization schedules; or
- (ii) Any portion of the offering is, by, or on behalf of any company official to whom a loan or forbearance has been made, and such person undertakes to effect repayment from the proceeds of the offering and repayment to the extent of such proceeds will be made immediately upon completion of the offering.

3. If the issuer or its affiliates has or will make loans or forbearances to officers, directors, or controlling persons, the prospectus or offering circular shall disclose the terms and details of the loans or forbearances.

(l) Impoundment of Proceeds. The Division may require that as a condition to registration that all proceeds of sales of securities be impounded in escrow until such time that a sufficient amount has been realized to accomplish the purpose of the offering.

(m) Future Self-Dealing Transactions. The prospectus shall contain a statement to the effect that all future transactions with affiliates of the issuer are to be on terms no less favorable than could be obtained from an unaffiliated third party and must be approved by a majority of the directors including the majority of disinterested directors.

(n) Standards for Specific Issuers.

1. Applicability.

(i) The Statements of Policy referred to in this subparagraph (4)(n) apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms. Deviations from these guidelines may be permitted by the Division where good cause is shown in accordance with paragraph (3) of this Rule.

(ii) The Division may grant effectiveness to any offering that is subject to review under guidelines below on a basis other than that permitted in such guidelines where the offering requires each investor in this state (including transferees) to have a minimum net worth of a least two hundred fifty thousand dollars (\$250,000) exclusive of home, home furnishings, and automobiles and to have had during the last tax year, and be expected to

have during the current tax year a gross income of at least sixty-five thousand dollars (\$65,000) or, in the alternative, a minimum net worth of at least five hundred thousand dollars (\$500,000) exclusive of home, home furnishings, and automobiles. In the case of such offerings, the Division may require a statement signed by each investor in this state acknowledging how the offering varies from the standards set forth in the guidelines below.

- (iii) The term "Administrator" as used in these guidelines shall mean the Assistant Commissioner.
- (iv) Copies of these guidelines may be obtained from the Division upon request and payment in advance of a reasonable charge for copying.

2. Cattle-Feeding Programs

The ~~s~~Statement of ~~p~~Policy on Registration of Publicly Offered Cattle-Feeding Programs adopted by NASAA, as reported at CCH NASAA Reports ¶11001 ~~¶11001 of CCH NASAA Reports~~, as it may be amended from time to time, is incorporated herein by reference.

3. Church Bonds

The Statement of Policy on Church Bonds adopted by NASAA, as reported at ~~¶1001 of~~ CCH NASAA Reports ¶11001, as it may be amended from time to time, is incorporated herein by reference.

4. Commodity Pool Programs

The Statement of Policy on Registration of Commodity Pool Programs adopted by NASAA, as reported at ~~¶1201 of~~ CCH NASAA Reports ¶11201, as it may be amended from time to time, is incorporated herein by reference.

5. Equipment Programs

The Statement of Policy on Registration of Equipment Programs adopted by NASAA, as reported at ~~¶1601 of~~ CCH NASAA Reports ¶11601, as it may be amended from time to time, is incorporated herein by reference.

6. Finance Company Debt Securities

The Statement of Policy on Finance Company Debt Securities adopted by the Central Securities Administrators Council, as reported at ~~¶5431 of~~ CCH Blue Sky Law Reporters ¶15431, as it may be amended from time to time, is incorporated herein by reference.

7. Health Care Facility Offerings

The Statement of Policy on Health Care Facility Offerings adopted by NASAA, as reported at ~~¶2001 of~~ CCH NASAA Reports ¶12001, as it may be amended from time to time, is incorporated herein by reference.

8. Oil and Gas Programs

The Statement of Policy on Registration of Oil and Gas Programs adopted by NASAA, as reported at ~~paragraph 2601 of~~ CCH NASAA Reports ¶2621, as it may be amended from time to time, is incorporated herein by reference.

9. Real Estate Investment Trusts.

The Statement of Policy on Real Estate Investment Trusts adopted by NASAA, as reported at ~~paragraph 3401 of~~ CCH NASAA Reports ¶3401, as it may be amended from time to time, is incorporated herein by reference.

10. Real Estate Programs.

The Statement of Policy on Real Estate Programs adopted by NASAA, as reported at ~~paragraph 3601 of~~ CCH NASAA Reports ¶3601, as it may be amended from time to time, is incorporated herein by reference.

11. Miscellaneous Direct Participation Programs.

In order to provide consistency in its review, the Division will use, to the extent appropriate, the NASAA Statement of Policy on Real Estate Programs, and particularly Sections II, III, and V through IX, as a reference in determining whether types of direct participation programs other than those specifically referenced in parts (4)(n)1. through 10. ~~above of this Rule~~ meet the standard set forth in subparagraph (1) of this ~~R~~Rule.

12. Religious Denominations.

The Guidelines for General Obligation Financing by Religious Denominations adopted by NASAA, as reported at ~~paragraph 1951 of~~ CCH NASAA Reports ¶¶1951-1957, as it may be amended from time to time, is incorporated herein by reference.

(5) Coordinated Review - Equity.

(a) An offering of equity securities which is submitted pursuant to a coordinated review process agreed to by the Division and other states, will be deemed to meet the standard of paragraph (1) of this ~~R~~Rule if it meets all of the terms and conditions of such coordinated review process, as well as meets the following guidelines:

1. The Statement of Policy ~~on~~ Regarding Corporate Securities Definitions adopted by NASAA, as reported at ~~paragraph 3811 of~~ CCH NASAA Reports ¶3811 et seq., as it may be amended from time to time, is incorporated herein by reference.

2. The Statement of Policy ~~on~~ Regarding the Impoundment of Proceeds adopted by NASAA, as reported at ~~paragraph 2151 of~~ CCH NASAA Reports ¶2151, as it may be amended from time to time, is incorporated herein by reference.

3. The Statement of Policy ~~on~~ Regarding Loans and Other Affiliated Transactions adopted by NASAA, as reported at ~~paragraph 371 of~~ CCH NASAA Reports ¶371, as it may be amended from time to time, is incorporated herein by reference.

4. The Statement of Policy ~~on~~ Regarding Options and Warrants adopted by NASAA, as reported at ~~paragraph 2801 of~~ CCH NASAA Reports ¶2801, as it may be amended from time to time, is incorporated herein by reference.

5. The Statement of Policy ~~on-Regarding~~ Preferred Stock adopted by NASAA, as reported at ~~paragraph 3001 of~~ CCH NASAA Reports ¶3001, as it may be amended from time to time, is incorporated herein by reference.
6. The Statement of Policy ~~on-Regarding~~ Promoters Equity Investment adopted by NASAA, as reported at ~~paragraph 3101 of~~ CCH NASAA Reports ¶3101, as it may be amended from time to time, is incorporated herein by reference.
7. The Statement of Policy ~~on-Regarding~~ Promotional Shares adopted by NASAA, as reported at ~~paragraph 3201 of~~ CCH NASAA Reports ¶3201, as it may be amended from time to time, is incorporated herein by reference.
8. The Statement of Policy ~~on-Regarding~~ Specificity in Use of Proceeds adopted by NASAA, as reported at ~~paragraph 3831 of~~ CCH NASAA Reports ¶¶3831-3837, as it may be amended from time to time, is incorporated herein by reference.
9. The Statement of Policy ~~on-Regarding~~ Underwriting Expenses and Underwriter's Warrants, Selling Expenses, and Selling Security Holders adopted by NASAA, as reported at ~~paragraph 3671 of~~ CCH NASAA Reports ¶¶3813-3820, as it may be amended from time to time, is incorporated herein by reference.
10. The Statement of Policy ~~on-Regarding~~ Unsound Financial Condition adopted by NASAA, as reported ~~at paragraph 3821 of~~ CCH NASAA Reports ¶¶3821-3827, as it may be amended from time to time, is incorporated herein by reference.
11. The Statement of Policy ~~on-Regarding Unequal~~ Voting Rights adopted by NASAA, as reported at ~~paragraph 2401 of~~ CCH NASAA Reports ¶2401, as it may be amended from time to time, is incorporated herein by reference.
12. The Statements of Policy referenced in subparagraph (4)(n) of this ~~R~~Rule will apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms.

- (b) Copies of these guidelines and terms and conditions of the coordinated review process may be obtained from the Division upon request and payment in advance of a reasonable charge for copying.

Authority: T.C.A. §§48-1-105, 48-1-106, 48-1-107, 48-1-115, and 48-1-116(a), §2(a)(48) of the Investment Company Act of 1940, §301 of the Small Business Investment Act of 1958, Employee Retirement Income Security Act of 1974, Title I, and §202(a)(22) of the Investment Advisers Act of 1940.

0780-04-02-.07 NON-PROFIT EXEMPTION.

- (1) All- persons offering securities claimed to be exempt under T.C.A. §48-1-103(a)(7) shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:
 - (a) A statement of the basis for the issuer's qualification for the exemption under T.C.A. §48-1-103(a)(7);
 - (b) An undertaking to notify the ~~C~~ommissioner immediately upon the receipt of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, or similar order entered by or issued by any regulatory authority or by any court, concerning the securities covered by the notice or other securities of the issuer currently being offered to the public; and

- (c) A statement of whether or not the issuer has ever been the subject of any order described in subparagraph (1)(b) ~~above of this Rule~~.
- (2) The issuer shall furnish at a minimum the following information to offerees:
- (a) 1. If the issuer is selling Church Bonds, a disclosure document prepared in accordance with the Statement of Policy ~~on~~ Regarding Church Bonds adopted by NASAA, as reported at CCH NASAA Reports ¶1001, as it may be amended from time to time ~~and as reported at paragraph 1001 of the CCH NASAA Reports~~. For purposes of this ~~¶~~Rule, the term "Church Bonds" shall mean certificates in the form of notes, bonds, or similar instruments issued by a congregation or church that represents an obligation to repay a specific principal amount at a stated rate of interest.
2. If the issuer is selling General Obligation Financing Notes by Religious Denominations, a disclosure document prepared in accordance with the Guidelines for General Obligations Financing by Religious Denominations adopted by NASAA, as reported at CCH NASAA Reports ¶¶1951-1957, as may it be amended from time to time ~~and as reported at paragraph 1951 of the CCH NASAA Reports~~. For purposes of this ~~¶~~Rule, the term "General Obligation Financing" shall mean notes, certificates, or similar debt instruments issued by religious denominations that represent an obligation to repay a specific principal amount at a stated rate of interest.
- (b) If the issuer is selling Health Care Facility Bonds, a disclosure document prepared in accordance with the Statement of Policy on Health Care Facility Offerings adopted by NASAA, as reported at CCH NASAA Reports ¶2001, as it may be amended from time to time ~~and as reported at paragraph 2001 of the CCH NASAA Reports~~. For purposes of this ~~¶~~Rule, the term "Health Care Facility Bonds" shall mean certificates in the form of notes, bonds, or similar instruments issued by a non-profit health care facility that represent an obligation to repay a specific principal amount at a stated rate of interest.
- (c) If the issuer is other than as described in subparagraphs (1)(a-b) ~~and (b) above of this Rule~~, the disclosure document must contain:
1. Financial statements of the issuer prepared in accordance with generally accepted accounting principles including, but not limited to, the following:
- (i) A balance sheet as of the end of the most recent fiscal year of the issuer; and
- (ii) A statement of income for each of the issuer's three (3) most recent fiscal years.
2. A statement from the issuer setting forth the issuer's plan for paying the principal and interest due on the securities to be sold, including, but not limited to, anticipated sources of revenue to be used in paying such principal and interest, and supporting financial information; and
3. A statement as to whether or not the issuer or any affiliate or predecessor has had any material default during the past ten (10) years in the payment of:
- (i) ~~¶~~Pincipal, interest, dividends, or sinking fund installments on any security or indebtedness for borrowed money; or
- (ii) ~~¶~~Rentals under material leases with terms of three (3) years or more.

- (d) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters and, if printed, in boldface roman type at least as high as ten (10) point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

Authority: T.C.A. §§ 48-1-103(a)(7), 48-1-115, and 48-1-116(a).

0780-04-02-.08 UNIFORM LIMITED OFFERING EXEMPTION.

(1) Preliminary Notes.

- (a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.
- (b) In view of the objective of this ~~f~~Rule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this ~~f~~Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly ~~f~~ stated in this ~~f~~Rule.
- (c) Nothing in this ~~f~~Rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of the law otherwise applicable to such registered persons.

- (2) Exemptions. By the authority delegated to the ~~C~~ommissioner in T.C.A. §§48-1-103-(b)(11) and 48-1-116, the following transactions are determined to be exempt from T.C.A. §§48-1-104 and 48-1-113.

Any sale of securities offered and sold in compliance with the ~~Securities Act of 1933 Act~~, Regulation D~~f~~, SEC Rule 505 (17 C.F.R. §230.505), including any offer or sale made exempt by application of SEC Rule 508-(a), ~~(17 C.F.R. §Sections 230.505 and 230.508-(a))~~, as made effective in SEC Release No. 33-6389 and as amended in subsequent SEC releases, which satisfies the following further conditions and limitations:

(a) Commissions.

1. No commission, fee, or other remuneration shall be paid or given directly or indirectly to any person for soliciting any prospective purchaser in this state unless such person ~~is appropriately registered in this state~~ has fully complied

with the registration requirements set forth in the Act and in these Rules, and has satisfied all outstanding comments of the Division.

2. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not ~~appropriately~~ registered in this state compliance with the registration requirements set forth in the Act and in these Rules.
- (b) Disqualification. No exemption under this ~~R~~Rule shall be available for the securities of any issuer if any of the parties described in ~~Securities Act of the~~ 1933 ~~Act,~~ Regulation A, ~~SEC Rule 252 (c), (d), (e) or (f); (17 C.F.R. §Section 230.252 (c)(d)(e) and (f)).~~
1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the notice required under this exemption.
 2. Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
 3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five (5) years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the notice required under this exemption.
 4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 5. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the notice required under this exemption.
 6. The prohibitions of parts ~~(2)(b)1.-3. through and 3. and (2)(b) 5. above of this Rule~~ shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered.
 7. Any disqualification caused by this subparagraph is automatically waived if the state securities administrator or agency of the state which created the basis for

disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

8. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subparagraph existed.

(c) Filing Requirement. The issuer shall file with the Division a notice on Form D (17 C.F.R. ~~§Section~~-239.500):

1. No later than fifteen (15) days after the earlier of the first payment of consideration or the delivery of a signed subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption, and at such other times and in the form required under Regulation D, SEC Rule 503, (17 C.F.R. ~~§Section~~-230.503), to be filed with the SEC ~~Securities and Exchange Commission~~. The Form D shall contain all information requested on the ~~f~~Form.
2. The notice on Form D shall be accompanied by:
 - (i) ~~e~~One (1) copy of all written information furnished to offerees;
 - (ii) ~~a~~A Form U-2 Uniform Consent to Service of Process;
 - (iii) ~~i~~f the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;
 - (iv) ~~a~~A non-refundable filing fee in the amount of five hundred dollars (\$300500); and
 - (v) ~~a~~A statement noting the date of the first sale, if any of such security, in this state.
3. The issuer shall promptly furnish any additional information requested by the Division.
4. Any initial notice on or amendment to the Form D shall be manually signed by a person authorized by the issuer.

(d) Amendments. Any filing pursuant to this exemption shall be amended by filing with the Division such information and changes as may ~~be~~ necessary to correct any material misstatement or omission in the filing. Any written offering material required by this ~~f~~Rule that was not prepared at the time of the initial filing, or which materially differs from the written offering material included in the filing shall be delivered or mailed to the Division concurrently with its first use in this state. There shall be no fees charged for amendment to filings pursuant to this ~~f~~Rule.

(e) Suitability. In all sales to nonaccredited investors in this state the following conditions must be satisfied, or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied.

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be

presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable; and

2. The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.
- (f) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters, and if printed, in boldface roman type at least as high as ten (10)-point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD. EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

- (3) A failure to comply with a term, condition, or requirement of subparagraphs (2)(a), (2)(c), and (2)(e) of this Rule will not result in the loss of the exemption from the requirements of T.C.A. §§48-1-104 and 48-1-113 for any sale to a particular purchaser if the person relying on the exemption shows:
 - (a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular purchaser;
 - (b) The failure to comply was insignificant with respect to the offering as a whole; and
 - (c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraphs (2)(a), (2)(c), and (2)(e) of this Rule.
- (4) Where an exemption is established only through reliance on paragraph (3) of this Rule, the failure to comply shall nonetheless be actionable by the Commissioner.
- (5) Transactions which are exempt under this Rule may not be combined with transactions exempt under any other Rule or any section of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.
- (6) The Commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.
- (7) The exemption authorized by this Rule shall be known and may be cited as the "Tennessee Uniform Limited Offering Exemption."

Authority: T.C.A. §§ 48-1-103(b)(11), 48-1-104, 48-1-113, 48-1-115, ~~48-1-116(a)~~, and 48-1-124(e), Public Acts of 1997, Chapter 164, ~~Section §1~~; §18 of the ~~Federal~~ Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, 17 C.F.R. §230.252, 17 C.F.R. §230.500, 17 C.F.R. §230.503, 17 C.F.R. §230.505, and 17 C.F.R. §230.508.

0780-04-02-.09 SUCCESSOR CORPORATE ISSUERS.

- (1) If an issuer is a corporate successor to a corporate issuer that met the standards of T.C.A. §48-1-103(a)(8), at the time of succession, the successor corporate issuer shall be deemed to have met the standards of T.C.A. §48-1-103(a)(8), if the predecessor and successor corporations taken together do so, provided that:
 - (a) The succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company;
 - (b) The assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; and
 - (c) The net income of the predecessor may, in accordance with generally accepted accounting principles, be consolidated with the income of the successor corporation.

Authority: T.C.A. §§ 48-1-103(a)(8), 48-1-115, and ~~48-1-116(a)~~.

0780-04-02-.10 NASDAQ/NMS EXEMPTION.

- (1) Exemption. By the authority delegated to the ~~C~~ommissioner in T.C.A. §§48-1-103(b)(11) and 48-1-116, the following transactions are determined to be exempt from T.C.A. §§48-1-104 and 48-1-113:

Any sale of securities that are designated or approved for designation upon notice of issuance on the NASDAQ/NMS, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

- (2) The ~~C~~ommissioner:
 - (a) Shall have the authority by rule or order to deny, suspend, or revoke the exemption created by this ~~R~~ule as to a specific issuer or category of securities; and
 - (b) May rescind this ~~R~~ule based on a finding that;
 1. The requirements of the NASDAQ/NMS have materially changed from those set forth in paragraph (3) of this Rule below and no longer afford equivalent investor protection; or
 2. The requirements of the NASDAQ/NMS as set forth in paragraph (3) of this Rule below are not applied or enforced sufficiently to afford protection to investors.
- (3) (a) 1. The ~~NASD-FINRA~~ shall require at least the following minimum standards to be met for the designation of an issuer's securities on the quotation system:

Alt. No. 1

Alt. No. 2

Net Tangible Assets	\$4,000,000	\$12,000,000
Public Float	<u>500,000</u>	<u>1,000,000</u>
Pre-Tax Income	<u>750,000</u>	<u>-----</u>
Net Income	<u>400,000</u>	<u>-----</u>
Shareholders	<u>800/400</u>	<u>800/400</u>

(The minimum number of shareholders under each alternative is eight hundred (800) for companies with five hundred thousand (500,000) to one million (1,000,000) shares publicly held, and four hundred (400) for companies with over one million (1,000,000) shares publicly held and with daily trading volume in excess of two thousand (2,000) shares per day for six (6) months.)

Market Value of Float	3,000,000	15,000,000
Minimum Bid	\$5/share	<u>-----</u>
Operating History	<u>-----</u>	3 years

2. The rules of the ~~NASD~~-FINRA shall require at least two (2) authorized market makers for each issuer.
 3. For purposes of this subparagraph (3)(a), the term "net tangible assets" is meant to include the value of patents, copyrights, and trademarks but to exclude the value of good-will.
- (b) The ~~NASD~~-FINRA shall require at least the following minimum corporate governance standards for its domestic issuers;
1. Distribution of Annual and Interim Reports.
 - (i) Each issuer shall distribute to shareholders copies of an annual report containing financial statements of the company and its subsidiaries. The report shall be distributed to shareholders in a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the ~~NASD~~-FINRA at the time it is distributed to shareholders.
 - (ii) Each issuer which is subject to SEC Rule 13a-13 (17 C.F.R. §240.13a-13) shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing of its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the ~~NASD~~FINRA. The statement of operations contained in quarterly reports shall disclose at a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.
 - (iii) Each issuer which is not subject to SEC Rule 13a-13 (17 C.F.R. §240.13a-13) and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in such interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the ~~NASD~~FINRA.

2. Independent Directors. Each issuer shall maintain a minimum of two (2) independent directors on its board of directors. For purposes of this ~~section~~ subparagraph (3)(b), "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.
3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.
4. Shareholder meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the ~~NASD~~ FINRA.
5. Quorum. Each issuer shall provide for a quorum as specified in its bylaws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less ~~that than~~ thirty-three and one-third percent (33 1/3%) of the outstanding shares of the issuer's common voting stock.
6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the ~~NASD~~ FINRA.
7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.
8. Shareholders' Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:
 - (i) Options plans or other special remuneration plans for directors, officers, or key employees.
 - (ii) Actions resulting in a change in control of the issuer.
 - (iii) The acquisition, direct or indirect, of a business, a company, tangible or intangible assets, or property or securities representing any such interests:
 - (I) From a director, officer, or substantial security holder of the issuer (including its subsidiaries and affiliates), or from any company or party in which one of such persons has a direct or indirect interest; and
 - (II) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of twenty-five percent (25%) or more.

(c) Voting Rights

1. The ~~NASD~~ FINRA rules shall provide that no rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/NMS ("authorization") or the continuance of the authorization, of any common stock or other equity security of a domestic issuer if, on or after September 1, 1988, the issuer issues any class of security or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share

voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the 1934 Act.

2. For purposes of ~~subpart (3)(c)(1.)~~ of this ~~Rule~~~~subparagraph (e)~~, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:
 - (i) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial owner or record holder;
 - (ii) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuers held by a beneficial owner or record holder based on the length of time such shares have been held by such beneficial owner or record holder;
 - (iii) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer; or
 - (iv) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For purposes of part ~~(3)(c)1.~~ of this ~~Rule~~~~subparagraph (e)~~, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:
 - (i) The issuance of securities pursuant to an initial registered public offering;
 - (ii) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of common stock of the issuer;
 - (iii) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer; or
 - (iv) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. For the purposes of this subparagraph ~~(3)(c)~~, the terms below shall have the following meanings and the rules of the ~~NASD-FINRA~~ shall include such definitions for purposes of the prohibition in part ~~(3)(c)1.~~ of ~~this Rule~~~~subparagraph (e)~~:
 - (i) "Common Stock" shall include any security of an issuer ~~designed~~ designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is common stock (e.g., a

security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

- (ii) "Equity security" shall include any equity security defined as such pursuant to SEC Rule 3a11-1 ~~under the 1934 Act~~ (17 C.F.R. §240.3a11-1).
- (iii) "Domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in SEC Rule 3b-4 ~~under the 1934 Act~~ (17 C.F.R. §240.3b-4).
- (iv) "Security" shall include any security defined as such pursuant to Section 3(a)(10) of the 1934 Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption, or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligation to the holders of that class of securities.

(d) Maintenance Criteria. After authorization for designation of a security on the NASDAQ/NMS, the issuer of such security must meet the following criteria in order for such designation to continue in effect:

1. The issuer of the security has net tangible assets of at least:
 - (i) Two million dollars (\$2,000,000) if the issuer sustained losses from continuing operations and/or net losses in two (2) of its three (3) most recent fiscal years; or
 - (ii) Four million dollars (\$4,000,000) if the issuer has sustained losses from continuing operations and/or net losses in three (3) of its four (4) most recent fiscal years.
2. There are at least two hundred thousand (200,000) publicly held shares;
3. There are at least four hundred (400) shareholders or at least three hundred (300) shareholders of round lots; and
4. The aggregate market value of publicly held shares is at least one million dollars (\$1,000,000).

Authority: T.C.A. §§ ~~48-1-103(b)(11), 48-1-104, 48-1-113, 48-1-115, and 48-1-116(a)~~, §3(a)(10) and §12 of the Securities Exchange Act of 1934, 17 C.F.R. §240.3a11-1, 17 C.F.R. §240.3b-4, and 17 C.F.R. §240.13a-13.

0780-04-02-.11 RESERVED.

0780-04-02-.12 NOTICE FILINGS FOR COVERED SECURITIES.

- (1) Initial notice filings for covered securities.
 - (a) An initial notice filing for a covered security of an issuer to be sold in this state shall contain:

1. ~~a~~A copy of the issuer's prospectus and statement of additional information; however, if the person making the notice filing provides an accurate filing number from the Electronic Data Gathering Access and Retrieval (EDGAR) system or other electronic data gathering access and retrieval system maintained by the SEC, or other identifying designation issued by the SEC, paper copies of the issuer's prospectus and additional information are not required to be filed with the Division;
 2. ~~a~~A completed and properly executed Form U-2, as provided under T.C.A. §48-1-124(e);
 3. ~~e~~Either (i) a completed and properly executed Form NF, Form D₁ or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the ~~SECurities and Exchange Commission~~; and
 4. ~~t~~The appropriate filing fee as set forth in T.C.A. §48-1-125.
- (b) An issuer of a security, which is subject to the notice filing requirements for covered securities, shall make an initial notice filing with the Division prior to the sale of such security in this state, unless the security being sold is a covered security as defined under T.C.A. §48-1-102(8)(F)(iv).~~t~~
- (c) An issuer of a security that is defined as a covered security~~ies~~ under T.C.A. §48-1-102(8)(F)(iv) shall make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such covered security in this state.
- (2) Renewal of notice filings for covered securities.
- (a) A renewal of a notice for a covered security that may be renewed as provided under T.C.A. §48-1-125(c) shall consist of:
1. ~~a~~A copy of the issuer's prospectus and statement of additional information;
 2. ~~e~~Either (i) a completed and properly executed Form NF, Form D₁ or Form U-1, as applicable, or ~~in~~ (ii) a copy of the issuer's federal registration statement as filed with the ~~SECurities and Exchange Commission~~; and
 3. ~~t~~The appropriate filing fee as set forth in T.C.A. §48-1-125(a).
- (b) Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. §48-1-125(c).
- (c) A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:
1. ~~s~~Such renewal is deficient;~~t~~ and
 2. ~~s~~Such deficiency is not ~~remedied~~ addressed prior to the expiration of the notice filing.
- (3) Deficient notice filings.
- (a) Documents. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the ~~C~~ommissioner suspending the offer ~~of~~ or sale of such covered security in this state as provided under T.C.A. §48-1-125(d), if:

1. ~~The~~ filing is deficient by failing to satisfy the document filing requirements of T.C.A. §48-1-125 (a), (b), or (c) and ~~paragraph-parts~~ (1)(a)1-3 of this ~~Rule~~; and
 2. ~~The~~ document deficiency is not ~~cured-addressed~~ within ten (10) business days of the issuer's receipt of notification from the Division.
- (b) Fees. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the ~~C~~commissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. §48-1-125 (d), if:
1. ~~The~~ filing is deficient by failing to satisfy the fee requirements of T.C.A. §48-1-125 and ~~paragraph-part~~ (1)(a)4 of this ~~Rule~~; and
 2. ~~The~~ fee deficiency is not ~~cured-addressed~~ within ten (10) business days of the issuer's receipt of notification from the Division.
- (c) In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. §48-1-116.
- (4) Failure to make notice filings.
- (a) Any issuer who fails to make a notice filing for a covered security to be sold in this state, as set forth under T.C.A. §48-1-125 and ~~subparagraph~~ (1)(b) or (1)(c) of this ~~Rule~~, shall be subject to a stop order of the ~~C~~commissioner, as provided under T.C.A. §48-1-125(d), suspending the offer or sale of such securities in this state.
 - (b) For purposes of T.C.A. ~~§48-1-125-(d)(2)~~ and paragraph (4) of this ~~Rule~~, a failure to make a notice filing cannot be promptly remedied:
 1. ~~If~~ the security is a covered security, other than a covered security as defined under T.C.A. §48-1-102(8)(F)(iv) and the delay in making the notice filing, required under T.C.A. ~~§48-1-125-(a)~~, exceeds ten (10) business days from the date of the first sale of such security in this state; or
 2. ~~If~~ the security is a covered security, as defined under T.C.A. §48-1-102(8)(F)(iv), and the delay in making the notice filing required under T.C.A. ~~§48-1-125-(b)~~ exceeds twenty five (25) calendar days from the date of the first sale of such security in this state.
- (5) Refusal to pay notice filing fees.
- (a) For purposes of this paragraph (5), an issuer is deemed to refuse to pay the notice filing fee when:
 1. ~~The~~ issuer is subject to a stop order under the provisions of ~~subparagraph~~ (3)(b) of this ~~Rule~~; or
 2. ~~The~~ issuer has failed to make a notice filing, as defined in ~~subparagraph~~ (4)(b) of this ~~Rule~~, and includes a failure to pay the appropriate notice filing fee.
- (6) Unit Investment Trusts.

(a) Notwithstanding any of the requirements in paragraph (1) of this Rule to the contrary, notice filings of series (except the first in a series) of unit investment trusts registered with the SEC under the Investment Company Act and not engaged in the business of investing in securities issued by one (1) or more open end management investment companies may comply with the following alternative filing requirements:

1. One (1) completed and properly executed Form NF, including the name and the address of the trustee, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate;
2. A statement identifying one (1) or more previous series of the unit investment trust for which an application for registration was made effective by the Division within five (5) years preceding the filing of the current application;
3. The following representations as filed with the SEC pursuant to SEC Rule 487 (17 C.F.R. §230.487):
 - (i) That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in the previous series identified by the applicant; and
 - (ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment is being filed, the registration statement or pre-effective amendment does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the applicant;
4. A copy of any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the SEC;
5. The appropriate filing fee computed in accordance with T.C.A. §48-1-125; and
6. Forms U-2 and U-2A or a statement in the transmittal letter that such forms are already on file with respect to the issuer under its current name of each firm-commitment underwriter.

(b) Upon SEC effectiveness, the following shall be filed with the Division;

1. Notice of SEC effectiveness, to include:
 - (i) The full name of each series of the unit investment trust registered with the SEC;
 - (ii) The time and date declared effective by the SEC;
 - (iii) The public offering price per unit;
 - (iv) The amount of sales commission per unit;
 - (v) The number of units registered with the SEC; and
 - (vi) The total aggregate dollar amount of the offering.

2. One (1) copy of the post-effective amendment containing one (1) copy of the final prospectus.
- (c) Each series underlying a unit investment trust constitutes a separate and distinct security under the Act and shall be separately notice filed under the Act. Unit investment trusts applying to notice file multiple series shall file separate notices for each series containing all of the information specified in subparagraph (6)(a) ~~above of~~ this Rule, with each Form NF specifically identifying the series to be notice filed.
 - (d) The ~~C~~commissioner may deny, suspend, or revoke the availability of this paragraph (6) to a unit investment trust if it appears to the ~~C~~commissioner that a notice filing that is or is intended to become effective in this state in reliance upon this paragraph (6) is incomplete or inaccurate in any material respect or the filer has not complied with the requirements set forth in this paragraph (6).
 - (e) The notice filing of a unit investment trust expires one (1) year from the date of SEC effectiveness, subject to T.C.A. §48-1-125.

Authority: T.C.A. §§~~48-1-102(8)(F)(iv), 48-1-108, 48-1-115, 48-1-116, 48-1-108121, 48-1-124(e), and 48-1-125;~~ Public Acts of 1997, Chapter 164, ~~Section §8;~~ §18 of the ~~Federal Securities Act of 1933~~93, as amended by the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §230.487.

0780-04-02-.13 NOTICE FILINGS FOR EXEMPT EMPLOYEE PLANS.

- (1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities in an employee stock purchase/option plan must file with the ~~C~~commissioner no later than fifteen (15) days after the first sale:
 - (a) One (1) copy of the form entitled "Notice of Sale of Securities Pursuant to Employee Stock Purchase/Option Plan Exemption", as provided by the Division;
 - (b) A Form U-2 Uniform Consent to Service of Process;
 - (c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;
 - (d) A non-refundable filing fee in the amount of five hundred dollars (\$500); and
 - (e) A statement noting the date of the first sale, if any, of such security in this state.

Authority: T.C.A. §§~~48-1-103(b)(9), 48-1-115, 48-1-116, 48-1-124,~~ and Public Acts of 2001, Chapter 278.

0780-04-02-.14 NOTICE FILINGS FOR SECURITIES SOLD TO ACCREDITED INVESTORS.

- (1) All issuers who wish to offer securities in, or into this state in reliance on the exemption afforded to sales of securities to accredited investors, as set forth in ~~Tenn. Code Ann.~~T.C.A. § 48-1-103(b)(14), must file with the ~~C~~commissioner no later than fifteen (15) days after the first sale:
 - (a) One (1) copy of the form entitled "Notice of Sale of Securities Pursuant to Accredited Investor Exemption", as provided by the Division;
 - (b) A Form U-2 Uniform Consent to Service of Process;

- (c) One (1) copy of the general announcement, if one is made regarding the proposed offering;
- (d) A non-refundable filing fee in the amount of five hundred dollars (\$500); and
- (e) A statement noting the date of the first sale, if any, of such security in this state.

Authority: T.C.A. §§ ~~48-1-103(b)(14)~~, 48-1-115, 48-1-116, 48-1-124, and Public Acts of 2001, Chapter 278.

0780-04-02-.15 BANK HOLDING COMPANY EXEMPTION.

- (1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the Commissioner no later than ten (10) days prior to the first sale:
 - (a) One (1) copy of the Form U-1, Uniform ~~a~~Application to Register Securities;
 - (b) A Form U-2 Uniform Consent to Service of Process;
 - (c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;
 - (d) A non-refundable filing fee in the amount of one hundred dollars (\$100.00); and
 - (e) A copy of all sales or advertising literature used or proposed to be used.

Authority: T.C.A. §§ ~~48-1-103(b)(10)(a)(13)~~, 48-1-113, 48-1-115, ~~and 48-1-116(a)~~, and 48-1-124.

0780-04-02-.16 UNSOLICITED TRANSACTION EXEMPTION.

(1) Preliminary Notes:

- (a) Nothing in this Rule is intended to relieve registered or exempt broker-dealers or agents from the due diligence, suitability, know-your-customer standards, or any other requirements of the law otherwise applicable to such registered or exempt persons.

(2) Exemption. By the authority delegated to the Commissioner in T.C.A. §§ ~~48-1-103(b)(20)~~ and 48-1-116, all registered or exempt broker-dealers who intend to rely upon the exemption afforded to unsolicited non-issuer transactions on the basis of T.C.A. § ~~48-1-103(b)(20)~~ must comply with the following to be exempt from T.C.A. §§ ~~48-1-104~~ and 48-1-113:

- (a) Shall retain the following information for each such unsolicited non-issuer transaction:
 1. The CRD numbers for the broker-dealer firm and the agent;
 2. The name of the broker-dealer;
 3. The name of the agent;
 4. The date of the transaction;
 5. The dollar amount of the transaction, the number of shares, and the price per share;

6. The Cusip number for each security making up the order placed by the purchaser;
7. The name of each security making up the order placed by the purchaser;
8. The purchaser(s)'s account number at the broker-dealer;
9. The broker-dealer's office address;
10. The broker-dealer's branch office identification number (if applicable);
11. An indication that the transaction was not solicited in any way by the broker-dealer or any agent of the broker-dealer; and
12. An indication that the broker-dealer:
 - (i) Acted solely as an agent for the purchaser;
 - (ii) Had no direct or indirect interest in the sale or distribution of the security ordered by the purchaser; and
 - (iii) Received no commission, profit, or other compensation from any source other than the purchaser.

(b) The information in subparagraph (2)(a) of this Rule~~above~~ must be retained by the broker-dealer for a period of five (5) years from the date of the transaction, in a manner consistent with Rule 0780-04-03-.02(1)(b).

(c) Upon request by the Division, based on a complaint or as the result of a Division examination of the broker-dealer's books and records, the broker-dealer must provide the purchaser(s) with a document containing the information retained pursuant to subparagraph (2)(a) of this Rule~~above~~ and must obtain the purchaser(s) signed acknowledgement that the transaction was unsolicited. Such acknowledgement may be in the form of a manual or electronic signature.

Authority: T.C.A. §§ 48-1-103(b)(20), 48-1-111, 48-1-115, 48-1-116(a), and Public Acts of 2013, Chapter 261.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10-13-14 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 10-13-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 10-13-14

Notary Public Signature: Denise M Lewis

My commission expires on: 2-15-16

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

Herbert H. Stately III
 Herbert H. Stately III
 Attorney General and Reporter
12/22/2014
 Date

Department of State Use Only

SECRETARY OF STATE
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 2014 DEC 23 PM 4:26

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: Industry Regulation

STATUTORY AUTHORITY: Tennessee Code Annotated, § 48-1-116

EFFECTIVE DATES: March 23, 2015, through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules make housekeeping changes to Chapter 0780-04-03 of the Tennessee Securities Rules concerning regulation of the securities industry.

Regulatory Flexibility Addendum

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

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-03 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

Impact on Local Governments

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

These proposed rules will not impact local governments.

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Division of Publications**

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For Department of State Use Only

Sequence Number: 12-30-14
Rule ID(s): 5860
File Date: 12/23/14
Effective Date: 3/23/15

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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0780-04-03	Industry Regulation
Rule Number	Rule Title
0780-04-03-.01	Registration
0780-04-03-.02	Post-registration
0780-04-03-.03	Oil and Gas Issuer-Dealers
0780-04-03-.04	Persons Deemed Not to be Broker-Dealers
0780-04-03-.05	Exemptions From Investment Adviser Registration
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Chapter Number	Chapter Title
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**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES**

**CHAPTER 0780-04-03
INDUSTRY REGULATION**

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Chapter 0780-04-03 Industry Regulation is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-03-.01 REGISTRATION.

(1) Broker-Dealer Registration.

(a) CRD System Eligible Broker-Dealer Applicants.

1. All broker-dealer applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following, unless waived by order of the Commissioner.
 - (i) A Form BD and all information and exhibits required by such Form;
 - (ii) The appropriate application fee as set forth in the Act; and
 - (iii) Satisfactory evidence of a passing score on an appropriate principal's examination taken by the executive officers or principals of the applicant.
2. Broker-dealers applying through the CRD System shall also, concurrently with the filing of an application ~~to through~~ the CRD System, file with the Division, unless waived by the Commissioner:
 - (i) (I) A copy of the applicant's most recent annual audited report filed pursuant to SEC Rule 17a-5 ~~under the 1934 Act~~ (17 C.F.R. §240.17a-5), plus all quarterly FOCUS Reports filed pursuant to that Rule since the most recent annual audited report; or
 - (II) If the applicant has not yet had an audit performed pursuant to its first fiscal year of existence, in lieu of complying with item (1)(a)2.(i) (I) ~~above of this Rule~~ it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant.

Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form to be executed by the accountant designated on such form; ~~or~~.

(III) The financial reports required by items ~~(1)(a)2.(i)-(l)~~ and ~~(II)~~ of this ~~Rule~~ ~~above~~ shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer.

(ii) Such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Broker-Dealer Applicants. All applications for initial registration as a broker-dealer other than those specified in subparagraph ~~(1)(a)~~ ~~above of this Rule~~ shall be submitted directly to the Division and shall contain the following information, unless waived by order of the ~~C~~ ~~commissioner~~;

1. A Form BD and all information and exhibits required by such ~~f~~ ~~Form~~;

2. The appropriate application fee as set forth in the Act;

3. (i) A balance sheet and income statement as of the end of the applicant's most recent fiscal year prepared in accordance with generally accepted accounting principles consistently applied and examined and reported on by an independent: (I) certified public accountant; or (II) public accountant currently licensed in the ~~S~~ ~~state~~ of Tennessee, and any subsequent quarterly balance sheets and income statements prepared in accordance with generally accepted accounting principles consistently applied; or

(ii) If the applicant has not yet had an audit performed ~~to-in~~ its first year of existence, in lieu of complying with subpart ~~(1)(b)3.(i)~~ of this ~~Rule~~, it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant. Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form as provided by the Division. Such Designation of Accountant form shall be executed by the designated accountant;

(iii) The financial reports required by subparts ~~(1)(b)3.(i-ii)~~ of this ~~Rules~~ ~~(i) and (ii)~~ ~~above~~ shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

4. Satisfactory evidence of a passing score on an appropriate ~~principle's~~ ~~principal's~~ examination taken by the executive officers or ~~principals~~ of the applicant; and

5. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this ~~f~~ ~~Rule~~ when it is complete. An application is deemed to be complete when all of the

information requested by the Division pursuant to subparagraph (1)(a) or parts (1)(b)1. through 5. ~~above of this Rule~~ is received by the Division.

- (d) All broker-dealers who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of other broker-dealers must be submitted directly to the Division and must contain the following:
 - 1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
 - 2. The appropriate fee as set forth in the Act.
- (e) A person who acts as a "clearing broker-dealer" with respect to any securities transaction in Tennessee must register as a broker-dealer in Tennessee.
- (f) A registered broker-dealer shall not conduct business in this state through an agent unless and until the broker-dealer has registered that agent in this state.
- (g) The registration of a broker-dealer shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as a broker-dealer shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The Commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to withdraw on Form BDW by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form BDW filed on behalf of a registrant or a written request filed on behalf of an applicant is actually received by the Division through the CRD System or through a direct filing with the Division, whichever is appropriate for the applicant.
- (h) Abandonment
 - 1. The Division may determine that an application to register a broker-dealer has been abandoned if:
 - (i) The application has been on file with the Division for more ~~that~~ than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
 - 2. Upon the determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Agent Registration

- (a) CRD System Eligible Agent Applicants

1. All agent applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following:
 - (i) A Form U4 and all information and exhibits required by such ~~f~~Form;
 - (ii) The appropriate application fee as set forth ~~in~~by the Act; and
 - (iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.
 2. Agents applying for registration through the CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.
- (b) Other Agent Applicants. All applications for registration as an agent other than those specified in subparagraph (2)(a) ~~above of this Rule~~ shall be submitted directly to the Division and shall contain the following information:
1. A Form U4 and all information and exhibits required by such ~~f~~Form;
 2. The appropriate application fee as set forth ~~in~~by the Act;
 3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and
 4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this ~~R~~Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (2)(a) or parts (2)(b)-1, ~~through 4.~~ ~~above of this Rule~~ is received by the Division.
- (d) All agents who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of all other agents must be submitted directly to the Division and must contain the following:
1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
 2. The appropriate fee as set forth in the Act.
- (e) The registration of an agent shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an agent shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The ~~C~~ommissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the

Division through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is received directly by the Division.

- (f) There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his relationship with a broker-dealer with whom he is registered and commences a new relationship with another broker-dealer, a termination of registration shall be effected by the broker-dealer with which the individual agent had the prior relationship and an application for initial registration shall be filed by the broker-dealer with which the individual agent proposes to have the new relationship. The termination of registration shall be effected by the broker-dealer by submitting a Form U5 through the CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (2)(f) are not required in the event of a mass transfer of agent registrations pursuant to CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).
- (g) All agent applicants who have voluntarily terminated registration with a broker-dealer and who are eligible under the rules established by the CRD System may apply for temporary registration with another broker-dealer through the CRD System by complying with the procedure required by the CRD System. In the case of all other voluntary terminations of a non-CRD agent's registration with a particular broker-dealer pursuant to subparagraph (2)(f) of this Rule, the Division may, in its discretion, allow the agent to be temporarily registered with the broker-dealer with whom the agent is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other broker-dealer. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.
- (h) Abandonment
 - 1. The Division may determine that an application to register an agent has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
 - 2. Upon the determination that an application through the CRD System has been abandoned, the Division shall, as provided through the routine operation of the CRD System, cancel such application without prejudice.
 - 3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(3) Investment Adviser Registration

- (a) IARD Eligible Investment Advisers

1. All investment advisers who are eligible must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, unless waived by order of the Commissioner:
 - (i) A Form ADV and all information and exhibits required by such Form; ~~and~~
 - (ii) The appropriate application fee as set forth in the Act; and
 - (iii) Satisfaction of the investment adviser representative examination requirements under ~~rule paragraph (10) of this Rule 0780-04-03-.01(10)~~ by appropriate executive officers or principals of the applicant.

2. Investment advisers applying through the IARD shall also, concurrently with the filing of an application to the IARD, file with the Division, unless waived by order of the Commissioner:
 - (i)
 - (I) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of ~~its~~ by-laws certified by the secretary of the corporation; ~~;~~
 - (II) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; ~~;~~ or
 - (III) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement, if any, certified by a managing member; ~~;~~
 - (ii)
 - (I) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this ~~subsection item (3)(a)2.(ii)(I)~~, "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or
 - (II) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02(4)(a)2. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit; and

- (iii) Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (b) Other Investment Adviser Applicants. All applications for initial registration as an investment adviser other than those specified in subparagraph (3)(a) ~~above of this Rule~~ shall be submitted in paper format ~~to the IARD or~~ directly to the Division and shall contain the following information, unless waived by order of the ~~C~~ Commissioner:
1. A Form ADV and all information and exhibits required by such ~~f~~Form;
 2. The appropriate application fee as set forth in the Act;
 3. (i) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its by-laws certified by the secretary of the corporation;~~;~~
(ii) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; ~~or~~
(iii) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement certified by a managing member;
 4. (i) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subpart (3)(b)42.(i), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or
(ii) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with ~~part (4)(a)2. of~~ Rule 0780-04-03-.02(4)(a)2. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit;~~;~~
 5. Satisfaction of the investment adviser representative examination requirements under ~~paragraph (10) of rule~~ Rule 0780-04-03-.01(10) by appropriate executive officers or principals of the applicant;~~;~~
 6. Such other information as the Division may request of a particular applicant to determine eligibility for registration; ~~and~~

7. Evidence of a temporary exemption; or, prior to December 31, 2003, evidence of a continuing hardship exemption as issued by the Division or another state securities administrator, which exempts the applicant from the requirements to make electronic filings through the IARD as required by subparagraphs (3)(a) and (3)(e) herein of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.
- (c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through the IARD as required by the subparagraphs (3)(a) and (3)(e) herein of this Rule and by rule-subparagraph (4)(d) of Rule 0780-04-03-.02. ~~(4)(d) Investment Adviser Reporting Requirements.~~
1. Temporary Hardship Exemption.
 - (i) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.
 - (ii) To request a temporary hardship exemption, the investment adviser must:
 - (I) File Form ADV-H in paper format with the state securities administrator where the investment adviser's principal place of business is located, or the Division if appropriate, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and
 - (II) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven (7) business days after the filing was due.
 - (iii) Effective Date Upon Filing. The temporary hardship exemption will be deemed effective by the Commissioner upon receipt of the complete Form ADV-H by the state securities administrator where the investment adviser's principal place of business is located or with the Division if such other state securities administrator does not routinely process applications for temporary hardship exemptions. Multiple temporary hardship exemption requests within the same calendar year may be allowed or disallowed at the discretion of the Commissioner.
 2. Continuing Hardship Exemption.
 - (i) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate to the satisfaction of the Commissioner that the electronic filing requirements of these Rules are prohibitively burdensome.
 - (ii) To apply for a continuing hardship exemption, the investment adviser must:
 - (I) File Form ADV-H in paper format with the appropriate state securities administrator, or the Division if appropriate, at least twenty (20) business days before a filing is due; and
 - (II) If a filing is due to more than one (1) state securities administrator, the Form ADV-H must be filed with the state securities administrator where the investment adviser's principal place of business is located

or with the Division if such state securities administrator does not routinely process applications for continuing hardship exemptions. If the Division is the state securities administrator which receives the application for a continuing hardship exemption, the Commissioner will grant or deny the application within ten (10) business days after the filing of Form ADV-H or within ten (10) business days after the receipt of further information or materials requested from the investment adviser by the Division to determine eligibility for such exemption.

(iii) **Effective Date Upon Approval.** The exemption is effective upon approval by the state securities administrator where the investment adviser's principal place of business is located or by the Commissioner, whichever is appropriate. The time period of the exemption may be no longer than one (1) year after the exemption approval date. Upon such approval, the investment adviser must, no later than five (5) business days after the exemption approval date, commence submitting necessary filings to the IARD in paper format (along with the appropriate processing fees), or to the Division, whichever is appropriate, for the period of time for which the exemption is granted.

3. **Recognition of Exemption.** The decision to grant or deny a request for a hardship exemption will be made by the state securities administrator where the investment adviser's principal place of business is located or the Commissioner, whichever is appropriate. Approval of an exemption by an appropriate state securities administrator in another state will be recognized and accepted by the Commissioner except that the Commissioner will not grant, accept, or recognize any continuing hardship exemption after December 31, 2003.

(d) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraphs (3)(a) or (3)(b) of this Rule is received by the Division.

(e) All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and
2. The appropriate fee as set forth in the Act.

(f) The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as an investment adviser shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The Commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of application to withdraw on Form ADV-W by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form ADV-W or a written request filed on behalf of an applicant through the IARD or through

a direct filing with the Division, whichever is appropriate, is actually received by the Division.

(g) Abandonment

1. The Division may determine that an application to register an investment adviser has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without the applicant becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
2. Upon the determination that an application has been abandoned, the Commissioner shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Examination of Agents and Principals of Broker-Dealers

- (a) Agents. Each applicant for initial registration as an agent shall receive a passing grade on:
 1. An examination administered by the NASD FINRA, the New York Stock Exchange, or the SEC which tests the applicant's general knowledge of securities principles; and
 2. The Uniform Securities Agent State Law Examination (USASLE/Series 63) or the Uniform Combined State Law Examination (UCSLE/Series 66) as either is administered by the NASD FINRA.
- (b) Principals. Each applicant for initial registration as a principal or supervisory officer of a broker-dealer must receive a passing grade on an appropriate securities examination for principals administered by the NASD FINRA, the New York Stock Exchange, or the SEC.
- (c) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (4), a duly granted examination waiver by the NASD FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the examination requirements of part (4)(a)1. and subparagraphs (4)(b) and (4)(d) herein of this Rule.
- (d) Each applicant for initial registration:
 1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or
 2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity for which the applicant is currently seeking registration within the preceding twenty-four (24) months.

(5) Registered Broker-Dealer Net Capital Requirements.

(a) NASD-FINRA Broker-Dealers and Exchange Members.

1. ~~1.~~ All broker-dealers, except government securities broker-dealers, who are members of the NASD-FINRA or a national exchange, shall have and maintain net capital in such minimum amounts as are prescribed for their activities under SEC ~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~ promulgated under the 1934 Act.
2. The aggregate indebtedness of each broker-dealer described in part (5)(a)1. of this Rule to all persons shall not exceed the levels prescribed under SEC ~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~ promulgated under the 1934 Act.
3. For purposes of this subparagraph (5)(a), the term "net capital" shall have the same meaning as in SEC ~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~ promulgated under the 1934 Act.

(b) Government Securities Broker-Dealer. Each registered government securities broker-dealer shall have and maintain liquid capital in such minimum amounts as are prescribed under SEC ~~Rule 15Ca2-2 and (17 C.F.R. §240.15Ca2-2) and Department of Treasury Rule 402.2 (17 C.F.R. §402.2)~~ promulgated under the 1934 Act.

(c) Other Broker-Dealers.

1. Each registered broker-dealer that does not fall within subparagraphs (5)(a) and (5)(b) ~~above of this Rule~~ shall have and maintain a minimum net capital of twenty-five thousand dollars (\$25,000). If such broker-dealer has a net capital of less than one hundred thousand dollars (\$100,000), it shall post a surety bond of ten thousand dollars (\$10,000).
2. For purposes of this subparagraph (5)(c), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

(6) Investment Adviser Net Capital Requirements.

- (a) Except as provided under subparagraph (6)(d) of this ~~paragraph (6)Rule~~, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars (\$15,000).
- (b) For purposes of this paragraph (6), "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied minus the following non-allowable assets:
 1. In the case of an individual: home equity, home furnishings, automobiles, goodwill, and any other personal item not readily marketable;
 2. In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates;
 3. In the case of a partnership: advances or loans to partners or affiliates, and ~~uncollateralized~~ uncollateralized receivables ~~from from~~ partners or affiliates; and

4. In the case of a limited liability company: advances or loans to members or affiliates, and ~~uncollateralized~~ uncollateralized receivables from members or affiliates.
- (c) The Division may require that a current appraisal be submitted in order to establish the value of any asset.
 - (d) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of this paragraph (6) if:
 1. The investment adviser is ~~licensed~~ registered as an investment adviser in the state in which it maintains its principal place of business;
 2. The investment adviser is in compliance with the applicable net capital requirement in the state in which it maintains its principal place of business; and
 3. The investment adviser is in compliance with any bonding requirement in the state in which it maintains its principal place of business.
 - (e) For purposes of this paragraph (6), "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.
- (7) Branch Offices and Other Business Locations of Broker-Dealers.
- (a) Every broker-dealer registered in Tennessee shall notify the Division of the establishment of any branch office or other business location in Tennessee, as well as its current address and the name or names of the agent or agents currently in charge.
 - (b) Such notification of establishment, change in address, or change in identity of any agent or agents in charge thereof must be filed with the Division through the CRD System or through a direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.
- (8) Withdrawal of Applications. An application for registration as a broker-dealer or investment adviser may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System and the IARD or, for other broker-dealers and other investment advisers, by filing a written request for withdrawal directly with the Division. An application for registration as an agent or investment adviser representative may be withdrawn prior to the effectiveness of the registration by following the procedures established by the CRD System or IARD, or, for other agents and other investment adviser representatives, by filing a written request for withdrawal directly with the Division.
- (9) Investment Adviser Representative Registration.
- (a) IARD and CRD System Eligible Investment Adviser Representative Applicants.
 1. All investment adviser representative applicants who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the application procedures required by the IARD and CRD System. The application filed through the IARD and CRD System shall contain the following:
 - (i) A Form U4 and all information and exhibits required by such ~~f~~Form;
 - (ii) The appropriate application fee as set forth in~~by~~ the Act; and

- (iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.
 - 2. Investment adviser representatives applying for registration through the IARD and CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.
- (b) Other Investment Adviser Representative Applicants. All applications for registration as an investment adviser representative other than those specified in subparagraph (9)(a) ~~above of this Rule~~ shall be submitted directly to the Division and shall contain the following information:
- 1. A Form U4 and all information and exhibits required by such ~~f~~Form;
 - 2. The appropriate application fee as set forth ~~in~~by the Act;
 - 3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and
 - 4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this ~~R~~Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (9)(a) ~~or and~~ parts (9)(b)-1-4, ~~through 4, above~~ of this Rule is received by the Division.
- (d) All investment adviser representatives who are eligible must apply for renewal of registration in Tennessee through the IARD and CRD System by complying with the requirements of the IARD and CRD System. Applications for renewal of all other investment adviser representatives must be submitted directly to the Division and must contain the following:
- 1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
 - 2. The appropriate fee as set forth in the Act.
- (e) The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The ~~C~~ommissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the IARD and CRD System, or for non-IARD and CRD System investment adviser representatives, the date upon which the Form U5 is received directly by the Division.

- (f) There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates his relationship with an investment adviser with whom he is registered and commences a new relationship with another investment adviser, a termination of registration shall be effected by the investment adviser with which the individual investment adviser representative had the prior relationship and an application for initial registration shall be filed by the investment adviser with which the individual investment adviser representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 through the IARD and CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (9)(f) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD and CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).
- (g) All investment adviser representative applicants who have voluntarily terminated registration with an investment adviser and who are eligible under the rules established by the IARD and CRD System may apply for temporary registration with another investment adviser through the IARD and CRD System by complying with the procedure required by the IARD and CRD System. In the case of all other voluntary terminations of a non-IARD and CRD System eligible investment adviser representative's registration with a particular investment adviser pursuant to subparagraph (9)(f) of this Rule, the Division may, in its discretion, allow the investment adviser representative to be temporarily registered with the investment adviser with whom the investment adviser representative is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other investment adviser. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.
- (h) Abandonment
1. The Division may determine that an application to register an investment adviser representative has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period ~~of~~ of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
 2. Upon the determination that an application through the IARD and CRD System has been abandoned, the Division shall, as provided through the routine operation of the IARD and CRD System, cancel such application without prejudice.
 3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

- (i) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-~~440~~109(c)(2), and who has no place of business located within this state, is not required to register as an investment adviser representative of such investment adviser in this state.
 - (j) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-~~440~~109(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule ~~275.203A-3~~ (17 C.F.R. §275.203A-3), ~~under the Investment Advisers Act~~, is not required to register as an investment adviser representative of such investment adviser in this state.
 - (k) An individual who solicits, offers, ~~offers~~ or negotiates for sale of or sells investment advisory services, but who is not compensated directly or indirectly for such activities, is not required to register as an investment adviser representative in this state.
- (10) Examination of Investment Adviser Representatives
- (a) Each applicant for initial registration as an investment adviser representative:
 1. Shall receive a passing grade on the Uniform Investment Adviser Law Examination (UIALE/Series 65) as administered by ~~NASD~~the FINRA; ~~or~~
 2. Shall receive passing grades on the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (UCSLE/Series 66) as administered by ~~NASD~~the FINRA; ~~or~~
 3. Shall have been registered as an investment adviser representative in any state within the preceding twenty-four (24) months; or
 4. Shall currently hold one (1) of the following professional designations:
 - (i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
 - (ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;
 - (iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
 - (iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or
 - (v) Chartered Investment Counselor (CIC) awarded by the Investment ~~Counsel-Adviser~~ Association of America, Inc.
 - (b) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (10), a duly granted examination waiver by the ~~NASD~~FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (10)(a)2. and subparagraph (10)(c) ~~herein~~of this Rule.

- (c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (10)(a)1. ~~and (a)2.~~ herein of this Rule:
1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or
 2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity appropriate to the required examination within the preceding twenty-four (24) months.
- (d) The requirements of this paragraph (10) shall apply to all applications for investment adviser registration and investment adviser representative registration filed with the Division on or after April 1, 2004.

Authority: T.C.A. §§48-1-102, 48-1-109, ~~48-1-109(d)~~, 48-1-110, ~~48-1-110(e)~~, ~~48-1-110(d)~~, 48-1-111, 48-1-112, ~~(a)(2)(B)~~, 48-1-115, ~~48-1-115(f)~~, 48-1-116(a), Public Acts of 2001, Chapter 61, ~~and~~ §222 of the Investment Advisers Act of 1940, as amended by §304(c) of the National Securities Markets Improvement Act of 1996, 17 C.F.R. §240.15c3-1, 17 C.F.R. §240.15Ca2-2, 17 C.F.R. §240.17a-5, 17 C.F.R. §275.203A-3, and 17 C.F.R. §402.2.

0780-04-03-.02 POST REGISTRATION.

(1) Broker-Dealer Required Records.

- (a) Every broker-dealer registered in this state shall make and keep current the following books and records relating to its business, unless waived by order of the ~~C~~ommissioner:
1. Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities (including certificate number), all receipts and disbursements of cash, and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, the settlement date, the name or other designation of the person from whom purchased or received or to whom sold or delivered, and some identification of the agent effecting the transaction;
 2. Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;
 3. Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or principals thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts, and all other debits and credits to such accounts.
 4. Ledgers (or other records) reflecting the following:
 - (i) Securities in transfer;
 - (ii) Dividends and interest received;
 - (iii) Securities borrowed and securities loaned;

- (iv) Monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);
 - (v) Securities failed to receive and failed to deliver; and
 - (vi) A record of all puts, calls, spreads, and straddles and other options in which the broker-dealer has any direct or indirect interest or which it has granted or guaranteed, containing at least identification of the security and the number of units involved.
5. A memorandum of each order (order ticket) and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order instructions for execution, or, if it is not so transmitted, the time when it is received.
 6. A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution.
 7. Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or principals of the broker-dealer.
 8. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers, partners, or principals showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried.
 9. Copies of all communications, correspondence, and other records relating to securities transactions with customers.
 10. A separate file containing all written complaints made or submitted by customers to the broker-dealer or agents relating to securities transactions.
 11. A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability.
 12. For each cash or margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority with respect to the account, the name and address of the beneficial owner of each account, and all margin and lending agreements; provided that in the case of a joint account, or of an account of a corporation, the records are required only as to persons authorized to transact business for the account.

13. A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month.
 14. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the broker-dealer.
 15. A separate file containing copies of all advertising circulated by the broker-dealer in the conduct of its securities business.
 16. A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form C-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in ~~rule—subparagraph (5)(a) of Rule~~ 0780-04-03-.01(5)(a). Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed ~~by—paragraph (5) of Rule~~ 0780-04-03-.01(5).
 17. All records required under ~~SEC Rule 17a-3 (17 C.F.R. §240.17a-3) promulgated under the 1934 Act~~ not otherwise delineated in this paragraph (1); ~~and~~.
 18. All records made and kept pursuant to ~~section—Section 17(f)(2) of the 1934 Act and rule—SEC Rule 17f-2 (17 C.F.R. §240.17f-2), under the 1934 Act.~~
- (b) All records required to be kept by subparagraph (1)(a) of this Rule hereof shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by ~~SEC Rule 17a-4 (17 C.F.R. §240.17a-4) promulgated under the 1934 Act~~, whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.
- (c) All broker-dealers who act as investment advisers shall maintain the records required by subparagraph (3)(a) of this Rule.
- (2) Broker-Dealer Reporting Requirements.
- (a) Financial Reports.
1. Upon request by the Division, each registered broker-dealer shall immediately file with the Division a report of its financial condition as of and for each requested fiscal year, including a balance sheet and income statement for such period. Such annual report shall be prepared and filed in accordance with the following requirements:
 - (i) The report shall be certified by an independent certified public accountant or independent public accountant;
 - (ii) The audit shall be made in accordance with generally accepted auditing standards; ~~‡~~The examination shall include a review of the accounting system ~~and~~; the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;
 - (iii) The report shall be accompanied by an opinion of the accountant as to the broker-dealer's financial condition which is unqualified except as to matters which would not have a substantial effect on the financial condition of the broker-dealer. In addition, the accountant shall submit, as a supplementary opinion, any comments, based upon the audit, as to any material

inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed; and

(iv) The annual report shall include as a supporting schedule a computation of net capital as required by ~~rule paragraph (5) of Rule~~ 0780-04-03-.01(5).

2. In lieu of complying with part (2)(a)1. of this ~~R~~Rule, an applicant may file with the Division a copy of the annual financial report required to be filed by SEC Rule 17a-5 (17 C.F.R. §240.17a-5), ~~promulgated under the 1934 Act~~. Any such report shall be filed in the form specified in SEC Rule 17a-5, and shall be accompanied by a copy of any comments made by the independent accountant as to material inadequacies in accordance with SEC Rule 17a-5.

(b) Criminal, Civil, Administrative, or Self-~~R~~Regulatory ~~a~~Actions.

1. Upon request by the Division, each broker-dealer registered in this ~~S~~State shall file with the Division a copy of:

(i) Any indictment or information filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

(ii) Any complaint filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the securities business or any investment-related business; and

(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing a similar function for the broker-dealer, related to the broker-dealer's securities business or investment-related business.

2. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts ~~(2)(b)1.(i-) through (iii)~~ above of this Rule.

3. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts ~~(2)(b)1.(i-) and (iii)~~ above of this Rule.

4. Nothing in subparagraph (2)(b) is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~R~~Rules or in the Act.

(c) Transfer of Control or Change of Name.

1. Each broker-dealer registered in this state shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.
2. Such notice of transfer of control or change of name shall be submitted through the CRD System or directly to the Division, whichever is appropriate.
3. Such notice of transfer of control or change of name shall be filed as an amendment to a broker-dealer's existing Form BD or as a complete new Form BD from the successor to a registered broker-dealer as provided under T.C.A. § 48-1-110(c).
4. Each broker-dealer that files a notice of transfer of control or change of name shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

(d) Except as otherwise provided in the Act, or in these ~~R~~Rules, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to Form BD filed promptly with the Division through the CRD System or by a direct filing, whichever is appropriate.

(e) Every broker-dealer shall file directly with the Division the following reports concerning its net capital, liquid capital, and aggregate indebtedness:

1. Immediate telegraphic, facsimile, or written notice whenever the net capital or liquid capital of the broker-dealer is less than that which is required by these ~~R~~Rules, specifying the respective amounts of its net capital, liquid capital, and aggregate indebtedness on the date of notice; and
2. A copy of every report or notice required to be filed by the broker-dealer pursuant to SEC Rule 17a-11 (17 C.F.R. §240.17a-11), contemporaneously with the date of filing with the SEC.

(f) Each broker-dealer shall give immediate telegraphic, facsimile, or written notice to the Division of the theft or mysterious disappearance from any office in this state of any securities or funds which might affect the financial stability of the broker-dealer, stating all material facts known to it concerning the theft or disappearance.

(3) Investment Adviser Required Records

(a) Except as provided in subparagraph ~~(3)(c) of this Rule of this paragraph~~, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the ~~C~~ommissioner:

1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;
2. A record showing all payments received, including date of receipt, purpose, and from whom received, and all disbursements, including date paid, purpose, and to whom made;
3. A record showing all receivables and payables;

4. Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date on which, amount of, and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;
 5. (i) Records showing separately all securities bought or sold by clients insofar as known to the investment adviser and indicating thereon:
 - (I) Proper identification of the individual account;
 - (II) The date on which such securities were purchased or sold;
 - (III) The amount of securities purchased or sold; and
 - (IV) The price at which such securities were purchased or sold; or ~~in the alternative~~
 - (ii) A Record showing:
 - (I) All securities bought or sold by or for the accounts of all clients of the investment adviser in each month;
 - (II) The total number of shares bought or sold; and
 - (III) The lowest and highest price at which such purchases or sales were made during the month;
 6. Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer;
 7. Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of discretionary authority;
 8. Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions;
 9. All partnership certificates and agreements, or all articles of incorporation, by-laws, minute books, and stock certificate books of the investment adviser; ~~and~~
 10. A computation made monthly of the investment adviser's net capital; ~~and~~
 11. Copies of all written agreements, acknowledgements, and solicitor disclosure statements required by ~~rule-paragraphs (5-6) of Rule~~ 0780-04-03-.13(5) and (6).
- (b) All records required by subparagraph (3)(a) of this Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 204-2 (17 C.F.R. §275.204-2), promulgated under the Investment Advisers Act, whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) An investment adviser which has its principal place of business in another state shall not be subject to the books and records requirement of this paragraph (3) if:

1. The investment adviser is registered ~~or licensed~~ as an investment adviser in the state in which it maintains its principal place of business;
2. The investment adviser is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business; and
3. The provisions of this paragraph (3) would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(4) Investment Adviser Reporting Requirements.

- (a)
 1. Each investment adviser registered in this state shall file with the Division, within ninety (90) days after the end of its fiscal year, a copy of its annual statement of financial condition (balance sheet) and thereafter, any other related financial statements which the Division may request.
 2. For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:
 - (i) Certified by an independent certified public accountant or independent public accountant;
 - (ii) Prepared in accordance with generally accepted accounting principles consistently applied; and
 - (iii) Accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.
 3. Such annual financial statements shall be sent to the Division by certified mail return receipt requested.
- (b)
 1. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of:
 - (i) Any indictment or information filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business; and

- (ii) Any complaint filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and
 - (iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, related to the investment adviser's securities or investment-related business.
2. Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts ~~(4)(b)1.(i) through (iii)~~ above of this Rule.
 3. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in subparts ~~(4)(b)1.(i) through (iii)~~ above of this Rule.
 4. Nothing in this ~~f~~Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~f~~Rules or in the Act.
- (c)
1. Each investment adviser, registered in this state, shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.
 2. Such notice of transfer of control or change of name shall be submitted directly to the Division or through a central registration depository designated by the Division, whichever is appropriate.
 3. Such notice of transfer of control or change of name shall be filed as an amendment to an investment adviser's existing Form ADV or as a complete new Form ADV from the successor to a registered investment adviser as provided under T.C.A. §48-1-110(c).
 4. Each investment adviser, which files a notice of transfer of control or change of name, shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.
 5. An investment adviser, which has made a notice filing with the Division pursuant to T.C.A. §48-1-109-(c)(2), shall notify the Division of a transfer of control or a change of name by filing an amended Form ADV with the Division within thirty (30) days after the date on which the transfer of control or change of name becomes effective.

- (d) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent application for registration shall be set forth in an amendment to Form ADV, pursuant to the updating instructions on Form ADV, and filed promptly through the IARD or directly with the Division, whichever is appropriate.
- (e) Each investment adviser registered in this state shall file with the Division within ninety (90) days after the end of the registrant's fiscal year, an annual updated Form ADV prepared pursuant to the updating instructions on Form ADV. Such annual updating amendment to Form ADV shall be filed through the IARD or directly with the Division, whichever is appropriate.

(5) Agent Reporting Requirements

- (a) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of:
 1. Any indictment or information filed in any court of competent jurisdiction naming the agent and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;
 2. Any complaint filed in any court of competent jurisdiction naming the agent and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and
 3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the agent and related to the agent's securities or investment-related business.
- (b) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (5)(a)1. through 3. above of this Rule.
- (c) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (5)(a)1. through 3. above of this Rule.
- (d) Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(6) Prohibited Business Practices

- (a) The following shall be deemed "dishonest or unethical business practices" by a broker-dealer under T.C.A. §48-1-112(a)(2)-(Gg), without limiting that term to the practices specified herein:
 1. Causing any unreasonable delay in the delivery of securities purchased by any of its customers;
 2. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer;
4. Executing a transaction on behalf of a customer without authority to do so;
5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders;
6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;
7. Executing any transaction in a margin account without obtaining from its customers a written margin agreement prior to settlement date for the initial transaction in the account;
8. Failing to segregate customers' free securities or securities in safe-keeping;
9. Hypothecating a customer's securities without having ~~in a~~ lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;
10. Charging its customers an unreasonable commission or service charge in any transaction executed as agent for the customer;
11. Entering into a transaction for its own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the ~~NASD~~ [FINRA](#) is unreasonable;
12. Entering into a transaction for its own account with a customer in which a commission is charged;
13. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;
14. Executing orders for the purchase or sale of securities which the broker-dealer knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;
15. Violating any rule of a national securities exchange or national securities dealers association of which it is a member with respect to any customer, transaction, or business in this state;
16. Requiring investment advisory clients of a broker-dealer or an affiliated investment adviser to use the broker-dealer to execute trades for such client, and failing to disclose to such clients their rights to use any broker-dealer for trade execution;
17. For a registered broker-dealer which shares office space with, or occupies the same business premises as, a person not so registered, failing to disclose

clearly, conspicuously, and continuously the relationship, or lack thereof, between it and such other person; ~~and~~

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; ~~and~~
19. Failing to provide information requested by the Division pursuant to the Act or these ~~R~~Rules promulgated thereunder.

(b) The following are deemed "dishonest or unethical business practices" by an agent under T.C.A. §48-1-112(a)(2)(~~g~~G), without limiting those terms to the practices specified herein:

1. Borrowing money or securities from a customer;
2. Acting as a custodian for money, securities, or an executed stock power of a customer;
3. Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;
4. Operating an account under a fictitious name, unless disclosed to the broker-dealer that the agent represents;
5. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
6. Dividing or otherwise splitting commissions, profits, or other compensation receivable in connection with the purchase or sale of securities in this state with any person not ~~licensed-registered~~ as an agent for the same broker-dealer, or for an affiliate of the same broker-dealer;
7. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
8. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer ~~or agent~~;
9. Executing a transaction on behalf of a customer without authority to do so;
10. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders;
11. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

12. Executing any transaction in a margin account without obtaining from ~~its~~ his or her customers a written margin agreement prior to settlement date for the initial transaction in the account;
 13. Charging a customer an unreasonable commission or service charge in any transaction executed as agent for the customer;
 14. Entering into a transaction for ~~a~~ his or her broker-dealer's account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the NASD-FINRA is unreasonable;
 15. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;
 16. Executing orders for the purchase or sale of securities which the ~~broker-dealer~~ agent knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;
 17. Violating any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction, or business in this state; ~~and~~
 18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; ~~and~~
 19. Failing to provide information requested by the Division pursuant to the Act or ~~these~~ Rules promulgated thereunder.
- (c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. §48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein;
1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;
 2. Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of the Act or ~~any rule thereunder~~ these Rules;
 3. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
 4. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the ~~broker-dealer~~ investment adviser;
 5. Executing a transaction on behalf of a customer without authority to do so;
 6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Failing to segregate customers' free securities or securities in safekeeping;
8. Hypothecating a customer's securities without having a lien— thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;
9. Entering into a transaction for ~~its~~ the investment adviser's own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the NASD-FINRA is unreasonable;
10. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client;
11. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;
12. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);
13. Charging a client an unreasonable advisory fee;
14. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
 - (i) Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and
 - (ii) Charging a client an advisory fee for rendering advice when a commission for executing ~~—~~securities transactions, pursuant to such advice, will be received by the adviser or its employees;
15. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;
16. Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-03-.09 under the Act;
17. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;
18. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is

subject to and does not comply with the requirements of ~~f~~Rule 0780-04-03-.07 under the Act;

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:
 - (i) ~~t~~The services to be provided;
 - (ii) ~~t~~The term of the contract;
 - (iii) ~~t~~The advisory fee;
 - (iv) ~~t~~The formula for computing the fee;
 - (v) ~~t~~The amount of prepaid fee to be returned in the event of contract termination or non-performance;
 - (vi) ~~w~~Whether the contract grants discretionary power to the adviser; and
 - (vii) ~~t~~That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;
20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public information by such investment adviser or any person associated with such investment adviser;
21. Entering into, extending, or renewing any advisory contract which would violate ~~s~~Section 205 of the Investment Advisers Act;
22. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of ~~the~~ ~~is a~~ Act or of the Investment Advisers Act, or any other practice that would violate ~~s~~Section 215 of the Investment Advisers Act;
23. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of ~~this the Act or any rule or regulation thereunder; these Rules;~~
24. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;
25. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser; and
26. Failing to provide information requested by the Division pursuant to the Act or ~~these f~~Rules promulgated thereunder.

(7) Rules of Conduct - Broker-Dealers.

- (a) Confirmations.

1. Every broker-dealer shall give or send to the customer a written confirmation, promptly after execution of and before completion of, each transaction. The confirmation shall set forth:
 - (i) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold, and any commission charged;
 - (ii) Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;
 - (iii) When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer;
 - (iv) Whether the transaction was unsolicited; and
 - (v) The name of the agent that effected the transaction.

2. Compliance with SEC Rule 10b-10 (~~17 C.F.R. §240.10b-10~~) promulgated under the 1934 Act or with Article III, Section 12 of the NASD-FINRA Rules of Fair Practice shall be deemed compliance with this ~~Rule~~.
 - (b) Every broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the Act ~~and of these Rules~~, and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its licensed registered agents, offices, and transactions in this state. A complete set of the procedures and systems for applying them shall be kept and maintained at every branch office.
 - (c) A broker-dealer shall not enter into any contract with a customer if the contract contains any conditions, stipulations, or provisions binding the customer to waive any rights under the Act, ~~or any rule~~ these Rules, or order thereunder. Any such condition, stipulation, or provision is void.
 - (d) Any person receiving a commission, fee, or other remuneration directly or indirectly for soliciting prospective purchasers in this state in connection with any offering for which an exemption is claimed pursuant to ~~Rule 0780-04-02-.08~~, the Tennessee Uniform Limited Offering Exemption, must be appropriately registered in this state pursuant to the Act and ~~all rules and regulations promulgated thereunder~~. these Rules.

- (8) Investment Adviser Representative Reporting Requirements.
 - (a) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of:
 1. Any indictment or information filed in any court of competent jurisdiction naming the investment adviser representative and alleging the commission of any felony

regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the investment adviser representative and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and
 3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser representative and related to the investment adviser representative's securities or investment-related business.
- (b) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any answer, response, or reply to any complaint, indictment, or information described in parts ~~(8)(a)1. through 3.~~ Above of this Rule.
- (c) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts ~~(8)(a)1. through 3.~~ above of this Rule.
- (d) Nothing in this ~~f~~Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~f~~Rules or in the Act.

Authority: T.C.A. §§48-1-102, 48-1-107, 48-1-109, 48-1-110, 48-1-111, ~~48-1-111(a), 48-1-112(a)(2)(B), 48-1-112(a)(2)(G), 48-1-113, 48-1-115(f), 48-1-116(a), and 48-1-118;~~ 48-1-121(a)(2). Public Acts of 2001, Chapter 61, §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, §§203A, 205, and 215 of the Investment Advisers Act of 1940, ~~§17(f)(2) of the Securities Exchange Act of 1934, 17 C.F.R. §240.10b-10, 17 C.F.R. §240.17a-3 through 17 C.F.R. §240.17a-5, 17 C.F.R. §240.17a-11, 17 C.F.R. §240.17f-2, 17 C.F.R. §275.204-2, and the FINRA Rules of Fair Conduct.~~

0780-04-03-03 OIL AND GAS ISSUER-DEALERS.

- (1) Oil and Gas Issuer Dealer Registration.
 - (a) All applications for initial registration as an oil and gas issuer-dealer shall contain the following unless waived by order of the ~~C~~Commissioner:
 1. Form IN-0911, Application for Registration as an Oil and Gas Issuer-Dealer, containing all information and exhibits required by that ~~f~~Form;
 2. A Consent to Service of Process and, if applicable, a Uniform Form of Corporate Resolution. Forms U-2 and U-2A are acceptable;
 3. A nonrefundable filing fee of one hundred dollars (\$100) by check made payable to the Tennessee Department of Commerce and Insurance; ~~and~~.

4. Such other information as the Division may request from a particular applicant to determine eligibility for registration.
- (b) All applications for registration must be filed with the Division at its current published address.
 - (c) All applications become effective by operation of law thirty (30) days after the date stamped on the Form IN-0911 by the ~~Division~~ ~~Department of Commerce and Insurance~~ or, in the event the application is incomplete, thirty (30) days after the date the application becomes complete, unless a proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A §48-1-110(f)(4), or the thirty (30) day period is waived in writing by the applicant.
 - (d) Abandonment
 1. The Division may determine that an application to register an oil and gas issuer-dealer has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
 2. Upon determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.
- (2) Renewal of Registration
 - (a) All registrations expire at midnight on December 31 of each year and must be renewed no later than ten (10) days prior to that date.
 - (b) All renewals shall contain the following:
 1. The renewal form provided by the Division with all information and exhibits required by the form; ~~and~~
 2. A nonrefundable renewal fee of fifty dollars (\$50) by check payable to the Tennessee Department of Commerce and Insurance.
 - (3) Amendments
 - (a) The applicant shall notify the Division in writing of any changes in the information provided in the application within ten (10) days of occurrence.

Authority: T.C.A. §§~~48-1-102~~, 48-1-107, 48-1-110, ~~48-1-110(f)~~, 48-1-111, ~~48-1-111(a)~~, 48-1-112, ~~(a)(2)(B)~~, ~~48-1-112(f)~~, 48-1-113, 48-1-115(f), 48-1-116(a), 48-1-118, Public Acts of 2001, Chapter 61, and §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, and §§201A, 205, and 215 of the Investment Advisers Act of 1940.

0780-04-03-.04 PERSONS DEEMED NOT TO BE BROKER-DEALERS.

(1) Associated Persons of an Issuer.

(a) An associated person of an issuer of securities shall not be deemed to be a broker-dealer by reason of his participation in the offer, sale, or transfer of the securities of such issuer if the associated person:

1. Is not subject to a statutory disqualification, as the term is defined in Section 3(a)(39) of the 1934 Act, at the time of his participation;
2. Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities;
3. Is not at the time of his participation an associated person of a broker-dealer; and
4. Meets the conditions of any one of the following subparts [(1)(a)4.(i), (1)(a)4.(ii), or (1)(a)4.(iii)] of this Rulepart:

(i) The associated person restricts his participation to transactions involving offers, sales, or transfers of securities.

(I) To a registered broker-dealer or an institutional investor;

(II) That are exempted from the registration requirements of the Act under T.C.A. §48-1-103(a)(11), or that are offered, sold, or transferred pursuant to transactions that are exempt from the registration requirements of the Act under T.C.A. §§48-1-103(b)(2), (b)(9), or (b)(10); or

(III) That are made pursuant to any of the events described in T.C.A. §48-1-102(15)(F).

(ii) The associated person meets all of the following conditions:

(I) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities;

(II) The associated person was not a broker-dealer, or an associated person of a broker-dealer, within the preceding twelve (12) months; and

(III) The associated person does not participate in selling an offering of securities for any issuer more than once every twelve (12) months other than in reliance on subparts (1)(a)4.(i) or (1)(a)4.(iii) of this ~~Rule~~ Rule, except that for securities issued pursuant to SEC Rule 415 (17 C.F.R. §230.415), ~~under the 1933 Act~~, the twelve (12) months shall begin with the last sale of any security included within one (1) SEC Rule 415 registration.

(iii) The associated person restricts his participation to any one (1) or more of the following activities:

- (I) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; provided, however, that the content of such communication is approved by a partner, officer, or director of the issuer;
 - (II) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses are limited to information contained in a registration statement filed under the Act or other offering document; or
 - (III) Performing ministerial and clerical work involved in effecting any transaction.
- (b) No presumption shall arise that an associated person of an issuer has violated T.C.A. §48-1-109 solely by reason of his participation in the offer, sale, or transfer of securities of the issuer if he does not meet the conditions specified in this ~~§~~Rule.
- (c) Definitions. When used in this ~~§~~Rule:
1. The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:
 - (i) The issuer;
 - (ii) A corporate general partner of a limited partnership that is the issuer;
 - (iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or
 - (iv) An investment adviser, registered under the Investment Advisers Act ~~of 1940~~ to an investment company registered under the Investment Company Act, ~~of 1940~~ which is the issuer.
 2. The term "associated person of a broker-dealer" means any partner, officer, director, or branch manager of such broker-dealer (or the person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer, any agent of such broker-dealer, or any employee of such broker-dealer, except that any person associated with a broker-dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker-dealer in that state solely because such person is an issuer of securities or an associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this ~~§~~Rule.
- (2) A retail or financing institution whose dealings in securities are limited to transactions for its own account with institutional investors or other retail or financing institutions in notes or other evidences of indebtedness secured by mortgages, deeds of trust, or agreements for the sale of real estate or personalty, will not be deemed a broker-dealer if the entire mortgage, deed of trust, or agreement, together with all notes or other evidences of indebtedness secured thereby, is offered and sold as a unit.
- (3) The exclusions set forth herein shall not exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§48-1-102, 48-1-103, 48-1-109, 48-1-110(f), 48-1-115, 48-1-116, and ~~48-1-116(a)~~48-1-121, §3(a)(39) of the Securities Act of 1933, and 17 C.F.R. §230.415.

0780-04-03-.05 EXEMPTIONS FROM INVESTMENT ADVISER REGISTRATION.

- (1) The following persons shall be exempted from the registration requirements for investment advisers set forth in T.C.A. §48-1-109:
 - (a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or
 - (b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.
- (2)
 - (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this ~~f~~Rule.
 - (b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this ~~f~~Rule.
- (3) This ~~f~~Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-115, 48-1-116, and ~~48-1-116(a)~~-21.

0780-04-03-.06 INVESTMENT ADVISER NOTICE FILINGS.

- (1) A person who is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act and who is an investment adviser as defined by T.C.A. §48-1-102(10) shall make the following filings with the Division through the IARD by complying with the filing procedures of the IARD:
 - (a) An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser and shall contain the following:
 1. A Form ADV, and all information and exhibits required by such ~~f~~Form, as submitted to the SEC; and
 2. The appropriate notice filing fee as set forth in the Act unless the investment adviser has previously paid the appropriate investment adviser registration filing fee for the current registration period.
 - (b) A renewal investment adviser notice filing and the appropriate renewal fee as set forth in the Act shall be filed pursuant to the renewal procedures of the IARD for each successive calendar year as is necessary in order to sustain compliance with T.C.A. §48-1-109(c)(2).
 - (c) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent notice filing shall be set forth in an amendment to Form ADV and filed promptly with the Division through the IARD.

- (2) The filings herein required shall constitute filings with the Commissioner pursuant to T.C.A. §48-1-121(c) and shall be submitted to the Division through the IARD or submitted to the Division in a manner consistent with the transmittal of such filings to the SEC pursuant to a temporary or continuing hardship exemption as granted by the SEC.
- (3) The filings ~~herein~~ required in subparagraphs (1)(a) and (1)(b) ~~above of this Rule~~ are deemed filed for purposes of T.C.A. §48-1-109(c)(2) and this ~~Rule~~ when they are complete. These filings are deemed to be complete when all required information and fees have been received by the Division.
- (4) A complete or incomplete investment adviser notice filing may be withdrawn by the investment adviser by submission of a withdrawal filing through the IARD.
- (5) Abandonment of Incomplete Investment Adviser Notice Filings.
 - (a) The Division may determine that an incomplete notice filing by an investment adviser has been abandoned if:
 1. The incomplete notice filing has been on file with the Division for more than one hundred eighty (180) days without becoming complete and no written communication has been received by the Division in connection with the notice filing during such time period; or
 2. A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the investment adviser.
 - (b) Upon the determination that an incomplete notice filing has been abandoned, the Division shall, by Order of Abandonment, cancel the incomplete notice filing manually or in the IARD without prejudice and, within thirty (30) days of such cancellation Order of Abandonment, send notice of such cancellation to the last known business address of the investment adviser.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-115, 48-1-116(a), 48-1-121, Public Acts of 2001, Chapter 61, and §203 of the Investment Advisers Act of 1940, as amended by, §307(a) of the National Securities Markets Improvement Act of 1996, ~~and Public Acts of 2001, Chapter 61.~~

0780-04-03-07 INVESTMENT ADVISER CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS.

- (1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person, within the meaning of T.C.A. §48-1-121(b)(~~23~~) of the Act, for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to ~~de-commit~~ an act or take any action, directly or indirectly, with respect to any funds or securities, unless:
 - (a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; ~~and~~
 - (b)
 1. All such funds of such clients are deposited in one (1) or more bank accounts which contain only clients' funds;
 2. Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

3. The investment adviser maintains a separate record for each such account which shows:
 - (i) ~~¶~~The name and address of the bank where such account is maintained;
 - (ii) ~~¶~~The dates and amounts of deposits in and withdrawals from such account; and
 - (iii) ~~¶~~The exact amount of each client's beneficial interest in such account; ~~and~~
 - (c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; ~~and~~
 - (d) Such investment adviser sends to each client, not less frequently than once every three (3) months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period; ~~and~~
 - (e) Such investment adviser complies with the reporting requirements set forth under ~~rule part (4)(a)2. of Rule 0780-04-03-.02(4)(a)2. and~~
 - (f) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T.C.A. §48-1-109(c)(2).
- (2) This ~~¶~~Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the 1934 Act if (a) such broker-dealer is subject to and in compliance with SEC Rule 15c3-1 [Reg. (17 C.F.R. §240.15c3-1)] under the 1934 Act, or (b) such broker-dealer is a member of an exchange whose members are exempt from SEC Rule 15c3-1 [Reg. §240.15c3-1] under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and ~~settled~~-settlement practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.
 - (3) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirement of ~~paragraph part (1)(b)3. of this ¶~~Rule if such investment adviser:
 - (a) ~~is~~ registered ~~or licensed~~ as an investment adviser in the state in which the principal place of business of the investment adviser is located;
 - (b) ~~is~~ in compliance with the books and records requirements of the state in which the investment adviser maintains its principal place of business; and
 - (c) ~~¶~~The provisions of ~~paragraph part (1)(b)3. of this ¶~~Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

- (4) An investment adviser in this state that fully complies with the conditions set forth under subparagraphs (1)(a-ef) of this Rule may take or have custody of any funds or securities of any client.
- (5) Any investment adviser that is not registered with the Division under T.C.A. §48-1-109(c)(2) that fully complies with SEC Rule 206(4)-2 promulgated under the Investment Advisers Act (17 C.F.R. §275.206(4)-2) may take or have custody of any funds or securities of any client.
- (6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Authority: T.C.A. §§48-1-109, 48-1-111, 48-1-115, 48-1-116, 48-1-121(a) and 48-1-121(b); Public Acts 1997, Chapter 164, §Section 7; §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996; §15 of the Securities Exchange Act of 1934, 17 C.F.R. §240.15c3-1, and 17 C.F.R. §275.206(4)-2.

0780-04-03-.08 INVESTMENT ADVISER FINANCIAL AND DISCIPLINARY DISCLOSURE.

- (1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:
 - (a) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred (\$500) from such client, six (6) months or more in advance; or
 - (b) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.
- (2) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph (1)(b) of this Rule for a period of ten (10) years from from the time of the event.
 - (a) A criminal or civil action in a court of competent jurisdiction in which the person:
 - 1. Was convicted, pleaded guilty, or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action") and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - 2. Was found to have been involved in a violation of an investment-related statute or regulation; or
 - 3. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

- (b) Administrative proceedings before the ~~SEC~~Securities and Exchange Commission, any other federal regulatory agency, or any state agency (any of the foregoing being referred to hereafter as "Agency") in which the person:
1. Was found to have caused an investment-related business to lose its authorization to do business; or
 2. Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities.
- (c) Self-Regulatory Organization (SRO) proceedings in which the person:
1. Was found to have caused an investment-related business to lose its authorization to do business; or
 2. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars (\$2,500); or otherwise significantly limiting the person's investment-related activities.
- (3) The information required to be disclosed by paragraph (1) of this Rule shall be disclosed to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract.
- (4) For purposes of this ~~R~~Rule:
- (a) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.
 - (b) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.
 - (c) "Investment related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act ~~{(7 U.S.C. §1 et seq.)}~~ or fiduciary.)
 - (d) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
 - (e) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
- (5) For purposes of calculating the ten (10) year period during which events are presumed to be material under paragraph (2), of this Rule, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal ~~from~~ from preliminary orders, judgments, or decrees lapsed.

- (6) Compliance with paragraph (2) of this ~~Rule~~ shall not relieve any investment adviser from the disclosure obligations of paragraph (1) of ~~this Rule~~; ~~Compliance~~ with paragraph (1) of ~~this Rule~~ shall not relieve any investment adviser from any other disclosure requirement under the Act, ~~these Rules, and regulations thereunder~~, or under any other federal or state law.

Authority: T.C.A. §§~~48-1-115, 48-1-116, 48-1-121, (b)(2) and 48-1-116(a)~~; §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, ~~and~~; 17 C.F.R. §275.206(4)-4.

0780-04-03-.09 ADVERTISEMENT BY INVESTMENT ADVISERS.

- (1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) ~~of the Act~~ for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:
- (a) ~~Which~~ refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser ~~or~~;
 - (b) ~~Which~~ refers, directly or indirectly, to past specific recommendations of such investment adviser, which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one (1) year, if such advertisement and such list, if it is furnished separately:
 - 1. ~~States~~ the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; ~~and~~
 - 2. ~~Contains~~ the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof; "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; ~~or~~
 - (c) ~~Which~~ represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his own decisions as to which securities to buy and sell, or when to buy and sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; ~~or~~
 - (d) ~~Which~~ contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or
 - (e) ~~Which~~ contains any untrue statement of a material fact, or which is otherwise false or misleading.

- (2) For the purposes of this ~~Rule~~, the term “advertisement” shall include any notice, circular, letter, or other written communication addressed to more than one (1) person, or any notice or other announcement in any publication or by radio or television, which offers (a) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (b) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (c) any other investment advisory service with regard to securities.

Authority: T.C.A. §§~~48-1-115, 48-1-116, (a) and 48-1-121(b)~~, Public Acts of 1997, Chapter 164; §§222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996; and 17 C.F.R. §275.206(4)-1.

0780-04-03-.10 WRITTEN DISCLOSURE STATEMENTS BY INVESTMENT ADVISERS.

- (1) General requirement. Unless otherwise provided in this ~~Rule~~, an investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109 ~~(c)(c) of the Act~~ shall, in accordance with the provisions of this ~~Rule~~, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part ~~#~~2 of its Form ADV or a written document containing at least the information then so required by Part ~~#~~2 of Form ADV.
- (2) Delivery.
- (a) An investment adviser, except as provided in subparagraph (2)(b) of this Rule, shall deliver the statement required by this ~~section-subparagraph (2)(a)~~ to an advisory client or prospective advisory client:
1. ~~n~~Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client; or
 2. ~~a~~At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.
- (b) Delivery of the statement required by subparagraph (2)(a) of this Rule need not be made in connection with entering into a contract for impersonal advisory services as defined in the Rule.
- (3) Offer to deliver.
- (a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this ~~Rule~~.
- (b) The delivery or offer required by subparagraph (3)(a) of this Rule need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars (\$200).
- (c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of two hundred dollars (\$200) or more, an offer of the type specified in subparagraph (3)(a) of this Rule shall also be made at the time of entering into an advisory contract.

- (d) Any statement requested in writing by an advisory client pursuant to an offer required by ~~this~~ paragraph (3) of this Rule must be mailed or delivered within seven (7) days of the receipt of the request.
- (4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by ~~Part- H-2~~ of Form ADV may be omitted ~~form-from~~ the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- (5) Other disclosures. Nothing in this ~~f~~Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or these ~~R~~Rules ~~thereunder~~ or other federal or state law to ~~disclosure-disclose~~ any information to its advisory clients or prospective advisory clients not specifically required by this ~~f~~Rule.
- (6) Sponsors of wrap fee programs.
- (a) An investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109(c) of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program, shall in lieu of the written disclosure statement required by paragraph (1) of this ~~f~~Rule and in accordance with other provisions of this ~~f~~Rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by ~~Part 2A Appendix 1 Schedule H~~ of Form ADV. Any additional information included in such disclosure should be limited to information concerning wrap fee programs sponsored by the investment adviser.
- (b) If the investment adviser is required under this paragraph (6) to furnish disclosure statements to clients or prospective clients of more than one (1) wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee programs- or programs any information required by ~~Schedule H~~Form ADV Part 2A Appendix 1 that is not applicable to clients or prospective clients of that wrap fee program or programs.
- (c) An investment adviser need not furnish the written disclosure statement required by subparagraph (6)(a) of this ~~f~~Rule to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.
- (7) Definitions. For purposes of this ~~f~~Rule:
- (a) "~~e~~Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:
1. ~~b~~By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;
 2. ~~t~~Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 3. ~~a~~Any combination of the foregoing services.

- (b) "eEntering into", in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.
 - (c) "wWrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.
- (8) An investment adviser that fails to make written disclosure statements as required by this Rule shall be deemed to have engaged in a dishonest and unethical practice in the securities business as provided under T.C.A. §48-1-112(a)(2)(G).

Authority: T.C.A. §§~~48-1-109~~, 48-1-112, ~~(a)(2)(G)~~ and ~~48-1-115~~, 48-1-116, ~~(a)~~; §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act, and; 17 C.F.R. §275.204-4.

0780-04-03-.11 PERSONS DEEMED NOT TO BE "AGENTS".

- (1) An individual associated person of a broker-dealer shall be exempt from the definition of "agent" as defined under T.C.A. §48-1-102(3) if such individual associated person effects any of the two (2) types of transactions in securities described in paragraph (2) of this Rule for a customer in this state and satisfies the following conditions:
 - (a) sSuch individual associated person is not ineligible to register in this state for any reason other than such a transaction in securities;
 - (b) sSuch individual associated person is registered with a securities association registered under the 1934 Act and is also registered in at least one (1) state; and
 - (c) tThe broker-dealer with which such individual person is associated is appropriately registered in this state.
- (2) For purposes of this Rule, the following are the two (2) types of transactions referred to in paragraph (1):
 - (a) aA transaction that is effected on behalf of a customer who:
 - 1. mMaintained an account with the broker-dealer employing the associated person for thirty (30) days prior to the date of the transaction; and
 - 2. wWas assigned to such individual associated person for fourteen (14) days prior to the day of the transaction and such individual associated person is registered with the state in which the customer was resident or was present for at least thirty (30) consecutive days during the one (1) year period prior to the day of the securities transaction; or
 - (b) aA transaction that is:
 - 1. eEffected on behalf of a customer who maintains an account with the broker-dealer for thirty (30) days prior to the date of the securities transactions; and
 - 2. eEffected during the period, beginning on the date on which such individual associated person of a broker-dealer files an application for agent registration in this state and ending on the earlier of:

- (i) Sixty (60) days after the date on which the application is filed; or
- (ii) ~~¶~~The date on which this state notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

For purposes of ~~subparagraph part (2)(a)2~~ of this ~~¶~~Rule, each of up to three (3) individuals, who are associated persons of a broker-dealer and who are designated by such broker-dealer to effect securities transactions for a customer in this state during the absence or unavailability of the principal associated person for a customer, may be treated as an associated person to which such customer is assigned.

- (3) An exemption from the definition of "agent" claimed on the basis of the transaction set forth in subparagraph (2)(a) of this Rule shall not be effective if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state and the associated person of the broker-dealer fails to file an application for agent registration in this state pursuant to T.C.A. §§48-1-109 and 48-1-110 not later than ten (10) business days after the later of:

- (a) ~~¶~~The date of the transaction; or
- (b) ~~¶~~The date of discovery of the customer's presence in this state for thirty (30) or more consecutive days; or
- (c) ~~¶~~The change in the customer's residence.

- (4) The exemptions set forth herein shall not exempt any person from the operation of the antifraud provision of the Act set forth at T.C.A. §48-1-121.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-110, 48-1-115, 48-1-116, 48-1-121, and 2(2) and 48-1-116(a); §15 of the Securities and Exchange Act of 1934, as amended by §103-(a)(2) of the National Securities Markets Improvement Act of 1996.

0780-04-03-.12 DEFINITION OF "CLIENT OF AN INVESTMENT ADVISER".

- (1) Preliminary note. This ~~¶~~Rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of T.C.A. §48-1-102(10)(E)(ii) and 48-1-102(10)(F) of the Act.
- (2) General. For purposes of ~~T.C.A. §§~~48-1-102(10)(E)(ii) and 48-1-102(10)(F), the following are deemed a single client:
 - (a) A natural person, and:
 - 1. Any minor child of the natural person;
 - 2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
 - 3. All accounts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries; or
 - 4. All trusts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries;

- (b) 1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in ~~paragraph part~~ (2)(a)4~~.~~ of this ~~selection~~Rule), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partner, members, or beneficiaries (any of which are referred to hereinafter as an an "owner"); and
 - 2. Two or more legal organizations referred to in ~~paragraph~~part (2)(b)1. of this ~~section~~Rule that have identical owners.
- (3) Special Rules. For purposes of this ~~R~~Rule:
- (a) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization; ~~provided~~, however, that the determination that an owner is a client will not affect the applicability of this ~~section~~subparagraph (3)(a) with regard to any other owner;
 - (b) An owner need not ~~to~~ be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;
 - (c) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;
 - (d) Any person for whom an investment adviser provides investment advisory services without compensation need not ~~to~~ be counted as a client; and
 - (e) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are residents in this state; an investment ~~adviser~~adviser that has its principal office and place of business in this state must count all clients.
- (4) Holding Out. ~~Any~~ investment adviser relying on this ~~Rule section~~paragraph shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of ~~subparagraph (1)(b) of this R~~rule 0780-04-03-.05(1)(b), solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the ~~Securities-1933 Act of 1933~~.

Authority: T.C.A. §§48-1-102, ~~48-1-115~~, ~~48-1-102(7)~~, 48-1-116(a); §222 of the Investment Advisers Act of 1940, as amended by §304(e) of the National Securities Markets Improvement Act of 1996, ~~and~~; 17 C.F.R. §275.203(b)(3)-1.

0780-04-03-.13 CASH PAYMENTS FOR CLIENT SOLICITATIONS.

- (1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under T.C.A. §48-1-121(b)(2), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:
 - (a) ~~T~~The solicitor is not a person:
 - 1. ~~s~~Subject to an order issued by the ~~C~~commissioner under T.C.A. §48-1-112(a) of the Act, ~~of~~

2. ~~e~~Convicted of any felony or any misdemeanor within the previous ten (10) years of any felony or misdemeanor involving conduct described in T.C.A. §48-1-112(a)(2)(C); ~~or~~
 3. ~~w~~Who has been found by the ~~C~~commissioner to have engaged, or has been convicted of engaging, in any of the conduct specified in T.C.A. §§48-1-121(~~C~~), 48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or has materially aided in the action in violation of T.C.A. §§48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or 48-1-121;
 4. ~~s~~Subject to an order, judgment, or decree described in T.C.A. §48-1-112(a)(2)(D) of the Act; or
 5. ~~d~~Described in SEC Rule 206(4)-3(a)(1)(ii) (17 C.F.R. §275.206(4)-3(a)(1)(ii)) ~~Regulation §275.206(4)-3(a)(1)(ii)) as promulgated under the Investment Advisers Act; and~~
- (b) ~~s~~Such cash fee is paid pursuant to a written agreement to which the adviser is a party; ~~and~~
- (c) ~~s~~Such cash fee is paid to a solicitor:
1. ~~w~~With respect to solicitation activities for the provision of impersonal advisory services only; ~~or~~
 2. ~~w~~Who is:
 - (i) ~~a~~A partner, officer, director, or employee of such investment adviser; or
 - (ii) ~~a~~A partner, officer, director, or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or
 3. ~~e~~Other than a solicitor specified in ~~paragraph parts (1)(c)-1. or (1)(c)2. above of this Rule~~ if all of the following conditions are met:
 - (i) The written agreement required by subparagraph (1)(b) of this Rule:
 - (I) ~~d~~Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received thereof;
 - (II) ~~e~~Contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and ~~these Rules thereunder or~~ of the Investment Advisers Act and the rules promulgated thereunder, whichever is applicable; ~~and~~
 - (III) ~~r~~Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by ~~r~~Rule 0780-04-03-.10 or SEC ~~r~~Rule 204-3 (17 C.F.R. §275.204-3); as applicable, and a

separate written disclosure statement described in paragraph (2) of this ~~f~~Rule.

- (ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document; ~~and~~.
 - (iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.
- (2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to ~~paragraph-subpart~~ (1)(c)3.(ii) of this ~~f~~Rule shall contain the following information:
- (a) The name of the solicitor;
 - (b) The name of the investment adviser;
 - (c) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
 - (d) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
 - (e) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
 - (f)
 - 1. The amount, if any, the client will be charged for the cost of obtaining his account in addition to the advisory fee; ~~and~~
 - 2. The differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.
- (3) Nothing in this ~~f~~Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.
- (4) For purposes of this ~~f~~Rule:
- (a) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.
 - (b) "Client" includes any prospective client.
 - (c) "Impersonal advisory services" means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

- (5) The investment adviser shall retain a copy of each written agreement required by subparagraph (1)(b) of this Rule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02(3).
- (6) The investment adviser shall retain a copy of each acknowledgement and solicitor disclosure document referred to in paragraph-subpart (1)(c)3(ii) of this Rule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02(3).
- (7) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of paragraphs (5) or (6) of this Rule if such investment adviser:
 - (a) is registered or licensed as an investment adviser in the state in which it maintains its principal place of business;
 - (b) is in compliance with applicable books and records requirements of the state in which it maintains its principal place of business; and
 - (c) The provisions of paragraphs (5) or (6) of this Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.
- (8) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, or coordinate the activities of the investment adviser.

Authority: T.C.A. §§48-1-111(a), 48-1-112, 48-1-115, 48-1-116(a), and 48-1-121, Public Acts of 1997, Chapter 164, 17 C.F.R. (b)(2); §275.204-3, and 17 C.F.R. §-275.206(4)-3.

0780-04-03-.14 AGENCY CROSS TRANSACTIONS FOR INVESTMENT ADVISORY CLIENTS.

- (1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment ~~adviser~~ adviser acting as principal for his own account to:
 - (a) Knowingly ~~to~~ sell any security to or to purchase any security from a client without:
 1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and
 2. Obtaining the consent of the client to such transaction; or
 - (b) Knowingly ~~to~~ effect any sale or purchase of any security for the account of such client, while acting as broker-dealer for a person other than such client, without:
 1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and
 2. Obtaining the consent of the client to such transaction.

The prohibitions of this paragraph (1) shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

- (2) An investment adviser registered under T.C.A. §48-1-109 ~~of the Act~~, or a person registered as a broker-dealer under T.C.A. §48-1-109 ~~of the Act~~ and controlling, controlled by, or under

common control with an investment adviser registered under T.C.A. §48-1-109 ~~of the Act~~, shall be deemed not to be in violation of the provisions of this ~~Rule~~ and T.C.A. §48-1-121(b)(2) ~~of the Act~~ in effecting an agency cross transaction for an advisory client, if:

- (a) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this ~~Rule~~, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure ~~that~~ with respect to agency cross transactions for which the investment adviser or such other person will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;
 - (b) The investment adviser, or any other person relying on this ~~Rule~~, sends to each client a written confirmation at or before the completion of each such transaction, which confirmation includes:
 1. ~~a~~ A statement of the nature of such transaction;
 2. ~~The~~ The date such transaction took place;
 3. ~~a~~ An offer to furnish upon request, the time when such transaction took place; and
 4. ~~The~~ The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this paragraph (2) in connection with the transaction.
 - (c) The investment adviser, or any other person relying on this ~~Rule~~, sends to each client, at least annually, and with or as part of any written statement or summary of such account form the investment adviser of such other person:
 1. ~~a~~ A written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and
 2. ~~The~~ The total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this ~~Rule~~ in connection with such transactions during such period;
 - (d) Each written disclosure and confirmation required by this ~~Rule~~ includes a conspicuous statement that the written consent referred to in subparagraph (2)(a) of this ~~Rule~~ may be revoked at any time by written notice to the investment adviser, or any other person relying on this paragraph, from the advisory client; and
 - (e) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.
- (3) For purposes of this ~~Rule~~, the term "agency cross transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, acts as broker-dealer for both such advisory client and for another person on the other side of the transaction.
 - (4) For purposes of ~~paragraph part~~ (2)(b)4. of this ~~Rule~~, the written confirmation referred to in such ~~Rule~~ may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer if:

- (a) ~~i~~n the case of a purchase, neither the investment adviser nor any other person relying on paragraph (2) was participating in a distribution; or
 - (b) ~~i~~n the case of a sale, neither the investment adviser nor any other person relying on this paragraph was participating in a tender offer.
- (5) This ~~R~~ule shall not be construed as relieving in any way the investment adviser or another person relying on this ~~R~~ule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may imposed by T.C.A. §48-1-121(b)(2) ~~of the Act~~ or by other applicable provisions of the Act.

Authority: T.C.A. §§~~48-1-109, 48-1-115, 48-1-116, 48-1-121, Public Acts of 1997, Chapter 164, §7, (b)(2) and 48-1-116(a)~~; §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996; and 17 C.F.R. §275.206(3)-2.

0780-04-03-.15 EXEMPTION FROM BROKER-DEALER REGISTRATION FOR CERTAIN CANADIAN BROKER-DEALERS.

- (1) Prior to effecting any securities transaction pursuant to the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g), a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:
 - (a) Initial exemption notice filing which contains the following:
 1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;
 2. Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;
 3. Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;
 4. Copy of the disclosure which will be made to customers that the Canadian broker-dealer is not subject to the full regulatory requirements of the Act;
 5. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;
 6. Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to part (1)(a)5. herein of this Rule;
 7. Form U-2 Uniform Consent to Service of Process;
 8. The appropriate fee as set forth in the Act; and

9. Such other information as the Division may request from a particular Canadian broker-dealer to determine eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).
- (2) Each exemption notice filing expires each December 31 unless timely renewed. An exemption notice filing is timely renewed for the next successive calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and on or before the immediately following December 31:
- (a) Renewal exemption notice filing which contains the following:
 1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;
 2. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;
 3. The appropriate fee as set forth in the Act; and
 4. Such other information as the Division may request from a particular Canadian broker-dealer to determine continuing eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).
 - (b) Exemption notice filings for which incomplete renewal exemption notice filings have been submitted will expire at the relevant December 31 unless completed by the filer on or before that December 31.
- (3) Abandonment
- (a) The Division may determine that an incomplete initial exemption notice filing has been abandoned if:
 1. An incomplete filing has been on file with the Division for more than one hundred eighty (180) days without becoming completed and no written communication has been received by the Division from the filer in connection with the filing during such period; or
 2. A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the filer.
 - (b) Upon the determination that an incomplete initial exemption notice filing has been abandoned, the Division may, by Order of Abandonment, cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail ~~a notice of the cancellation~~ the Order of Abandonment to the last known business address of the filer.
- (4) Termination and Withdrawal
- (a) A Canadian broker-dealer may terminate its initial exemption notice filing or renewal exemption notice filing by filing a written request for termination directly with the Division. Annual fees previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.

- (b) An incomplete initial exemption notice filing, a renewal exemption notice filing, or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.
- (c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g) shall immediately notify the Division in writing of the cause of such ineligibility and shall simultaneously, as is appropriate, request a termination or withdrawal pursuant to subparagraphs (4)(a) or (4)(b) [herein of this Rule](#).
- (5) The filings herein required shall constitute filings with the [G](#)commissioner pursuant to T.C.A. §48-1-121(c).

Authority: T.C.A. §§48-1-102, 48-1-109(g), [48-1-112](#), [48-1-115](#), [48-1-116](#), [48-1-121](#), and [48-1-124\(e\)](#),
~~and 48-1-116(a).~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10-13-14 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 10-13-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 10-13-14

Notary Public Signature: Denise M. Lewis

My commission expires on: 2-15-16

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/22/2014
 Date

Department of State Use Only

SECRETARY OF STATE
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 2014 DEC 23 PM 4:27

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Fish and Wildlife Commission

SUBJECT: Rules and Regulations Governing Hunts

STATUTORY AUTHORITY: Tennessee Code Annotated, § 70-1-206

EFFECTIVE DATES: March 9, 2015 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule 1660-01-08-.03 is amended to add Headwaters and Parker Branch Wildlife Management Areas and Bean Switch Refuge, Cypress Pond Refuge, and Eagle Lake Refuge to the list of agency controlled lands. Rule 1660-01-08-.05 is amended to clarify portions of the Quota Big Game Hunt Drawings which no longer utilize paper applications, and to outline the procedures for the Sandhill Crane quota permit drawing.

Public Hearing Comments

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

RULE: 1660-01-08-.05

New	_____
Amendment	<u> X </u>
Repeal	_____

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 as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

The Commission does not anticipate significant impact to small businesses in Tennessee. Rule 1660-01-08-.03 is amended to add Headwaters and Parker Branch Wildlife Management Areas and Bean Switch Refuge, Cypress Pond Refuge, and Eagle Lake Refuge to the list of agency controlled lands. Rule 1660-01-08-.05 is amended to clarify portions of the Quota Big Game Hunt Drawings which no longer utilize paper applications, and to outline the procedures for the Sandhill Crane quota permit drawing.

(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 Commission anticipates no record keeping associated with this rule.

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

The Commission anticipates no probable effect to small businesses.

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

The Commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

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

The Commission is unaware of federal or state counterparts to this 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 Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

Impact on Local Governments

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

Will passage of this rule have a projected financial impact on local governments?

The Commission is not aware of any projected financial impacts on local governments.

Please describe the increase in expenditures or decrease in revenues:

n/a

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 12-10-14
Rule ID(s): 5847
File Date: 12/9/14
Effective Date: 3/9/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Wildlife
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1660-01-08	Rules and Regulations Governing Hunts
Rule Number	Rule Title
1660-01-08-.03	Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands
1660-01-08-.05	Permit Applications and Drawings

Chapter 1660-01-08
Rules and Regulations of Hunts

Amendments

Rule 1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands, paragraph (3) subparagraph (a) is amended by adding Headwaters and Parker Branch Wildlife Management Areas so that, as amended, the rule shall read:

AEDC	Forks of the River	North Chickamauga Creek
Alpine Mountain	Haley-Jaqueth	North Cumberland
Arnold Hollow	Harmon Creek	Oak Ridge
Bark Camp Barrens	Haynes Bottom	Obion River
Barkley	Headwaters	Old Hickory
Bean Switch Refuge	Henderson Island Refuge	Old Hickory Lock 5 Refuge
Bear Hollow Mountain	Hick Hill	Owl Hollow Mill
Beaver Dam Creek	Hickory Flat	Paint Rock Refuge
Big Sandy (including Gin Creek)	Hiwassee Refuge	Parker Branch
Bogota	Hop-In Refuge	Pea Ridge
Bridgestone/Firestone	Horns Bluff Refuge	Percy Priest

Centennial Wilderness	Jackson Swamp	Perryville
Browntown	Jarrell Switch Refuge	Prentice Cooper
Buffalo Springs	John Tully	Rankin
Camden	Keyes-Harrison	Shelton Ferry
Catoosa	Kingston Refuge	Skinner Mountain
Cedar Hill Swamp	Kyker Bottoms Refuge	South Fork Refuge
Charlotte Ann Finnell Neal	Kyles Ford	Tellico Lake
Cheatham	Laurel Hill	Thorny Cypress
Cheatham Lake	Lick Creek	Tie Camp
Chickamauga	Lick Creek Bottoms	Tigrett
Chuck Swan	Luper Mountain	The Boils
Cordell Hull	Maness Swamp Refuge	Three Rivers
Cordell Hull Refuge	Maple Springs	Tumbleweed
Cove Creek	Meeman-Shelby Forest	Watts Bar
C. M. Gooch	Mingo Swamp	West Sandy
Cummings Cove	Moss Island	White Lake Refuge
Cypress Pond	Mount Roosevelt	White Oak
Dry Creek	MTSU	Williamsport
Eagle Creek	Natchez Trace	Wolf River
Eagle Lake Refuge	New Hope	Woods Reservoir Refuge
Ernest Rice Sr.	Nolichucky	Yanahli
Flintville Hatchery	Normandy	Yuchi Refuge
Foothills		

Rule 1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands, paragraph (3) subparagraph (b) is amended by adding Bean Switch Refuge, Cypress Pond Refuge, Eagle Lake Refuge, Headwaters Wildlife Management Area, and Parker Branch Wildlife Management Area so that, as amended, the rule shall read:

AEDC	Headwaters	Obion River
Barkley	Hiwassee Refuge	Old Hickory
Bean Switch Refuge	Horns Bluff Refuge	Parker Branch
Big Sandy (including Gin Creek)	Jackson Swamp	Percy Priest
Bogota	Jarrell Switch Refuge	Shelton Ferry
C.M. Gooch	John Tully	South Fork Refuge
Camden	Moss Island	The Boils
Cedar Hill Swamp	Lick Creek	Thorny Cypress
Charlotte Ann Finnell Neal	Lick Creek Bottoms	Three Rivers
Cheatham Lake	Meeman-Shelby Forest	Tigrett
Chickamauga	Mingo Swamp	Tumbleweed
Cordell Hull	Moss Island	Watts Bar
Cordell Hull Refuge	New Hope	West Sandy
Cypress Pond Refuge	Nolichucky	White Oak
Eagle Lake Refuge	North Chickamauga Creek	Wolf River
Ernest Rice Sr.	Paint Rock Refuge	Yanahli
Harmon Creek	Oak Ridge	Yuchi Refuge
Haynes Bottom		

Rule 1660-01-08-.03 Permit Requirements – Wildlife Management Areas, Refuges and other agency controlled lands, paragraph (3) subparagraph (c) is amended by adding Headwaters and Parker Branch Wildlife Management Areas so that, as amended, the rule shall read:

AEDC	Fall Creek Falls State Park	Normandy
Alpine Mountain	Flintville Hatchery	North Chickamauga Creek
Arnold Hollow	Foothills	North Cumberland
Bark Camp Barrens	Forks of the River	Oak Ridge
Barkley	Gallatin Steam Plant	Obion River
Bear Hollow Mountain	Haley-Jaqueth	Old Hickory

Bean Switch Refuge	Harmon Creek	Old Hickory Lock 5 Refuge
Beaver Dam Creek	Haynes Bottom	Owl Hollow Mill
Big Sandy (including Gin Creek)	Headwaters	Paint Rock Refuge
Bogota	Henderson Island Refuge	Parker Branch
Bridgestone/Firestone Centennial Wilderness	Hick Hill	Pea Ridge
	Hickory Flat	Percy Priest
Browntown	Hiwassee Refuge	Perryville
Buffalo Springs	Hop-In Refuge	Prentice Cooper
C. M. Gooch	Horns Bluff Refuge	President's Island
Camden	Jackson Swamp	Rankin
Catoosa	Jarrell Switch Refuge	Shelton Ferry
Cedar Hill Swamp	John Tully	Skinner Mountain
Charlotte Ann Finnell Neal	Keyes-Harrison	South Fork Refuge
Cheatham	Kingston Refuge	Tellico Lake
Cheatham Lake	Kyles Ford	The Boils
Cherokee	Laurel Hill	Thorny Cypress
Chickamauga	Lick Creek	Three Rivers
Chuck Swan	Lick Creek Bottoms	Tie Camp WMA
Cordell Hull	Luper Mountain	Tigrett
Cordell Hull Refuge	Maness Swamp Refuge	Tumbleweed
Cove Creek	Maple Springs	Watts Bar
Cummings Cove	Meeman-Shelby Forest	West Sandy
Cypress Pond	Mingo Swamp	White Lake Refuge
Dry Creek	Moss Island	White Oak
Eagle Creek	Mount Roosevelt	Williamsport
Eagle Lake Refuge	MTSU	Wolf River
Edgar Evins State Park	Natchez Trace	Woods Reservoir Refuge
Enterprise South Park	New Hope	Yanahli
Ernest Rice Sr.	Nolichucky	Yuchi Refuge

Authority: T.C.A. §§70-1-206, 70-2-201, 70-4-107 and 70-5-101. Administrative History: Original rule certified May 8, 1974. Amendment filed July 18, 1974; effective August 18, 1974. Amendment filed December 23, 1974; effective January 23, 1975. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed October 8, 1975; effective November 7, 1975. Amendment filed July 19, 1976; effective August 18, 1976. Amendment filed October 22, 1976; effective November 22, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 2, 1982; effective August 31, 1982. Amendment filed January 24, 1984; effective February 23, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed July 25, 1986; effective September 8, 1986. Amendment filed July 8, 1987; effective August 22, 1987. Amendment filed April 20, 1988; effective June 4, 1988. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed November 6, 1991; effective December 21, 1991. Amendment filed December 14, 1992; effective January 19, 1993. Amendment filed September 26, 1996; effective December 10, 1996. Amendments filed August 16, 1999; effective October 30, 1999. Amendment filed July 1, 2000; effective September 23, 2000. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendment filed July 29, 2004; effective October 12, 2004. Amendment filed July 12, 2005; effective September 25, 2005. Amendment filed October 25, 2005; effective January 8, 2006. Amendment filed June 22, 2006; effective September 5, 2006. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed June 25, 2008; effective September 8, 2008. Amendment filed April 4, 2012; effective July 3, 2012.

Rule 1660-01-08-.05 Permit Applications and Drawings is amended by changes to section (1) (e), (f) and (j), clarifying portions of the Quota Big Game Hunt Drawings which no longer utilize paper applications, and by adding a new paragraph (8) which outlines the procedures for the Sandhill Crane quota permit drawing, so that, as amended, the rule shall read:

- (1) Quota Big Game Hunt Drawings

- (a) Each individual desiring to participate in a managed quota deer, bear, or turkey hunt, must apply only at locations and during periods as designated by the Tennessee Wildlife Resources Agency, except as indicated in items (i), (j), and (k) below.
- (b) Applicants may submit only one application, except youths six (6) through sixteen (16) years of age may apply for one additional young sportsman hunt on management areas. If an individual's name (except youths applying for one additional young sportsman hunt as noted above) appears on more than one application, that individual will be rejected, his permit fee forfeited, and he/she will be subject to prosecution.
- (c) For quota big game hunts on wildlife management areas, applicants must be at least six (6) years of age prior to the date of the hunt.
- (d) All information requested on the application must be completed by the applicant. Failure to clearly specify all information will result in an invalid the application being returned.
- (e) Applications must be received by the Tennessee Wildlife Resources Agency as specified on the application. Applications cannot be accepted received after the this deadline will be returned.
- (f) All persons wishing to hunt together as a party must submit their applications as one unit, indicating identical hunt choices on all individual applications. The number of applicants comprising a party may not exceed fifteen (15) members. If the number of applicants exceeds the maximum party size, all applications of that party will be returned. Persons may apply as an individual or with up to 14 other individuals as a "party". Specific instructions to apply as a party will be available on the Agency's website and available on the Quota Hunt Instruction Sheet, available at license vendors.
- (g) Each application must be accompanied by a non-refundable handling fee for each applicant, except Sportsman License holders, Lifetime Sportsman License holders and persons possessing an Annual Senior Citizen Permit (type 167).
- (h) Priority drawings and procedures for qualifying with priority status will be established as indicated on applications.
- (i) A drawing will be held to determine successful applicants. If unfilled hunt quotas exist after the regular drawing a vacancy drawing or drawings will be held to fill those vacancies. Successful and unsuccessful applicants will be notified by mail.
- (j) When vacancies exist following the drawing(s), quotas will be filled by issuing permits to any applicant, on a first-come, first-served basis at Regional Offices, Nashville Office, and at other locations as designated by the Agency. Permits are not transferable. An individual may obtain up to fifteen (15) permits for him/herself or for other individuals at one time, but will be allowed only one (1) leftover permit per person and may obtain leftover permits for other individuals (limit of one leftover permit per person) if they provide the required information for individuals they are representing, for each available hunt, until all persons waiting in line at that location have had an opportunity to select permits.
- (k) Land Between the Lakes quota hunt drawings – Individuals desiring to participate in a quota hunt on Land Between the Lakes must submit an application as instructed by the USDA Forest Service.

(8) Sandhill Crane Quota Permit Computer Drawing And Handheld Allocation Procedures.

- (a) Permits will be issued by handheld drawing(s) on-site or near hunt zone(s) or by a computer drawing to determine successful applicants.

- (b) Each individual desiring to participate in a quota permit drawing must submit an application during the application period specified and per the instructions supplied by the Tennessee Wildlife Resources Agency (hereafter "Agency").
- (c) Applicants may submit one application per year. If more than one application is received per hunter, that individual's applications will be rejected.
- (d) All information requested at the time of application must be completed; failure to provide all information will result in the application being rejected.
- (e) If a handheld drawing is conducted, a current Hunting & Fishing License and Waterfowl license are required to apply for the permit. If a computerized drawing is conducted, each application must be accompanied by a non-refundable handling fee, except Sportsman License holders, Lifetime Sportsman License holders and persons possessing an Annual Senior Citizen Permit (type 167).
- (f) If a computerized drawing is conducted, priority drawings and procedures for qualifying with priority status will be established as indicated on the application.
- (g) When permits remain following the drawing(s), leftover permits will be available on a first-come, first-served basis either at Regional Offices and other locations designated by the Agency or on the Agency web site. An individual may obtain permits for up to 5 other individuals if they provide proof that the individuals they are representing meet the minimum licensing requirements (as outlined in (e)). Individuals wishing to obtain permits for others may obtain one permit at a time and only by returning to the end of the line (at handheld drawings) for each additional permit they wish to obtain.
- (h) Successful applicants must possess appropriate licenses and permits in order to participate in the hunt(s).
- (i) Successful applicants may be required to pass a bird identification test; specific requirements will be outlined by the Agency in the Sandhill Crane Quota Permit Application.

Authority: T.C.A. §§ 70-1-206, 70-2-219, 70-4-107, and 70-5-101. Administrative History: Original rule filed July 19, 1976; effective August 18, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 28, 1979; effective October 12, 1979. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed February 6, 1981; effective March 23, 1981. Amendment filed August 12, 1982; effective August 31, 1982. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed April 22, 1988; effective June 6, 1988. Amendment filed September 1, 1988; effective October 16, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed June 11, 1992; effective July 26, 1992. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed July 26, 1996; effective October 7, 1996. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed March 4, 1998; effective May 18, 1998. Amendment filed May 20, 1998; effective August 3, 1998. Amendments filed September 17, 1998; effective December 1, 1998. Amendment filed July 13, 1999; effective September 26, 1999. Amendment filed May 19, 2000; effective August 2, 2000. Amendment filed October 2, 2000; effective December 16, 2000. Amendment filed December 1, 2000; effective February 14, 2001. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendments filed July 12, 2005; effective September 25, 2005. Amendments filed October 25, 2005; effective January 8, 2006. Amendment filed June 20, 2006; effective September 3, 2006.

* 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
Jeffrey H. Griggs	✓			
Chad Baker	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Connie King	✓			
Jeff McMillin	✓			
Tom Rice	✓			
Jim Ripley	✓			
James Stroud	✓			
Trey Teague	✓			
David Watson	✓			
Jamie Woodson	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 8/29/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/18/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 08/29/2014

Date: 8/29/14

Signature: [Signature]

Name of Officer: Ed Carter

Title of Officer: Executive Director



Subscribed and sworn to before me on: 8.29.14

Notary Public Signature: [Signature]

My commission expires on: 5-5-15

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

[Signature]

Herbert H. Slatery III
Attorney General and Reporter

11/25/2014

Date

Department of State Use Only

Filed with the Department of State on: 12/9/14

Effective on: 3/9/15

[Signature]

Tre Hargett

2014 DEC -9 PM 12:13
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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Administration

SUBJECT: Allocation of Tax Revenues to Assist Economically Distressed Counties; Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 67-6-104(l).

EFFECTIVE DATES: March 2, 2015 through June 30, 2015

FISCAL IMPACT: The fiscal memorandum for the bills that became Public Chapter 985 of 2014 estimated the decrease of state revenue, and increase of local revenue from the bill as follows:
\$60,400 /FY 2014-15
\$120,900/FY 2015-16
\$181,300/FY 2016-17
\$241,800/FY 2017-18
\$307,300/FY 2018-19 and subsequent fiscal years.

STAFF RULE ABSTRACT: The rule implements Public Chapter 985 of 2014 and provides the application and review procedures for applying for the allocation of certain sales tax revenues.

Public Chapter 985 of 2014 established a procedure whereby counties, municipalities, and industrial development districts could apply to the commissioner of finance and administration for allocation of sales tax revenue that is collected within a commercial development district.

Public Chapter 985 required the department to set an application fee for governmental entities that apply for the allocation. The rule sets the application fee at \$10,000.

Public Hearing Comments

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

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

The regulations may have a projected impact on local governments.

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Sequence Number: 12-0114
Rule ID(s): 5841
File Date: 12/2/14
Effective Date: 3/2/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Administration
Contact Person:	Trammel Hoehn
Address:	Office of the Commissioner of Finance and Administration, State Capitol, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-7680
Email:	Trammel.Hoehn@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0620-03-07	Allocation of Tax Revenues to Assist Economically Distressed Counties
Rule Number	Rule Title
0620-03-07-.01	Purpose, Scope and Authority
0620-03-07-.02	Application Process

Chapter Number	Chapter Title
Rule Number	Rule Title

Department of Finance and Administration
Division of Administration

Chapter 0620-03-07
Allocation of Tax Revenues to Assist Economically Distressed Counties

New Rules

Chapter 0620-03 Administrative Division is amended to add Chapter 0620-03-07 Allocation of Tax Revenues to Assist Economically Distressed Counties, so that, the new rule shall read:

Table of Contents

0620-03-07-.01 Purpose, Scope and Authority

0620-03-07-.02 Application Process

0620-03-07-.01 Purpose, Scope and Authority.

- (1) Public Chapter 985 of 2014 amended Title 67, Chapter 6 of T.C.A. to create a program for allocation of certain sales tax revenues to assist economically distressed counties. The Department of Finance and Administration (Department) is granted certain responsibilities under Public Chapter 985 (Act).
- (2) The Department is authorized to promulgate rules and regulations regarding its responsibilities under the Act.

Authority: T.C.A. §§ 4-5-201 *et seq.*; 67-6-104.

0620-03-07-.02 Application Process.

- (1) An eligible county, municipality, or industrial development corporation established by such eligible county or municipality seeking to receive the allocation provided by the Act must submit an application to the Department. The Department will consider an application only if the following conditions are met:
 - (a) The application must be on a form approved by the Department.
 - (b) The application must be accompanied by payment of the non-refundable application fee of ten thousand dollars (\$10,000).
 - (c) The application must contain all information required by the form. The applicant must also submit any supplemental information requested by the Department after receipt of the application. The completed application and all requested supplemental information must be received within the time specifications of the Department's form to be considered.
 - (d) The applicant must indicate which information in the application materials it considers confidential under T.C.A. § 67-6-104(i). The applicant must separate this material from non-confidential materials and label the confidential materials as such. The Department may allow consultants to review confidential material submitted in the course of the application process, provided that the contract or memorandum of understanding requires the consultant to maintain the confidentiality of such materials.

Authority: T.C.A. §§ 4-5-201 *et seq.*; T.C.A. § 67-6-104.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Finance and Administration on 10/14/14, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/20/14

Rulemaking Hearing(s) Conducted on: (add more dates). 10/14/14

Date: November 5, 2014

Signature: Larry B. Martin

Name of Officer: Larry B. Martin

Title of Officer: Commissioner of F&A

Subscribed and sworn to before me on: November 5, 2014

Notary Public Signature: Janet McGaha

My commission expires on: My Commission Expires: August 29, 2015



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. Statz III
 Attorney General and Reporter
November 25, 2014
 Date

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 SECRETARY OF STATE

Filed with the Department of State on: 12/2/14

Effective on: 3/2/15

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State Board of Education
<u>SUBJECT:</u>	State Attendance Guidelines
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-6-3002.
<u>EFFECTIVE DATES:</u>	March 23, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None.
<u>STAFF RULE ABSTRACT:</u>	<p>Tennessee Code Annotated, Section 49-6-3002 requires the State Board of Education to promulgate rules on attendance that are firm, but fair; include effective accounting and reporting procedures; account for extenuating circumstances; include appeal procedures; and establish and maintain alternative programs for students who fail to meet minimum attendance requirements.</p> <p>The Rule requires each local education agency (LEA) to adopt an attendance policy that complies with the requirements of Section 49-6-3002.</p> <p>The Rule includes a tiered process for improving school attendance for students who have excessive absenteeism.</p>

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

This will have no impact on local governments.

13

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Sequence Number: 12-24-14
Rule ID(s): 5855
File Date: 12/23/14
Effective Date: 3/23/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Joanna E. Collins
Address:	1 st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-741-4928
Email:	joanna.collins@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.17	State Attendance Guidelines

State Attendance Guidelines.
0520-01-02

0520-01-02-.01	Definition of a Tennessee Public School	0520-01-02-.11	School Board Training
0520-01-02-.02	Salary Schedules	0520-01-02-.12	Waivers
0520-01-02-.03	Employment Standards	0520-01-02-.13	Fiscal Accountability Standards
0520-01-02-.04	Leave for Teachers	0520-01-02-.14	Recruitment, Employment, and Retention of African- American Teachers
0520-01-02-.05	Adult High Schools	0520-01-02-.15	Approval of Textbooks
0520-01-02-.06	Adult Education	0520-01-02-.16	Reporting Attendance Relative to Disciplinary Actions
0520-01-02-.07	Joint Career and Technical Centers	0520-01-02-.17	Repealed <u>State Attendance Guidelines through 520-01-02-29</u>
0520-01-02-.08	Interscholastic Athletics	0520-01-02-.18	Repealed
0520-01-02-.09	Alternative Schools	<u>0520-01-02-.29</u>	
0520-01-02-.10	Homebound Instruction for Pregnant Students		

Rule 0520-01-02-.17 State Attendance Guidelines.

Each Local Education Agency (LEA) shall adopt an attendance policy that is firm, but fair; includes effective accounting and reporting procedures; accounts for extenuating circumstances; includes appeal procedures; and establishes and maintains alternative programs for students who fail to meet minimum attendance requirements.

Attendance policies should include remedies to address excessive absences that account for a student's social and emotional development and family support. Early intervention is a key aspect of a policy that effectively improves attendance. Efforts to improve attendance should include supports and interventions in elementary, middle, and high school levels to address and prevent chronic absenteeism.

(1) The number of unexcused absences shall comply with T.C.A. § 49-6-3007. When appropriate, responses to and consequences for unexcused absences shall be handled within the school setting using relevant supports and interventions that address the underlying cause(s) for the unexcused absences. Nontraditional learning environments that improve student engagement such as online or distance learning, credit recovery, evening programs and flexible scheduling should be considered.

(a) Upon or before five (5) days of unexcused absences, the principal or designee shall notify the director of schools or designee and initiate meaningful communications with the student and their parent/guardian. The school shall attempt to determine the underlying cause(s)

of the unexcused absences. When appropriate, a plan to improve school attendance should be initiated for the student.

(b) Upon or before ten (10) days of unexcused absences, the principal or designee shall attempt to meet in person with the student and/or their parent/guardian, develop or refine the attendance plan, and provide necessary supports and services to improve school attendance. The principal or designee shall maintain documented attempts to meet with the student and their parent/guardian and the resulting attendance plan.

(c) The policy shall address the excusing of absences for reasons including but not limited to the following: injury, illness, pregnancy, hospitalization, homebound, summons, subpoena, court order, military, college visits, school-sponsored activities, school-endorsed activities, death of a family member, and extenuating circumstances determined on a case-by-case basis.

(d) To the extent possible, local district attendance policies should not be used to penalize students academically.

(e) The policy shall align with the McKinney-Vento Homeless Assistance Act [found at 42 U.S.C. § 11431, et seq.].

(2) Whenever possible, attendance issues should be resolved at the school level. To ensure due process, LEAs must adopt a policy that affords students with excessive (more than 5) unexcused absences the opportunity to appeal. Such policy must, at minimum, include written or actual notice to the student or their parent/guardian and the opportunity to be heard. The burden of proof rests on the student or their parent/guardian. The appeal process for determining unexcused absences is ancillary to a truancy decision rendered by a juvenile court judge as described in T.C.A. § 49-6-3010.

(3) When an attendance policy has been adopted by the governing body of an LEA, a copy of the policy shall be posted at each school, and school counselors shall be supplied copies for discussion with students. The policy shall be referenced in all school handbooks. All teachers, administrative staff, and parents/guardians shall be provided copies of the policy.

(4) LEAs are encouraged to develop truancy boards, youth courts, or other alternative programs to serve as an intervention for students with excessive absences.

Authority: T.C.A. § 49-6-3002(a).

* 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)
Ayers	X				
Edwards	X				
Chancey	X				
Pearre	X				
Roberts	X				
Rogers				X	
Rolston	X				
Sloyan	X				
Wright				X	
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 04/11/2014, 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11-19-14

Signature: Gary Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 11/19/14

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/19/2014
 Date

Department of State Use Only

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	State Board of Education
<u>SUBJECT:</u>	Educator Licensure
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-1-302
<u>EFFECTIVE DATES:</u>	March 18, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>Educator licensure, a state function, is designed to ensure that educators meet minimum standards of practice. According to the Board, the current educator licensure policy and process is too complex to effectively serve teachers, students or the public. The Board also states that Tennessee issues many types of teacher licenses, which is unnecessary and confusing for new teacher candidates.</p> <p>According to the Board the rules streamline the current licensure policy while recognizing the role of licensure with respect to other state, district, and school level personnel functions. The rules also reflect changes based on licensure policy rescinded at the Board's Jan. 31, 2014 meeting.</p>

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

This rule will have no impact on local governments.

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Sequence Number: 12-18-14
Rule ID(s): 5849
File Date: 12/18/2014
Effective Date: 3/18/2015

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: State Board of Education
Division:
Contact Person: Joanna E. Collins
Address: 1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN
Zip: 37243
Phone: 615-741-4928
Email: joanna.collins@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-02-03	Teacher Education Licensure
Rule Number	Rule Title
0520-02-03-.01	Licensure, General Requirements
0520-02-03-.02	Licensure, Instructional Leader
0520-02-03-.03 through 0520-02-03-.10	Reserved
0520-02-03-.11	Induction
0520-02-03-.12	Post-Baccalaureate Program
0520-02-03-.13 through 0520-02-03-.20	Reserved
0520-02-03-.21	Effective Dates
0520-02-03-.22 through 0520-02-03-.94	Repealed

~~Teacher Education and Licensure~~ Educator Licensure
0520-02-03

<u>0520-02-03-.01</u>	<u>General Information and Regulations</u>	<u>0520-02-03-.06</u>	<u>Out of State Applicants</u>
<u>0520-02-03-.02</u>	<u>Teacher Licenses</u>	<u>0520-02-03-.07</u>	<u>Other Special Cases</u>
<u>0520-02-03-.03</u>	<u>Licensure, Instructional Leader</u>	<u>0520-02-03-.08</u>	<u>Permits</u>
<u>0520-02-03-.04</u>	<u>School Service Personnel Licenses</u>	<u>0520-02-03-.09</u>	<u>Denial, Formal Reprimand,</u>
<u>0520-02-03-.05</u>	<u>Occupational Education Licenses</u>		<u>Suspension and Revocation</u>

0520-02-03-.01 General Information and Regulations.

(1) Prospective Educators.

(a) Securing a License.

The educator shall be responsible for securing a license, verifying its accuracy, maintaining its validity, registering it with the employing board of education, and meeting the requirements of T.C.A. § 49-5-101.

(b) Unless otherwise designated in this chapter, prospective educators seeking initial licensure must hold a bachelor's degree from a regionally accredited college or university, be enrolled in or have completed a state-approved educator preparation program, and meet all requirements regarding assessments and qualifying scores as specified by State Board of Education rules or policy.

(c) Prospective educators seeking initial licensure must meet requirements in at least one area of endorsement.

(d) In-State Applicant for Initial License.

An in-state applicant applying for an initial license must apply through the appropriate official of the educator preparation provider.

(e) At the time of application, prospective educators seeking initial licensure must be recommended by an approved educator preparation provider.

1. For applicants who have completed a licensure program, the provider must indicate that the applicant has successfully completed all required components of the program and indicate the area(s) of endorsement for which the applicant has successfully completed requirements. Recommendations must be received within 5 years of the date of program completion. If a candidate completed a program more than 5 years prior to the date of the application, the candidate may attempt to secure an updated recommendation from the provider. Educator preparation providers are under no obligation to issue an updated recommendation. Recommendations must attest that the candidate has met current standards for licensure.

2. For applicants who are enrolled in a licensure program, the provider must indicate the area(s) of endorsement for which the applicant has successfully demonstrated content competency. Verification of successful program completion, including verification of the endorsement areas for which the candidate is recommended, must be submitted by the end of the validity period of the initial license.

(f) Official transcripts of all college credits, bearing the school seal and/or signature of the registrar, must be submitted with the application. These transcripts and forms upon which licensure is granted become the property of the State of Tennessee. Photocopies are not acceptable.

(g) Upon receipt of the applications, transcripts, and results of required assessments, materials will be

evaluated and a license will be issued to the applicant or the applicant will be notified of deficiencies.

(2) Licensed Educators.

- (a) Duration of License or Certificate. Initial licenses become valid on the date of issuance. The end of the validity period of the license will be set for August 31. The year of expiration is determined by the date of issuance and advances one year on March 1 of each year.
- (b) Licensure Expectations. All expectations for licensure advancement and renewal shall be defined in State Board of Education policy.
- (c) Change of Name and Address. If a licensed educator changes his or her name or address by legal means, the holder must report such changes to the Office of Educator Licensing within thirty (30) days of making the change.

Authority: T.C.A. § 49-1-302

0520-02-03-.02 Teacher Licenses.

(3) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all teacher licenses.

(4) Licenses Currently Issued.

- (a) Practitioner License. Initial three-year (3) teacher license issued to applicants who hold a bachelor's degree, are enrolled in or have completed a preparation program approved by the State Board of Education, and have verified content knowledge as defined in State Board policy. The Practitioner License may be renewed once.
- (b) Professional License. A six-year (6) teacher license issued upon meeting licensure expectations at the practitioner level and completion of an approved educator preparation program. The Professional License is renewable.
- (c) Non-Public School Teacher License. A ten-year (10) license issued to individuals who qualify for or hold a valid Tennessee teaching license, have current certification from the National Board for Professional Teaching Standards, or hold a valid license from another state. The non-public license only provides license for an educator to work in a Tennessee non-public school. The Non-Public School Teacher License is renewable.
- (d) JROTC Teacher License. A five-year (5) license issued to active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) teachers, based upon a certification of preparation by the branch of the military approving the teacher placement. The JROTC teacher license does not entitle an individual to teach courses other than those designated as part of the JROTC program, consistent with the requirements of T.C.A. § 49-5-108. No other teaching endorsements may be added to a JROTC license. JROTC teachers may earn a teaching license with an endorsement in a content area through an educator preparation program approved by the State Board of Education. The JROTC Teacher License is renewable.
- (e) Adjunct License. A one-year (1) license issued to applicants who teach no more than three classes in subject areas of critical shortage as designated by the State Board of Education and who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program approved by the State Board of Education. The Adjunct License is renewable nine (9) times.

Adjunct teachers must meet the following criteria:

- (i) The applicant must hold at least a bachelor's degree or a master's degree from a regionally accredited institution of higher education that includes at least twenty-four (24) semester hours of credit in the content area in which they will be teaching.
 - (ii) The applicant must have at least five (5) years of work experience in the subject(s) to be taught.
 - (iii) The applicant must have completed the pre-service portion of an adjunct licensure program that addresses the knowledge and skills in the professional education core and that has been approved by the State Board of Education.
 - (iv) A Tennessee director of schools must state intent to employ the applicant for specific subject(s) and course(s) not to exceed three (3) classes and must provide a mentor teacher for the applicant during the first year of teaching.
 - (v) Applicants are eligible for an adjunct license for the specific subject(s) or course(s) indicated on the application in subject areas of critical shortage as designated by the State Board of Education.
 - (vi) School systems shall assess the effectiveness of the teachers annually using the evaluation procedures approved by the State Board of Education.
 - (vii) Applicants may renew an adjunct license annually but not more than nine times provided that a director of schools states intent to employ and provided that the applicant has received a successful evaluation in the preceding year. Before the first renewal, the applicant must have passed all required licensure examinations.
 - (viii) The teacher shall not attain licensure beyond the approved subject(s) or course(s) without successfully completing the state's regular or alternative licensure programs.
- (f) International Teacher Exchange License. The international exchange teacher license is a time-limited license designed to allow eligible teachers from other nations to teach in Tennessee schools for up to three (3) consecutive years. The validity period begins on the date all application requirements for the license are met or July 1, whichever is more recent, and expires on June 30, three (3) years later. If the applicant is employed between January 1 and June 30, the validity period begins on the first (1st) day of the month of employment and expires June 30, three (3) years later. If the teacher wishes to remain beyond the third (3) year, the teacher must satisfy all requirements for a professional teacher license. Districts that wish to employ teachers holding this license must adhere to State Board of Education policies regarding mentoring and evaluation of these teachers. The International Teacher Exchange License is nonrenewable.

Teachers participating in an international teacher exchange program must meet the following criteria:

1. hold primary citizenship outside the United States;
2. hold the U.S. equivalent of a bachelor's degree or higher;
3. hold a foreign teacher credential in a field comparable to that recognized in Tennessee;
4. demonstrate proficiency in English;
5. provide verification from a Tennessee director of schools of intent to employ; and

6. provide a recommendation by the government of a country with whom the Department of Education has signed a memorandum of agreement or by a recognized international exchange program.

(5) License Advancement and Renewal.

(a) Practitioner License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(6) Additional Endorsements.

(a) Licensed teachers must submit qualifying scores on all required, state-approved teacher licensure specialty assessments for additional endorsements.

(b) Licensed teachers seeking to add endorsements may complete an educator preparation program. In some cases, as defined in State Board policy, teachers may add an endorsement by using a test-only.

(c) Licensed teachers who complete programs of study for additional endorsements at education preparation providers in other states may be recommended by the out-of-state provider to the Tennessee Department of Education.

Authority: T.C.A. § 49-1-302

0520-02-03-.03 Licensure, Instructional Leader.

(7) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all instructional leader licenses.

(8) Licenses currently issued:

(a) Instructional Leadership License-Aspiring (ILL-A). Initial five-year (5) instructional leader license issued candidates who are enrolled in an instructional leader preparation program approved by the State Board. The Instructional Leadership License-Aspiring is not renewable.

(b) Instructional Leadership License-Beginning (ILL-B). Initial five-year (5) instructional leader license issued to candidates who have completed an instructional leader preparation program approved by the State Board and have submitted a qualifying score on the required licensure assessment. The Instructional Leadership License-Beginning is renewable.

(c) Instructional Leadership License-Professional (ILL-P). Five-year (5) instructional leader license issued to educators who have met licensure expectations for advancement from the ILL-B. The Instructional Leadership License-Professional is renewable.

(d) Instructional Leadership License-Exemplary (ILL-E). Eight-year (8) instructional leader license issued to educators who have held an ILL-P or Professional Administrator License (PAL) for at least two (2) years and are eligible for the ILL-E as stipulated by State Board policy. The Instructional Leadership License-Exemplary is renewable.

(9) License Advancement and Renewal.

- (a) Instructional Leadership License-Aspiring (ILL-A). At the end of the validity period of the initial ILL-A, if the educator has met licensure expectations, the license will be advanced to the ILL-B. At the end of the validity period of the initial ILL-A, if the educator has not met licensure expectations, the license will become inactive.
- (b) Instructional Leadership License-Aspiring (ILL-B). At the end of the validity period of the ILL-B, if the educator has met licensure expectations as defined in State Board policy, the license will be advanced to the ILL-P. If the educator has not met licensure expectations by the end of the first validity period of the license, the ILL-B may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.
- (c) Instructional Leadership License-Professional (ILL-P). At the end of the validity period of the ILL-P, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.
- (d) Instructional Leadership License-Professional (ILL-E). At the end of the validity period of the ILL-E, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(10) Those who hold a Professional Administrator License (PAL) license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P or ILL-E license will be required.

(11) Assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed.

Authority: T.C.A. § 49-1-302

0520-02-03-.04 School Service Personnel Licenses.

(12) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all school service personnel licenses.

(13) Licenses Currently Issued.

- (a) Practitioner School Service Personnel License. Initial three-year (3) license issued to applicants upon completion of a preparation program approved by the State Board of Education, leading to endorsement as a school counselor, school psychologist, school social worker, school food service supervisor, school speech-language pathologist, or school audiologist. Applicants must have also submitted qualifying scores on the state required licensure assessment. The Practitioner School Service Personnel License is renewable once.
- (b) Professional School Service Personnel License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, as a school counselor, school psychologist, school social worker, school food service supervisor, school speech-language pathologist, or school audiologist. The Professional School Service Personnel License is renewable.

(14) License Advancement and Renewal.

- (a) Practitioner School Service Personnel License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional School Service Personnel License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302

0520-02-03-.05 Occupational Education Licenses.

(15) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all occupational education licenses, except for the requirement of a bachelor's degree.

(16) Licenses Currently Issued.

(a) Practitioner Occupational Education License. Initial three-year (3) license issued to applicants who have met endorsement requirements pursuant to State Board of Education policy and have had content verification provided by the Tennessee Department of Education. The Practitioner Occupational Education License is renewable once.

(b) Professional Occupational Education License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, completing coursework covering the professional education standards and additional requirements as defined in State Board of Education policy. The Professional Occupational Education License is renewable.

(17) License Advancement and Renewal.

(a) Practitioner Occupational Education License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional Occupational Education License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302

0520-02-03-.06 Out of State Applicants.

(18) General Requirements.

(a) Tennessee has adopted the provisions of Interstate Agreement on Qualification of Educational Personnel as proposed by the National Association of State Directors of Teacher Education and Certification (NASDTEC). Participation in this agreement is evidenced by signed reciprocal contracts between Tennessee and other participating states as defined by the Interstate Certification Project (ICP).

(b) Licensure may be awarded to applicants from states which are not parties to the ICP but which are accredited by or affiliated with the national accrediting body with which the State of Tennessee has entered into an agreement on the same basis as those applying from states which are party to the ICP agreement.

(c) Licensure may be awarded to applicants not covered by Paragraphs (a) or (b) above on the same basis as those applying from states which are party to the ICP agreement if one of the following

conditions is met:

7. The applicant has received a recommendation from an educator preparation provider which is accredited by the same national accrediting body with which the State of Tennessee has entered into an agreement; or
 8. The Tennessee Department of Education has reviewed a state's process for approving educator preparation providers and has found the process to be acceptable for purposes of granting full licensure in Tennessee.
- (d) An applicant from a state other than Tennessee must apply directly to the Office of Educator Licensing.
 - (e) The application for licensure must be accompanied by a set of official transcripts supplied by all institutions attended by the applicant.
 - (f) An applicant from another state must submit qualifying scores for assessments required by the State Board of Education. Scores must have been obtained within five (5) years prior to the date of application for licensure.
 - (g) No license or endorsement which requires a Master's Degree or above as part of its requirements may be awarded to an individual not possessing said degree.

(19)Teacher Licensure for Applicants Trained in Other States.

- (a) Applicants meeting all requirements will be issued a practitioner license except those who have been certified by the National Board for Professional Teaching Standards who will be issued a professional license.
- (b) Licensure will be awarded in all endorsement areas (the areas most similar to those awarded in Tennessee), which are reflected on the full, currently valid licensure credential(s) supplied by the other qualifying state(s) and the area most closely related to the area of certification by the National Board for Professional Teaching Standards.
- (c) Applicants with an out-of-state endorsement in a teaching area covering a grade span that is more narrow than the comparable Tennessee K-12 teaching endorsement, shall be awarded the Tennessee endorsement based on parameters defined by State Board policy.

(20)Instructional Leader Licensure for Applicants Trained in Other States.

- (a) Applicants who have completed an instructional leader preparation program approved in a state other than Tennessee who have not yet submitted qualifying scores on the required licensure assessment may be issued an ILL-A. Upon submitting qualifying scores, the educator license may be advanced to the ILL-B.
- (b) Applicants meeting all requirements will be issued an ILL-B.

(21)School Service Personnel Licensure for Applicants Trained in Other States.

- (a) Applicants meeting all requirements will be issued a Practitioner License.
- (b) The Practitioner School Services Personnel License will be awarded to applicants who hold a full and valid school service personnel license from another state.

Authority: T.C.A. § 49-1-302

0520-02-03-.07 Other Special Cases.

(22) Correspondence and Extension Credit. Credit earned by correspondence and extension instruction with a member of the National University Extension Association or the Teacher College Association for Extension and Field Services shall be accepted for licensure purposes to the extent of one fourth of the amount of credit necessary for the particular license desired.

(23) Experience in Lieu of Student Teaching. An individual applying for a license who holds at least a bachelor's degree may present evidence of three (3) years of successful teaching experience in an approved school or a National Association for the Education of Young Children (NAEYC) accredited early childhood education program at the grade level of work authorized by the endorsement sought in lieu of student teaching.

(24) Military Service.

(a) The duration of a license may be extended from the date of termination of military service for the number of years, not to exceed four, which the holder spent in military service during the life of the license. Four calendar months of military service during any school year shall be counted as a full year for purposes of extending the license.

(b) The five (5) years preceding the issuance of a teacher license, within which time academic credit must be earned, shall not include the years spent in military service.

(25) Validation of Credit from an Unapproved Institution.

(a) Credit from an unapproved institution may be accepted for licensure when such credit has been accepted in full on a transcript by an approved institution for advanced standing toward a degree, provided that not less than eight (8) semester hours of satisfactory work has been completed in the approved institution.

(b) Degree or credit from an institution accredited by a regional accrediting association but not approved for teacher education will be accepted.

(c) An applicant who holds the bachelor's degree from an unapproved institution and has otherwise met all of the requirements for a license may validate the degree and apply for a license as follows:

9. Enter an approved graduate school and complete a minimum of eight (8) semester hours in an approved educator preparation program. The applicant must successfully complete the approved educator preparation program in order to advance to a Professional License.

10. Secure a properly certified statement from an educator preparation program approved by the State Board of Education indicating all deficiencies and/or probations have been met.

(26) Emergency Teaching Credential. A one-year (1) credential, effective for only one school year, to be issued to displaced licensed teachers under one of the following circumstances:

(a) The Governor declares a state of emergency or declares a disaster under TCA § 58-2-107, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons, or

(b) A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons.

Authority: T.C.A. § 49-1-302

0520-02-03-.08 Permits.

(27) Permits.

(a) The state may issue a permit when a school district or public charter school meets the following requirements:

11. A director of schools or public charter school leader must state intent to employ and indicate the position to be held by the applicant.
12. The school district or public charter school must indicate that it is unable to obtain the services of a licensed educator for the type and kind of school in which a vacancy exists.
13. The school district or public charter school must identify and document a targeted recruitment strategy for the position or shortage areas. The strategy may include, but is not limited to, partnerships with educator preparation providers, advertisements, or recruitment campaigns.

(b) The state may issue a permit to a school district or public charter school to hire an applicant one time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.

Authority: T.C.A. § 49-1-302

0520-02-03-.09 Denial, Formal Reprimand, Suspension and Revocation.

(28) Automatic Revocation of License.

The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. § 40-35-501(i)(2) or T.C.A. §§ 39-17-417, 39-13-532, and/or 39-15-527 (including conviction on a plea of guilty or nolo contendere). The Board will notify persons whose licenses are subject to automatic revocation at least 30 days prior to the Board meeting at which such revocation shall occur.

(29) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

- (a) Conviction of a felony;
- (b) Conviction of possession of narcotics;
- (c) Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;
- (d) Falsification or alteration of a license or documentation required for licensure;
- (e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or
- (f) Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to Tenn. Code Ann. § 49-1-607, default on a student loan pursuant to Tenn. Code Ann. § 49-5-108(d)(2) or failure to report under part (e).

For purposes of this part (2), "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of the denial, suspension or revocation.

(30)Restoration of License.

(a) A person whose license has been suspended shall have the license restored after the period of suspension has been completed, and, where applicable, the person has complied with any terms prescribed by the State Board. Suspended licenses are subject to expiration and renewal rules of the State Board.

(b) A person whose license has been denied or revoked under parts (1) or (2) may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and shall be voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.

(31)Notice of Hearing.

Any person who is formally reprimanded or whose license is to be denied, suspended or revoked under part (2) or who is refused a license or certificate under part (3) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.

(32)Notification of Office of Educator Licensing.

It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within 30 days of receiving knowledge of the conviction.

Authority: T.C.A. § 49-1-302

0520-02-03-.01 LICENSURE, GENERAL REQUIREMENTS.

- (1) — Teacher candidates seeking licensure shall complete teacher education programs approved by the State Board of Education.
- (2) — Teacher candidates seeking licensure shall meet the requirements in at least one area of endorsement.
- (3) — Teacher candidates seeking licensure shall complete either a full semester student teaching program or an internship program in accordance with rule 0520-02-03-.11.

- (4) — ~~Teachers seeking initial licensure at the graduate level may complete a post-baccalaureate program in accordance with rule 0520-02-03-.12.~~
- (5) — ~~All programs of teacher education, both undergraduate and graduate, and the institutions providing these programs must be approved by the State Board of Education. This shall be done according to standards and guidelines established by the State Board of Education and the National Council for Accreditation of Teacher Education.~~
- (6) — ~~Teacher candidates seeking initial licensure must be recommended by an institution of higher education with an approved program of teacher education; the institution shall indicate the area(s) of endorsement for which the teacher has successfully completed requirements.~~
- (7) — ~~Teacher candidates seeking initial licensure must meet all requirements for tests specified by the State Board of Education.~~
- (8) — ~~The teacher license is the principal license authorized by the State Board of Education. All endorsements except as otherwise specifically provided are included on this license.~~
- (9) — ~~Teacher candidates seeking to add endorsements to a teacher license may complete a teacher education program for additional endorsement. Institutions which offer programs for additional endorsements shall submit to the State Department of Education a list of specialty areas in which additional endorsements are offered. Institutions of higher education will verify completion of the appropriate course requirements to the Department of Education. Teachers who are licensed in Tennessee and who complete programs of study for additional endorsements at institutions in other states may be recommended by the out-of-state institution to the State Department of Education for additional endorsements. Teachers who hold a valid Tennessee license with a 7-12 endorsement may add a 7-12 endorsement by obtaining a passing score on all of the required, state-approved teacher licensure specialty exams and submitting application with the passing scores to the State Department of Education.~~
- (10) — ~~Candidates seeking licensure and endorsement as a school counselor shall complete a graduate degree and a program of studies approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.~~
- (11) — ~~Candidates seeking licensure and endorsement as a school social worker shall complete a program in social work either at the bachelor's or master's level; candidates shall also complete a program of studies in school social work approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.~~
- (12) — ~~Candidates seeking licensure and endorsement as a school psychologist shall complete a program of studies in school psychology at the graduate level including an academic year internship. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.~~
- (13) — ~~Candidates seeking licensure and endorsement as an occupational education teacher shall complete successfully a teacher education program not to exceed eighteen (18) semester hours designed to meet the knowledge and skills for teacher preparation. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.~~
- (14) — ~~Candidates seeking licensure and endorsement as a reading specialist shall complete advanced~~

studies in a program approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

- (15) — Candidates seeking licensure and endorsement as a school speech language pathologist shall complete a program of studies in speech language pathology at the graduate level. Candidates shall meet the licensure standards, employment standards and examination requirements of the State Board of Education.
- (16) — Candidates seeking licensure to serve as a school speech language teacher working under the direction of a school speech language pathologist are trained to supplement — not supplant — the services of a school speech language pathologist and must hold a minimum of a bachelors degree and:
- (a) — Hold a current teacher license earned through a teacher preparation program approved according to standards and guidelines established by the state board of education. And also completes an endorsement program of studies in speech language including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education;
 - (b) — Complete a teacher preparation program of studies for teachers of speech language including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education. These candidates are eligible for a School Speech Language Teacher (PreK-12) (A) license; or
 - (c) — Complete a bachelor's level program of studies in speech language, speech language disorders or communications disorders including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a bachelor level program and verify the candidate meets the standards and guidelines of the Tennessee Teacher Licensure Standards: Special Education, School Speech Language Teacher (PreK-12). These candidates are eligible for a Special Education, School Speech Language Teacher (PreK-12) (B) license. The (B) license does not entitle the holder to teach courses other than those designated as part of a speech language program in a school based setting. No other teaching endorsement may be added to a (B) license. Other teaching credentials may only be earned through a preparation program approved according to standards and guidelines established by the State Board of Education.
- (17) — Candidates seeking licensure and endorsement as a school audiologist shall complete a program of studies in audiology at the graduate level. Candidates shall meet the licensure standards, employment standards and examination requirements of the State Board of Education.

~~0520-02-03-02 LICENSURE, INSTRUCTIONAL LEADER.~~

- (1) — On September 15, 2009, current State Board of Education approval of all administrator or supervisor preparation programs will expire.
- (2) — Beginning September 15, 2009, only programs initially approved or re-approved by the State Board of Education, according to the Board's Instructional Leadership Policy, will be eligible to prepare and recommend candidates for licensure as instructional leaders.
- (3) — Beginning September 15, 2009, the two-tiered licensure system for school administrators and

supervisors [Beginning Administrator License (BAL) and Professional Administrator License (PAL)] will be replaced with the following four-tiered instructional leader licensure system, further outlined in State Board policy:

- (a) — Instructional Leadership License-Aspiring (ILL-A)
 - (b) — Instructional Leadership License-Beginning (ILL-B)
 - (c) — Instructional Leadership License-Professional (ILL-P)
 - (d) — Instructional Leadership License-Exemplary (ILL-E)
- (4) — Instructional Leadership License-Aspiring (ILL-A). After September 15, 2009, a candidate admitted to a State Board approved instructional leadership program may receive an ILL-A if the following conditions are met:
- (a) — License terms and responsibilities are specified in the LEA-preparation program partnership agreement
 - (b) — The candidate is recommended by the preparation program. An ILL-A is valid only while a candidate is enrolled and participating in an approved instructional leadership preparation program. The employment of an instructional leadership candidate with an ILL-A is not a guarantee of continued employment or job advancement, nor does it require an increased salary.
- (5) — Beginning Administrator License (BAL). A State Board program approved to recommend licensure and/or endorsement in school administration and supervision prior to September 15, 2009 may continue to recommend program graduates or candidates enrolled prior to September 15, 2009, for a BAL.
- (a) — Candidates who entered an administrator or supervisors preparation program prior to September 15, 2009, may complete that program or transition into an approved instructional leadership preparation program at the same institution and become eligible for an ILL-B.
- (6) — Effective September 15, 2009, assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed or be enrolled in a State Board approved instructional leadership preparation program.
- (7) — Instructional Leadership License-Beginning (ILL-B). After September 15, 2009, a candidate seeking licensure in instructional leadership must be recommended by a preparation program approved after September 15, 2009, as per State Board policy.
- (a) — The ILL-B is valid for three (3) years of continuous employment as an instructional leader.
 - (b) — The ILL-B expires five (5) years after issuance if the candidate has not been employed as an instructional leader per State Board policy.
- (8) — Instructional Leadership License-Professional (ILL-P). Those who hold a PAL license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P or ILL-E license will be required.
- (9) — After September 15, 2009, those who hold an ILL-B and have completed three (3) years of satisfactory employment as an instructional leader may receive an ILL-P if the candidate has met the requirements of the State Board of Education policy.

~~(a) The ILL-P is valid for five (5) years of employment as an instructional leader.~~

~~(b) The ILL-P is renewable per State Board policy.~~

~~(10) Instructional Leadership License Exemplary (ILL-E). After September 15, 2009, those who have held an ILL-P or PAL for at least two (2) years shall be eligible for the ILL-E if they meet the licensure requirements for an ILL-E, are recommended by the director of the employing school system and are approved by the State Department of Education appointed leadership council as per State Board policy.~~

~~0520-02-03-03 THROUGH 0520-02-03-10 RESERVED.~~

~~0520-02-03-11 INDUCTION.~~

~~(1) General Requirements.~~

~~Teacher candidates shall successfully complete an induction program consisting of either a full school year internship or a student teaching semester in accordance with standards and procedures established by the State Board of Education.~~

~~(2) Internship.~~

~~(a) The internship is a full school year experience following completion of a baccalaureate degree whereby teacher candidates are inducted into the teaching profession.~~

~~(b) The internship experience shall be planned jointly by the institutions of higher education in which the interns are enrolled and the local school system(s) in which the interns are placed with significant input from principals and teachers in the school system(s) and shall be approved by the State Board of Education.~~

~~(c) The internship experiences shall include classroom teaching, observation, course work, seminars, and planning and shall occur primarily in the school setting; internship experiences may occur in either public schools or other state approved schools.~~

~~(d) The interns shall spend more than half of the school year in direct teaching activities.~~

~~(e) The interns shall have regular and frequent contact with a team of mentors, both higher education faculty and K-12 teachers, throughout the school year.~~

~~(f) K-12 teachers shall assume mentoring roles and, in cooperation with higher education faculty mentors, direct the activities of the interns in the classroom.~~

~~(g) The interns shall have direct teaching experiences with students with diverse learning needs and varied backgrounds in at least two classrooms which may be in different schools.~~

~~(h) The interns shall be supplemental to the existing staff in the schools in which they are located.~~

~~(i) The performance of interns shall be evaluated by the internship team composed of teacher mentors, higher education faculty mentors, and principals or their designees.~~

~~(j) The interns shall be evaluated by the principals or designees to determine apprentice licensure status using the approved local evaluation model and by the institution of higher education faculty mentors to award college credit.~~

~~(k) Teacher candidates who successfully complete a full school year internship experience shall have the year count as the first year of apprentice licensure; the internship shall count~~

as one full school year (10 months) on the state pay scale. The salary or stipend paid to an intern, if any, may be less than the regular salary on the state salary schedule.

~~(3) Student Teaching.~~

- ~~(a) The student teaching experience is a planned professional semester of at least 15 weeks that includes full day teaching and observation activities as an initial step in the induction process for teacher candidates.~~
- ~~(b) The student teaching experience shall be planned jointly by the institution of higher education and the local school system with significant input from principals and teachers and shall be approved by the State Board of Education as part of the teacher education program approval process.~~
- ~~(c) The student teachers shall have direct teaching experiences with students with diverse learning needs and varied backgrounds in at least two classrooms which may be in different schools.~~
- ~~(d) Regular seminars shall be held with higher education faculty to focus on application and analysis of teaching knowledge in the classroom.~~
- ~~(e) Cooperating teachers shall assume mentoring roles and direct, in cooperation with higher education faculty mentors, the activities of teacher candidates in the classroom.~~
- ~~(f) The performance of teacher candidates shall be evaluated by cooperating teachers and supervising higher education faculty with shared responsibility for formative evaluation.~~
- ~~(g) Summative evaluation shall be the responsibility of the higher education faculty with significant input from and consultation with cooperating teachers.~~

~~(4) Beginning Teacher Program.~~

- ~~(a) The beginning teacher program is an assisted experience whereby employed first year teachers (those with less than one year experience who have completed student teaching but not an internship) are inducted into the teaching profession.~~
- ~~(b) The beginning teacher program shall be planned by the local school system with significant input from principals and teachers.~~
- ~~(c) The beginning teacher program experiences shall occur primarily in the school setting and shall include classroom observations, opportunities for informed observations of both experienced teachers and other first year teaching peers, in-service seminars, and regular and frequent contact with teacher mentors throughout the school year.~~
- ~~(d) Mentors, along with principals, shall provide periodic and frequent formative evaluation designed to provide feedback and support to the beginning teachers.~~
- ~~(e) The principal or designee shall provide summative evaluation of the beginning teacher.~~
- ~~(f) Assistance shall continue until the beginning teacher acquires apprentice licensure status.~~

~~0520-02-03-12 POST-BACCALAUREATE PROGRAM.~~

~~Purpose: The post-baccalaureate teacher education program is designed to attract talented individuals and those seeking to change careers who have the potential to become good teachers.~~

- (1) ~~Teacher candidates may seek licensure through post-baccalaureate teacher education programs, provided such programs are approved by the State Board of Education.~~
- (2) ~~Institutions of higher education may apply to the State Board of Education to offer experimental post-baccalaureate teacher education programs in accordance with standards and procedures adopted by the State Board of Education.~~
- (3) ~~Teacher candidates admitted to post-baccalaureate teacher education programs shall be those individuals who completed baccalaureate degrees but who did not complete teacher preparation requirements.~~
- (4) ~~The post-baccalaureate teacher education program shall include either an internship or student teaching experience, planned jointly by the institution of higher education in which the teacher candidate is enrolled and the cooperating local school system with significant input from principals and teachers.~~
- (5) ~~Institutions shall require candidates to address any deficiencies in their undergraduate education to ensure the attainment of the knowledge and skills required in general education, professional education, and the major for the teaching field; additional course work may be required based upon assessment of the knowledge and skills demonstrated by the candidate when admitted to the program or through assessment of performance during the induction experience.~~
- (6) ~~Teacher candidates in post-baccalaureate programs shall complete at least an entire summer or full semester carrying a full load of course work in professional education including laboratory/field experiences prior to entering an induction experience.~~
- (7) ~~The induction experience shall be structured in accordance with the standards and guidelines of the State Board of Education for the internship or student teaching.~~
- (8) ~~Additional course work to meet other knowledge and skills required in general education, professional education, or the teaching area constituting a major shall be completed during and/or following the induction experience.~~
- (9) ~~Teacher candidates who successfully complete an internship shall have that experience count as the first year of apprentice licensure; the internship shall count as one full school year (10 months) on the state pay scale.~~
- (10) ~~If candidates complete student teaching, they are eligible for beginning teacher (apprentice) licensure and for a beginning teacher program during their first year of teaching in Tennessee.~~

~~0520-02-03-.13 THROUGH 0520-02-03-.20 RESERVED.~~

~~0520-02-03-.21 EFFECTIVE DATES~~

- (1) ~~Teacher candidates seeking licensure and endorsement in the following areas of endorsement shall meet the requirements of Rules 0520-02-03-.01(1) through (9) and 0520-02-03-.11 by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.~~

Endorsement Area	Effective Date Sept. 1	Superseded Date Aug. 31	Single Effective Date

			Column
Secondary Education: Career and Technical Education			
Agriculture Education 7-12			2009
Agriscience 7-12			2009
Business Education 7-12			2004
Business Technology 7-12			2004
Family and Consumer Sciences 5-12			2008
Food Production & Management Services 9-12			2008
Early Childhood Care and Services 9-12			2008
Technology Engineering Education			2005
Marketing Education 7-12			2010
Occupational Education			
Health Sciences Education 9-12			2002
Trade and Industrial Education 9-12			2002

(2) — Candidates seeking licensure and endorsement in the following areas shall meet the requirements of rules 0520-02-03-.01 (14), (15), (16), (19), and (20) by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.

Endorsement Area	Effective Date Sept. 4	Superseded Date Aug. 31
School Counselor PreK-12	1996	
School Social Worker PreK-12	1996	
School Psychologist PreK-12	2001	
Sp Ed School Audiologist PreK-12	2006	
Sp Ed School Speech/Language Pathologist PreK-12	2006	

(3) — Candidates seeking endorsement as a beginning administrator shall meet the requirements of rules 0520-02-03-.01 (10) through (13) no later than September 1, 1994.

(4) — Candidates seeking to add endorsements to a teacher license shall meet the requirements of the initial endorsements no later than the date on which the requirements for the initial endorsements become effective.

0520-02-03-.22 THROUGH 0520-02-03-.94 REPEALED

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* 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)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	X				

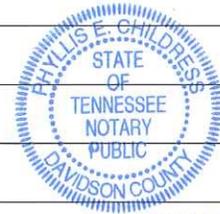
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 07/25/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11-19-14

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES: January 9, 2016

Subscribed and sworn to before me on: 11/19/14

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/11/2014 Date

Department of State Use Only

Filed with the Department of State on: 12/18/2014

Effective on: 3/18/2015



Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: General Rules of the Workers' Compensation Program;
Enforcement Procedures for the Court of Workers'
Compensation Claims

STATUTORY AUTHORITY: Tennessee Code Annotated, § 50-6-118 and Public
Chapter 289 of 2013

EFFECTIVE DATES: March 22, 2015 through June 30, 2015

FISCAL IMPACT: Minimal for local governments that accept the provisions of
the workers' compensation laws. None for the state.

STAFF RULE ABSTRACT: These rules provide timelines for provision of medical
panels to injured employees consistent with the
requirements § 50-6-204(a)(3); specify the forms required
for proof of payment when seeking reimbursement from
the second injury fund; establish the procedures for
enforcement of orders issued by a judge on the Tennessee
Court of Workers' Compensation Claims; and provide
enforcement authority to ensure that all parties to the
mediation process are participating in the program
faithfully.

Public Hearing Comments

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

PUBLIC COMMENTS AND RESPONSES

Comment: There is no process provided for obtaining subpoenas.

Response: The Division agrees with the comment. The rules have been revised to include instructions on how to obtain subpoenas.

Comment: The Division should add a requirement to Rule 0800-02-23-.02 that the parties to attempt to resolve the issue informally before filing a motion for enforcement of an order with the court. Adding the requirement would save judicial resources.

Response: The Division agrees with the comment and has amended the rule to include a requirement that the party seeking enforcement of the order attempt to contact the non-compliant party prior to filing the motion.

Comment: The authority to collect information afforded the investigating employee in rule 0800-02-23-.04(3) is too broad and could result in the parties being required to release sensitive information that is not essential for resolving the referral.

Response: The Division agrees with the comment and has amended the rule to make it clear that only information that is reasonably related to the investigation of the penalty referral must be provided.

Comment: There is a typographical error in Rule 0800-02-23-.05(2). The rule states that maximum penalty will be ten thousand dollars and this is accompanied by a numerical value of \$5,000.

Response: The Division agrees with the response and has amended the rule so that it states the correct maximum penalty amount of five thousand dollars (\$5,000).

Comment: The language in Rule 0800-02-23-.05(2) which mandates that the investigating employee assess a civil penalty whenever a party has failed to comply with an order issued by a workers' compensation judge does not provide appropriate discretion. Suggest changing the language from "shall" to "may."

Response: The Division disagrees with this comment and no changes to the rule will be made. The language is mandatory to ensure that the orders are followed and the authority determination of whether or not a party should be penalized for failing to follow an order issued by a judge is appropriately vested in the judge under the rules.

Comment: The language in Rule 0800-02-23-.07 which provides that the money collected by the Division shall be placed in the Division's general fund account and used to offset the costs of administering the law is constitutionally suspect.

Response: The Division disagrees with the comment. However, because Public Chapter 903 has amended the code to ensure that the penalties collected are utilized to offset program costs, the language is redundant of that in the code and has been removed.

Comment: The language in rule 0800-02-23-.02(2) allows a party to file a motion for enforcement of an order issued by a workers' compensation judge. This rule appears to provide an unnecessary "second bite at the apple" for enforcement of an order.

Response: The Division disagrees that the language is unnecessary or inappropriate. If parties have a concern about compliance with an order, the rule provides an avenue for getting the issue before a judge. The inclusion of this language does not mean that the Division will be abandoning its current enforcement structure. Orders will still be monitored for compliance.

Comment: The language in the rules uses the term "good faith" as a kind of safe harbor for actions taken under the law. Does this represent a departure from the Division's current penalty assessment procedure?

Response: This is not a departure from the current process. The rules provide that penalties for a violation of an order issued by a judge must be assessed which is similar to the process for assessing penalties for violations of orders in the Benefit Review process.

Comment: We are very concerned about the changes to the MIR program in Rule 0800-02-20-.01. The changes could result in the accumulation of unnecessary expenses to procure an impairment rating. Request that the current definition of "dispute of degree in medical impairment" remain in effect.

Response: The Division agrees. This rule has been deleted from the final rules.

Comment: Rule 0800-02-01-.25 references a form to be provided by the Division for use in making a referral to a specialist physician or surgeon. The form cannot be found on the Division's website. Additionally, many in the medical community feel that use of the form would be unnecessarily burdensome.

Rule: The Division agrees with the comment. The portion of Rule 0800-02-01-.25 requiring that the referral be provided on a form approved by the Division has been deleted from the final rules.

Comment: The rules provide for the enforcement of civil penalties through a contested case hearing. Recommend keeping the entire process in house so that the penalties are enforced through the court rather than the contested case hearing process.

Response: The Division appreciates the concern expressed in this comment. However, the use of the contested case hearing procedure for a party to challenge a penalty assessment is statutory and any change to that procedure must come from legislative, as opposed to administrative, action.

Comment: The word "employee" is missing from the first line in the first paragraph of rule 0800-02-23-.05.

Response: The Division agrees. The rule has been amended in the manner suggested by the comment.

Comment: Rule 0800-02-01-.25 provides for the assessment of a civil penalty to be assessed in cases where the employer fails to provide a panel to an injured employee. If no panel is provided, is the physician that the employee visits for treatment deemed to have been accepted by the employer?

Response: The Division cannot respond to this comment. The issue of whether the law deems that the physician the employee utilizes in situations where no panel has been provided will be the authorized treating physician falls outside the scope of these rules. That is a question that will need to be addressed by the courts in reviewing the claims.

Comment: The portion of Rule 0800-02-01-.25 allowing for the provision of a panel of specialist physicians after a referral has been made will result in a delay in treatment for the patient under an early intervention sports medicine treatment model. Recommend inclusion of language allowing the employer to set up a preferred treatment panel to be provided by the treating physician when a referral is made.

Response: The Division neither agrees nor disagrees with this comment. There is nothing in the law that would prohibit an employer from establishing these types of panels to be utilized by their initial panel physicians so no change to the rules is necessary to address this issue.

Comment: Recommend adding the phrase "to the authorized employer representative" to the second sentence of paragraph 1 in rule 0800-02-01-.25(1).

Response: The Division disagrees with the recommendation made by this comment and no changes will be made to the rule. The change suggested by the comment could result in unnecessary difficulty for an employee in both reporting a claim and securing treatment. Furthermore, the rules are structured so that the employer will not be penalized when the failure to provide a panel was the result of an honest mistake or miscommunication.

Comment: Recommend reducing the amount of the maximum fine as it would be unaffordable to small business and overly burdensome on businesses in general.

Response: The Division disagrees. The penalties provided are in a range from \$50 to \$5,000 and no specific amount is required for any action. Furthermore, the maximum penalty is one-half of the maximum penalty provided under current law for the same or similar malfeasance.

Comment: Recommend clarifying that when an employer does not provide a panel of specialists, the specialist to whom the employee has been referred will become the authorized treating physician.

Response: The Division agrees with this comment. Rule 0800-02-01-.25(2) has been amended to reflect the changes suggested by the this comment.

Regulatory Flexibility Addendum

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry, at least one employee. The rules address the procedure for enforcing orders issued by a workers' compensation judge through the assessment of a civil penalty. Accordingly, any small business that refused to comply with an order issued by a workers' compensation judge could be penalized. However, the penalty could easily be avoided by complying with an order issued by a judge. Furthermore, in the past when similar penalties have been issued, the penalties have been paid by the insurance carrier. Finally, the maximum penalty amount that may be assessed under these rules is 50% less than the maximum amount that may be assessed under current law. Accordingly, the new procedures would be less burdensome in cases where the maximum penalty is assessed.
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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators. Accordingly, any administrative impact to small businesses should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Since the penalties assessed under these rules will generally be borne by the insurance carrier, the impact on small businesses and consumers should be minimal.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to ensure the effective administration of claims through the newly created Court of Workers' Compensation Claims. It is expected that the Court will provide speedier and more predictive outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

Impact on Local Governments

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

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be minimal.

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Sequence Number: 12-22-14
Rule ID(s): 5854
File Date: 12/22/14
Effective Date: 3/22/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-6909
Email:	Josh.baker@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

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

Chapter Number	Chapter Title
0800-02-01	General Rules of the Workers' Compensation Program
Rule Number	Rule Title
0800-02-01-.25	Medical Panels
0800-02-01-.26	Second Injury Fund Reimbursements

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Chapter Number	Chapter Title
0800-02-24	Enforcement Procedures for the Court of Workers' Compensation Claims
Rule Number	Rule Title
0800-02-24-.01	Purpose and Scope
0800-02-24-.02	Securing Compliance with Orders
0800-02-24-.03	Referrals for Penalty Assessment
0800-02-24-.04	Investigation of Referrals for Penalty Assessment
0800-02-24-.05	Assessment of Civil Penalty
0800-02-24-.06	Appeals of Civil Penalty Assessment
0800-02-24-.07	Payment

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

New Rules
Chapter 0800-02-01
General Rules of the Workers' Compensation Program

Chapter 0800-02-01 is amended by adding the following as a new rule:

Rule 0800-02-01-.25 Medical Panels

- (1) Time requirement for provision of panel of physicians. Upon notice of any workplace injury, other than a minor injury for which no person could reasonably believe requires treatment from a physician, the employer shall immediately provide the injured employee a panel of physicians that meets the statutory requirements for treatment of the injury. In any case where the employer fails to provide a panel of physicians to the employee within a reasonable amount of time, but in no instance longer than five (5) business days from the date the employer has notice of an injury that would qualify for medical benefits, or provides a panel of physicians to the injured employee that does not meet statutory requirements on more than one (1) occasion for the subject injury, the employer may be assessed a civil penalty, not to exceed five thousand dollars (\$5,000).
- (2) Provision of three (3) physician list upon referral by original treating physician. In cases where the authorized treating physician, selected by the employee from the original three (3) physician panel provided by the employer, refers the employee for specialized care, the employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups to the employee pursuant to T.C.A. § 50-6-204(a)(3)(A). If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician. For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-204; T.C.A. § 50-6-233; T.C.A. § 50-6-118.

Chapter 0800-02-01 is amended by adding the following as a new rule:

Rule 0800-02-01-.26 Second Injury Fund Reimbursements

- (1) Any party seeking reimbursement from the Second Injury Fund pursuant to T.C.A. § 50-6-238(b) (2013) shall submit proof of the amount of money paid pursuant to the order of the specialist contemporaneously with the party's submission of a certified copy of an appropriate order to the Division via certified mail.
- (2) A copy of a signed SD-1 form for the claim shall constitute proof of payment. If an SD-1 is not available, any of the following may be submitted as proof of payment:
 - (a) Copies of EOB's (Explanation of Benefits) from the provider showing the provision of medical services for the claim;
 - (b) Copies of checks demonstrating payment for temporary disability or medical benefits provided to the employee for the claim; or
 - (c) Any other proof of payment deemed acceptable by the Division.
- (3) A reimbursement request that does not include documentation satisfying the requirements of this rule shall not be considered as having been received by the Division and interest as provided by T.C.A. § 50-6-238(b) (2013) shall not begin to accrue until such documentation has been received by the Division.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-238 (2013); T.C.A. § 50-6-233.

Chapter 0800-02-24
Enforcement Procedures for the Court of Workers' Compensation Claims

Rule 0800-02-24.01 Purpose and Scope

These rules are intended to ensure the effective and expedient resolution of workers' compensation claims within the adjudication process provided through the court of workers' compensation claims and the attendant mediation process. These rules govern only the procedures for the assessment of civil penalties that arise from actions related to the adjudication of claims with a date of injury that is on or after July 1, 2014, in the court of workers' compensation claims and the attendant mediation process. In addition to these penalties, the Division may also assess civil penalties, where appropriate, pursuant to Division rules.

Authority: T.C.A. § 50-6-118.

Rule 0800-02-24-.02 Securing Compliance with Orders

- (1) Whenever a judge has issued an interlocutory or final order in a workers' compensation claim and a party has failed to comply with that order, the party seeking enforcement of the order may file a motion to compel with the court requesting that the court enforce the order. Prior to filing the motion, the moving party must make an attempt to contact the opposing party to inform the party that a motion to enforce the order will be filed.
- (2) Before filing the motion, the moving party must contact the clerk's office to obtain a date that the judge is available to hear the motion. The moving party shall include a notice of hearing in the motion setting forth the date and time of the hearing before filing the motion with the clerk. The moving party shall serve a copy of the motion and notice upon all other parties to the claim in the manner provided by rule 0800-02-21-.09.
- (3) All parties may file a response to the motion. Any response must be filed with the clerk and served upon all other parties to the claim in the manner provided by rule 0800-02-21-.09. All responses must be filed and served not later than five (5) calendar days before the scheduled hearing.
- (4) If at the hearing, the judge determines that a party has failed to comply with the order at issue, the judge, in addition to ordering compliance with the order, may refer the noncompliant party to the Division's penalty program for the assessment of a civil penalty.

Authority: T.C.A. § 50-6-118 and T.C.A. § 50-6-239.

Rule 0800-02-24-.03 Referrals for Penalty Assessment

In addition to referrals made by a workers' compensation judge, any Division employee may refer any person or entity to the penalty program for the assessment of a civil penalty whenever the referring employee believes that there may have been a violation of the Division's rules or the Tennessee Workers' Compensation Act. Pursuant to this chapter, the penalty program shall be responsible for investigating all referrals for civil penalties, making determinations of whether assessment of a civil penalty is appropriate under the circumstances, assessing civil penalties, collecting civil penalties, and appearing at contested case hearings whenever a party that has been assessed a civil penalty chooses to challenge the assessment.

Authority: T.C.A. § 50-6-118 and T.C.A. § 50-6-239.

Rule 0800-02-24-.04 Investigation of Referrals for Penalty Assessment

- (1) Upon receipt of a referral, the referral shall be assigned to an employee of the penalty program who shall attempt to collect all information necessary to determine whether a civil penalty should be assessed.
- (2) In investigating a referral, the investigating employee may contact any person or entity involved in the claim.

Authority: T.C.A. § 50-6-118.

Rule 0800-02-24-.05 Assessment of Civil Penalty

- (1) The investigating employee may assess (1) a civil penalty for each action of not less than fifty dollars (\$50) but no more than five thousand dollars (\$5,000) against the person or entity that is the subject of the referral for the following acts:

- (a) Failed to attend a scheduled alternative dispute resolution proceeding;
 - (b) Arrived more than thirty minutes late to any scheduled alternative dispute resolution proceeding without previously notifying the mediator of their tardiness;
 - (c) Denied or stopped providing benefits for a claim of temporary disability or medical benefits without first performing a reasonable investigation of the claim;
 - (d) Provided medical providers on a Form C-42 that the party knew, should have known, or had good reason to believe, would not provide treatment for the injured employee;
 - (e) Provided medical providers on a Form C-42 in an untimely manner;
 - (f) Failed to comply within a reasonable amount of time with any appropriate request or directive of an ombudsman;
 - (g) Failed to timely provide documents as required by the Tennessee workers' compensation act or the Division's rules; or
 - (h) Failed to provide a representative with authority to settle a case at alternative dispute resolution proceeding.
- (2) In addition to the assessment authority provided in paragraph (1), the investigating employee shall assess a civil penalty of not less than fifty dollars (\$50) but no more than five thousand dollars (\$5,000) against the person or entity that has failed to comply with any order of a workers' compensation judge in a timely manner or has performed any of the actions enumerated in § 29-9-102 in relation to any proceedings in the court of workers' compensation claims. In assessing a penalty under this subsection, the investigating employee shall not be required to determine that the person or entity acted in bad faith.
- (3) The investigating employee shall send written notice of the assessment to the assessed party in the manner provided by rule 0800-02-21-.09.
- (4) The person or entity against whom the penalty has been assessed shall have fifteen (15) calendar days from the date the penalty is assessed to challenge the assessment by requesting a contested case hearing. If a contested case hearing is not timely requested, the penalty shall become due and payable and shall not be subject to further review.
- (5) Failure to pay the penalty within five (5) business days after it has become due and payable may result in the assessment of additional civil penalties.
- (6) In addition to these penalties, the investigating employee may assess a civil penalty of up to five thousand dollars (\$5,000) for a violation of rule 0800-02-01-.25(1).

Authority: T.C.A. § 50-6-118.

Rule 0800-02-24-.06 Appeals of Civil Penalty Assessment

- (1) All requests for a contested case hearing must be made in writing, received by the Division, and must include a copy of the penalty assessment.
- (2) A request for a contested case hearing shall not be timely unless the request is received by the Division before the close of business on the fifteenth (15th) calendar day after the date the penalty was assessed.

- (3) If the referral for a civil penalty was made by a workers' compensation judge, the judge who made the referral shall not be required to provide testimony, via deposition or in person, at the contested case hearing.
- (4) After the request has been filed, the contested case hearing shall be conducted in the manner provided by rule 0800-02-13-.17.

Authority: T.C.A. § 50-6-118.

Rule 0800-02-24-.07 Payment

- (1) Unless otherwise provided by law, penalties shall be made payable to the Division of Workers' Compensation. Payment may be made by check or credit card and, if made by check, must be mailed to the Division at the address provided on the penalty assessment notice.
- (2) All penalties collected by the Division from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected pursuant to an assessment made under this section shall be paid to the division for use by the division, at the discretion of the administrator, to offset the cost of administering this chapter.

Authority: T.C.A. § 50-6-118.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Division of Workers' Compensation (board/commission/ other authority) on January 10, 2014, 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: 12/18/13

Rulemaking Hearing(s) Conducted on: (add more dates). 2/ 14/14

Date: November 5, 2014

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: November 5, 2014

Notary Public Signature: Darlene Carver-McDonald

My commission expires on: May 3, 2017

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
12/17/2014

Date

Department of State Use Only

SECRETARY OF STATE
RECEIVED

2014 DEC 22 PM 2:01

Filed with the Department of State on: 12/22/14

Effective on: 3/22/15

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety

SUBJECT: Conduct of administrative hearings in regards to seized property

STATUTORY AUTHORITY: Chapter 382 of the Public Acts of 2013

EFFECTIVE DATES: March 10, 2015 to June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules establish terms for the manner in which administrative hearings are held to determine whether or not seized property should be forfeited to the state. The primary reason that the amendments are necessary is the enactment of Public Chapter 382 of 2013, which mandated that before a forfeiture warrant is issued that a hearing be held if a person whose property is seized is not arrested. A secondary reason for the amendments to update information, such as addresses, that has changed since the initial effective date of the rule being amended.

Regulatory Flexibility Addendum

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

This rule may minimally affect certain small businesses that are lienholders as they shall have the duty to notify the department of any successor-in-interest on property that has been seized.

(If applicable, insert Regulatory Flexibility Addendum here)

Impact on Local Governments

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

This Rule has no impact on local governments.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 12-14-14
 Rule ID(s): 5848
 File Date: 12/10/14
 Effective Date: 3/10/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Tennessee Department of Safety
Division: Legal
Contact Person: Deborah Martin, Staff Attorney
Address: 1150 Foster Avenue, Nashville, TN
Zip: 37243
Phone: (615) 251-5297
Email: Deborah.Martin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1340-02-02	The Rules of Procedure for Asset Forfeiture Hearings
Rule Number	Rule Title
1340-02-02-.01	Scope and Construction
1340-02-02-.02	Definitions
1340-02-02-.03	Style, Filing and Service of Pleadings and Other Items
1340-02-02-.04	Time
1340-02-02-.05	Duties of the Seizing Agency
1340-02-02-.06	The Legal Division
1340-02-02-.07	Filing Claims and Bonds
1340-02-02-.08	Representation by Counsel
1340-02-02-.09	Settlement
1340-02-02-.10	Motions
1340-02-02-.11	Service of Notice of Hearing
1340-02-02-.12	Continuances
1340-02-02-.13	Discovery
1340-02-02-.14	Subpoenas
1340-02-02-.15	Burden of Proof
1340-02-02-.16	Order of Proceedings
1340-02-02-.17	Default and Uncontested Proceedings

1340-02-02-18	Common Evidentiary Problems and Precedent
1340-02-02-19	Clerical Mistakes
1340-02-02-20	Intervention
1340-02-02-21	The Appeals Division
1340-02-02-22	Petitions for Reconsideration or a Stay
1340-02-02-23	Filing of Orders
1340-02-02-24	Costs of Administration and Proceedings
1340-02-02-25	Code of Conduct
1340-02-02-26	Declaratory Orders
1340-02-02-27	Bonding Procedure

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

1340-02-02-.01 Scope and Construction.

- (1) Pursuant to T.C.A. § 4-5-219, T.C.A. § 40-33-214, and T.C.A. §53-11-201(j), the Tennessee Department of Safety hereby adopts ~~the following~~ these rules Rules to be used in the administration and conduct of contested cases concerning property seized pursuant to the Tennessee Drug Control Act; T.C.A. § 53-11-201, et seq.; T.C.A. § ~~55-10-403, et seq.~~ §55-10-414; and T.C.A. § 55-50-504, ~~et seq.~~ T.C.A. § 55-50-506, T.C.A. § 55-5-108, and any other statute pursuant to which the department holds asset forfeiture hearings. These rules Rules apply instead of the Uniform Rules, Chapter ~~1360-4-1-01 thru 20~~ 1360-04-01, et seq. and any successor or additional rules thereto.
- (2) Any provision of these rules, except Rules 1340-2-2-.06, .21 and .25, may be suspended by the commissioner upon motion by a party where clearly warranted in the interest of justice. Any suspension order must be in writing with a reason given for the suspension. The suspension order must be served by the commissioner on all parties to a contested case in which a suspension is ordered.
- (3) These rules Rules shall be construed to secure the just, speedy, and inexpensive determination of claims and ~~notices of seizure~~ Notices of Seizure. Where appropriate and to the extent necessary to secure just, speedy, and inexpensive determinations, any procedural matter that is not specifically addressed by these rules may be addressed by reference to provisions of state or federal law. For guidance, reference should first be made to T.C.A. § 40-33-201, et seq., and the Tennessee Drug Control Act, or T.C.A. § 53-11-201, et seq., or T.C.A. § ~~55-10-403, et seq.~~ § 55-10-414, or T.C.A. § 55-50-504, et seq., or T.C.A. § 55-50-506, or T.C.A. § 55-5-108, or any other statute pursuant to which the department holds asset forfeiture hearings, as applicable; and second, to the Uniform Administrative Procedures Act. ~~third, to the Tennessee Rules of Civil Procedure and the Tennessee Rules of Criminal Procedure, and the Tennessee Rules of Appellate Procedure.~~ These proceedings are not exclusively governed by the Tennessee Rules of Evidence. ~~(See T.C.A. § 4-5-313(1).)~~ (See T.C.A. § 4-5-313(1)).
- (4) For matters outside the definition of "rule" by the UAPA, T.C.A. § 4-5-102(10), nothing in these rules shall prohibit the use of informal policies and internal procedures for the administration of the Act and the handling of seized property.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-214 as amended by Public Chapter 910 (1996) and Public Chapter 959 (1996) and 53-11-201(j). Administrative History: Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997.

1340-02-02-.02 Definitions.

- (1) Act. T.C.A. § 40-33-201, et seq., as amended, or T.C.A. § 53-11-201, et seq., as amended, or T.C.A. § ~~55-10-403, et seq.,~~ 55-10-414, as amended, or T.C.A. § 55-50-504, ~~et seq.,~~ as amended, or T.C.A. § 55-5-506, as amended, or T.C.A. § 55-5-108, as amended, or any successor law(s).
- (2) Administrative Judge. An employee or official of the administrative procedures division of the office of the secretary of state or the department licensed to practice law and authorized by the commissioner to conduct contested case proceedings. Wherever the term "administrative judge" is used in these rules, it is intended to include reference to the term "hearing officer" or "commissioner," in cases in which a hearing officer or the commissioner conducts the proceedings. For purposes of these rules, a hearing officer is an employee or official of the office of the secretary of state or the department, not licensed to practice law, and authorized by the Commissioner to conduct a contested case proceeding.
- (3) Administrative Procedures Division. The division of the Department of State that supplies administrative judges to hear contested cases pursuant to the UAPA. ~~In the event if the Agency~~ department utilizes employs an administrative judge from the Administrative Procedures Division, the initial or final order shall not be deemed entered until the initial or final order has been filed with the Administrative Procedures Division. Hereinafter, the Administrative Procedures Division may be referred to as "APD".

Address: Administrative Procedures Division,
 Department of State, ~~17th Floor, James K. Polk Building, Nashville, Tennessee 37219.~~
 8th Floor, William R. Snodgrass Tower
 312 Rosa L. Parks Avenue
 Nashville, Tennessee 37243-1102
 Telephone number: (615) 741-7008 FAX: (615) 741-4472

- (4) ~~Agency. The Tennessee Department of Safety.~~
- (4) Appeals Division. The division of the department designated by the commissioner to administer certain contested case orders and all appellate matters under the Act, including but not limited to final orders, Interlocutory Appeals, Petitions for Reconsideration, Petitions for a Stay, Appeals of an Initial Order, and Notices of Review of an Initial Order.
- Address: Appeals Division,
 Tennessee Department of Safety,
 1150 Foster Avenue,
 Nashville, TN ~~37249-1000.~~ 37243
 Telephone number: (615) ~~251-5296~~-251-5114 FAX: (615) 253-4622
- (5) Claim. A claim is a written request, signed under oath, for a hearing by a claimant seeking to recover an alleged interest in seized property. A claim must conform to Rule 1340-02-02-.07.
- (6) Claimant. A person who files a claim alleging an interest in seized property.
- (7) Contested Case. Administrative *in rem* forfeiture proceeding whereby the entire world's interest in seized property is determined.
- (8) Commissioner. The commissioner of the Tennessee Department of Safety.
- (9) Department. The Tennessee Department of Safety.
- (10) File(d). Actual receipt by the Legal Division.
- (11) Judge. Judges and magistrates shall include (1) the judges of the Supreme Court; (2) the judges of the circuit, criminal, and chancery courts; (3) judicial commissioners; (4) judges of the courts of general sessions; (5) city judges in cities and towns; and (6) judges of juvenile courts.

- (12) Legal Division. The division of the department designated by the commissioner to receive for filing all pleadings in contested case proceedings under the Act, to maintain the record in contested case proceedings under the Act, and to administer the Act as set out in these rules.
- Address: Legal Division, Tennessee Department of Safety,
1150 Foster Avenue,
Nashville, TN 37249-1000- 37243.
Telephone number: (615) 251-5296 FAX: (615) 532-7918
- (13) Notice of Seizure. ~~Writing~~ Department created form given to a person potentially having an interest in seized property.
- (14) Party to a Contested Case. ~~The department all claimants and intervenors and the persons and entities who have properly filed pursuant to T.C.A. § 40-33-201, et seq. and any other applicable statute to protect their interest in the seized property. are parties to a contested case.~~
- (15) Pauper's Oath. The Uniform Civil Affidavit of Indigency which must be completed and signed before a notary by any potential claimant alleging that the claimant cannot pay the cost bond.
- (16) Person. Any individual, partnership, corporation, association, or governmental subdivision - , including any agency, division, or department of government, or public or private organization of any character.
- (17) Pleadings. The notice of seizure, the claim, and any motions, memoranda, responses, answers, orders, notices, title searches, or other paper filed with the Legal Division shall comprise the pleadings in a contested case.
- (18) Record. All items in a contested case filed with the Legal Division, including any pleadings, transcripts and exhibits, orders, or other items, and if an administrative judge has been utilized, all items set forth above plus any initial and final orders.
- (19) Secured Party. The holder of a security interest in the seized property pursuant to T.C.A. § 47-9-301. ~~acquired in the ordinary course of business within the meaning of the T.C.A. §47-9-105(m) and shall include a recourse party under the terms of a financing agreement.~~
- (20) Seizing Agency. Any ~~person~~ entity authorized to seize property pursuant to the applicable Act.
- (21) Seized Property. Any property, ~~including a conveyance~~, excluding real property, seized pursuant to the Act.
- (22) UAPA. The ~~Tennessee~~-Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq.
- (23) Working Day. Any ~~working~~ day or part of the day on which state offices are open for business.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997.

1340-02-02-.03 Style, Filing and Service of Pleadings and other Items.

- (1) All pleadings and other items required to be filed with the Legal Division and Appellate Division by a time certain shall be filed by delivery in person or in any other manner, including mail, or facsimile transmission, so long as they are actually received within the required time period. Any document received after regularly scheduled business hours shall be date stamped as of the next business day. Regularly scheduled business hours for the Legal Division are as follows: For the Central Time region of Tennessee 8:00 A.M.-4:30 P.M. C.S.T. (C.D.S.T.) and for the Eastern Time region of Tennessee 8:00 A.M.-4:30 P.M. E.S.T.(E.D.S.T.)

- (2) A claim filed by facsimile transmission must be accompanied by a cost bond or a pauper's oath in accordance with Rule 1340-02-02-.07 (5)(d), and (5)(e). (~~Pauper's Oath~~).
- (3) Discovery materials that are not actually introduced as evidence need not be filed, except as set forth in Rule 1340-02-02-.13(3).
- (4) A party shall serve copies of any filed item on all parties, by hand delivery, by mail or by any other means allowed per by Rule 5~~r~~ of the Tennessee Rules of Civil Procedure. Each pleading or other item shall contain a certificate of service indicating that copies have been served upon all parties. ~~If the Administrative Procedures Division is involved,~~ The administrative judge conducting the contested case proceeding must also be served.
- (5) A "Notice of Hearing" filed by the Legal Division in compliance with T.C.A. § 4-5-307(b) shall bear a caption and include a Department assigned contested case number. All subsequent pleadings or other items filed must bear this same caption and the contested case number. All claims filed on a particular seized property shall receive the same contested case number.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.04 Time.

- (1) Pursuant to T.C.A. § 40-33-206, any person claiming any interest in seized property shall file a claim within thirty (30) days after receipt of notice from the department of a Forfeiture Warrant being issued. This time cannot be extended.
 - (a) Any potential claimant who is not notified by the department and who could not reasonably be discovered pursuant to a search of the applicable public records shall have thirty (30) days from the date of the forfeiture warrant to file a claim.
- (2) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.
- (3) Except in regard to the filing of a claim as noted above in ~~subparagraph~~ Paragraph (1), petitions for review under T.C.A. §§ 4-5-315, 4-5-317, 4-5-322, and 40-33-213, acts under Rules 1340-02-02-.05, .06 and .10(3)(b), or where otherwise prohibited by law, when an act in a contested case is required or allowed to be done at or within a specified time, the administrative judge may, at any time;
 - (a) With or without motion or notice, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceedings that would be prohibited by T.C.A. § 4-5-304.
- (4) Mail Rule. This part does not apply to the filing of claims or administrative or judicial appeals from an initial or final order. Except as noted above, whenever a party has the right or is required to do some act or to take some proceedings within a prescribed time after the service of a notice or other paper and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

1340-02-02-.05 Duties of the Seizing Agency.

- (6) (1) Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. §40-33-201 the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure. Such Notice of Seizure shall contain the following:
- (a) A general description of the property seized and, if the property is money, the amount seized;
 - (b) The date the property was seized and the date the notice of seizure was given to or mailed to the person in possession of the seized property;
 - (c) The vehicle identification number (VIN) if the property seized is a motor vehicle;
 - (d) The reason the seizing officer believes the property is subject to seizure and forfeiture;
 - (e) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and
 - (f) The consequences that will attach if no claim for recovery is filed within the applicable time period.
- (4) (2) Once personal property is seized pursuant to the applicable a provision of law that requires the issuance of a forfeiture warrant, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with T.C.A. §40-33-204 by a general sessions, circuit, criminal court or popularly elected city judge as defined in the Act. Such forfeiture warrant shall authorize the institution of a forfeiture proceeding.
- (2) (3) If an arrest was made at the time of the seizure, the officer making the seizure or the officer's designee shall apply for a forfeiture warrant by filing an affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the Notice of Seizure. The affidavit in support of the forfeiture warrant shall state the following:
- (a) The legal and factual basis making such property subject to forfeiture;
 - 1. If the owner of the property was not the person in possession of the property at the time of seizure, and it can be determined from public records of titles, registrations, or other recorded documents, and the seizing agency intends to forfeit the owner's interest, then the seizing agency must state the legal and factual basis for forfeiture of such owner's interest in the property.
 - 2. If the interest of a secured party with a duly perfected security interest as reflected in public records of titles, registrations, or other recorded documents is sought to be forfeited, then the seizing agency must state the legal and factual basis for forfeiture of such secured parties party's interest.
- (3) (4) The seizing officer may ask the judge for an additional ten (10) days to seek a forfeiture warrant. The seizing officer may assert to the judge that such officer is unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five (5) day period.
- (4) (5) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations, or other recorded documents, the officer may submit certain indicia of ownership to

the judge which proves that the possessor is nonetheless an owner of the property. Such indicia of ownership shall include, but is not limited to the following:

- (a) How the parties involved regarded ownership of the property in question;
 - (b) The intentions of the parties relative to ownership of the property;
 - (c) Who was responsible for originally purchasing the property;
 - (d) Who pays any insurance, license or fees required to possess or operate the property;
 - (e) Who maintains and repairs the property;
 - (f) Who uses or operates the property;
 - (g) Who has access to use the property;
 - (h) Who acts as if they have a proprietary interest in the property.
- (6) Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. § 40-33-201 where the person in possession is not arrested, the seizing officer shall provide the person found in possession of the property, if known, a notice entitled "Notice of Forfeiture Warrant Hearing". This notice shall contain the following:
- (a) The date, time, and court in which the seizing officer will be seeking a forfeiture warrant against the seized property pursuant to T.C.A. § 40-33-204;
 - (b) A statement that the person in possession is entitled to appear in court at the stated date and time to contest the issuance of a forfeiture warrant against the seized property and that this hearing shall be civil in nature pursuant to T.C.A. § 40-33-204(b); and,
 - (c) A statement that if the person in possession does not appear in court, a forfeiture warrant may be issued and the property subject to the forfeiture process set forth in title 40, chapter 33, part 2 and as stated on the Notice of Seizure.
- (7) If no arrest was made at the time of the seizure, the officer making the seizure shall present to the court, at the date and time specified on the Notice of Forfeiture Warrant Hearing, the application for a forfeiture warrant, the affidavit in support, the notice of seizure, and the notice of forfeiture warrant hearing. At the hearing on the forfeiture warrant application, the court shall:
- (a) Review the application for a forfeiture warrant and the affidavit in support and take testimony from the seizing officer regarding the probable cause to issue a forfeiture warrant, including any testimony as may be required in this section; and
 - (b) Review any evidence presented by and take testimony from the person in possession at the time of the seizure regarding why no probable cause exists to issue a forfeiture warrant.
 - (c) If the person in possession at the time of the seizure does not appear at the hearing and has received notice of the hearing, then the court shall review the application for a forfeiture warrant ex parte as under subsection (b)(2).
 - (d) The taking of testimony shall consist solely of the judge putting the seizing officer and person in possession under oath and asking questions to determine if probable cause exists for a forfeiture warrant to be issued. Any examination by the judge of the seizing officer shall in no form or manner extend to whether the seizure is part of an ongoing investigation, nor shall the judge's examination extend in any form or manner to the source of any confidential information used in making a stop leading to seizure of the property.
- (8) All hearings on applications for forfeiture warrants pursuant to paragraphs 6 and 7 shall be recorded and made available to any party requesting them, and the same shall be admissible as evidence.

- (5)(9) The seizing agency shall send a Notice of Seizure, Affidavit, Notice of Forfeiture Warrant Hearing, if applicable, and Forfeiture Warrant pursuant to T.C.A. § 40-33-204(e) to the Legal Division within seven (7) working days of the issuance of the Forfeiture Warrant. The Legal Division shall stamp the aforementioned documents with the date and time of receipt.
- (6) Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. §40-33-201 the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure. Such Notice of Seizure shall contain the following:
- (a) A general description of the property seized and, if the property is money, the amount seized;
 - (b) The date the property was seized and the date the notice of seizure was given to or mailed to the person in possession of the seized property;
 - (c) The vehicle identification number (VIN) if the property seized is a motor vehicle;
 - (d) The reason the seizing officer believes the property is subject to seizure and forfeiture;
 - (e) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and
 - (f) The consequences that will attach if no claim for recovery is filed within the applicable time period.
- (7)(10) The seizing agency shall not use or release any seized property unless and until an order of forfeiture has become final by the expiration of any relevant appeal time and the department has received payment of assessed costs in accord accordance with Rule 1340-02-02-.24.
- (8)(11) The seizing agency shall cooperate with the Legal Division in that division's effort to administer the Act. In the absence of cooperation, and within the discretion of the staff attorney handling a particular claim, the department may settle a claim.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended; ~~and 53-11-201, et seq.~~ and *Public Chapter No. 382 (2013)*. *Administrative History:* Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.06 The Legal Division.

- (1) The Legal Division is designated by the commissioner to receive for filing all pleadings in contested case proceedings under the Act, to maintain the record in contested case proceedings under the Act, and to administer the Act as set out in these rules.
- (2) Upon receipt of a Notice of Seizure, Affidavit and Forfeiture Warrant the Legal Division shall:
 - (a) Search for potential claimants and secured parties by: ~~among other things,~~
 1. reviewing the ~~notices of seizure,~~ Notice of Seizure and the forfeiture warrant,
 2. checking out the vehicle's identification number, registration, and title in appropriate public data bases,
 3. checking the secured party address file created under subparagraph 2(f) 2(g) of this rule Rule, ~~or and~~
 4. checking other sources of indicia of ownership as may be appropriate for the property seized.

- (b) Take steps to notify each potential claimant and secured party unearthed through the search performed under subparagraph (2)(a) of this rule Rule, reflected on a ~~notice of seizure~~ Notice of Seizure, or related by a seizing agency after the filing of a Notice of Seizure.
 - (c) All potential claimants and secured parties shall be sent notification to their last known address that a Forfeiture Warrant has been issued. The notice shall state the name of the potential claimant or secured party, the name of the person(s) in possession of the seized property, give a general description of the seized property, the reasons for the seizure, the procedure by which recovery of the property may be sought, including the time period in which a claim or proof of security interest shall be filed with the Legal Division, and the consequences of failing to file within the time period.
 - (d) Any potential claimant who is not notified by the department and who could not reasonably be discovered pursuant to a search of the applicable public records shall have thirty (30) days from the date of the Forfeiture Warrant to file a claim.
 - ~~(d)~~ (e) Notice to a potential claimant or secured party shall be given in accordance with state and federal constitutional requirements. ~~Such notice may be proven by notice sent to the potential claimant or secured party by certified mail, return receipt requested, at the claimant's or secured party's last known address.~~ Such notice to a potential claimant or a secured party may be proven by any method used by the United States Postal Service to inform its users of the date of delivery of certified mail.
 - 1. When the potential claimant or secured party or an agent or other representative of the potential claimant or secured party refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the case shall be deemed an actual and valid service of the notice. Service by mail is complete upon mailing. For purposes of these rules, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the potential claimant's refusal to accept delivery.
 - ~~(e)~~ (f) If no claim or proof of security interest is received by the conclusion of the thirtieth (30th) day after the date of the potential claimant's or secured party's receipt of the Notice of Forfeiture Warrant sent by the Legal Division, seized property shall be forfeited to the state for disposition under the Act. A final order shall be issued. The final order shall be sent to each potential claimant and secured party and the person in possession of seized property.
 - ~~(f)~~ (g) A secured party may at any time notify the Legal Division – Nashville in writing of any address or addresses that it wishes the Legal Division to use when ~~forwarding~~ sending a Notice of Forfeiture Warrant to that secured party. The Legal Division shall keep the requested address or addresses on file until notified otherwise in writing by the secured party. Upon receiving written notification of address or addresses from a secured party in accordance with this rule, that shall be the primary address or addresses that the Legal Division shall use when ~~forwarding~~ sending a Notice of Forfeiture Warrant to that secured party until notified otherwise in writing by the secured party.
- (3) Upon receipt of a claim, the Legal Division shall within thirty (30) days of such receipt establish a hearing date and set such case on ~~the~~ a docket. Nothing in this ~~section~~ these Rules shall be construed as requiring the hearing to be conducted within the thirty (30) day period. Only the cases on the docket may be heard on the merits on that day and at that time.
 - (4) The commissioner designates the Legal Division to administer the forfeiture of seized property, to make settlements on behalf of the department and seizing agency, ~~to issue Final Orders,~~ and to prosecute on behalf of the department all contested cases under the Act. The Legal Division, in its discretion, may

associate with third party attorneys, e.g., district attorneys, seizing agency attorneys, etc., to prosecute the contested cases under the Act.

Authority: T.C.A. §§ 4-3-2009, 4-5-202, 4-5-219, 4-5-308, 40-33-201, et seq., as amended, and 53-11-201, et seq.
Administrative History: Original rule filed December 5, 1994; effective February 18, 1995. Amendments filed August 9, 2007; effective December 28, 2007.

1340-02-02-.07 Filing Claims and Bonds.

- (1) Filing Claims. A ~~claim filed by a claimant~~ properly filed claim commences a contested case proceeding under the Act. Each claimant shall file a separate claim, except a husband and wife with common interests may file a single claim but each must sign the claim.
- (2) The Legal Division shall stamp or write on the claim the date that a claim is received. Any document received after regularly scheduled business hours shall be date stamped as of the next business day. Regularly scheduled business hours for the Legal Division are as follows: For the central time region of Tennessee 8:00 A.M.-4:30 P.M. C.S.T. (C.D.S.T.) and for the eastern time region of Tennessee 8:00 A.M.-4:30 P.M. E.S.T.(E.D.S.T.)
- (3) A purported claim that does not comply with ~~subparagraph~~ Paragraph (4) of this rule Rule does NOT commence a contested case proceeding and does NOT stay the thirty (30) day filing time. Claims not filed by an attorney may be reviewed less stringently.
- (4) Claim.
 - (a) A claim is a written request, signed by the claimant, seeking to recover an alleged interest in seized property. If the claimant is an individual, the claim must be signed by the claimant and/or claimant's attorney. If the claimant is a business entity, the claim must be signed by an individual whose authority to sign is reflected on the claim. Claims shall be filed with the Legal Division at the address below within thirty (30) days of notification of a ~~seizure~~ forfeiture warrant. A claim must set forth the following:
 - ~~1. A claim must set forth the following:~~
 - (i) 1. The full name of claimant.
 - (ii) 2. The address where claimant will accept mail.
 - (iii) 3. The telephone number where claimant can be reached.
 - (iv) 4. Identification of the seized property in which claimant asserts an interest.
 - (v) 5. The nature and extent of claimant's interest in the seized property.
 - (vi) 6. A valid cost bond or Pauper's Oath per ~~part~~ Paragraph (5) below.
 - (b) If a secured party with a duly perfected security interest receives notification pursuant to T.C.A. § 40-33-204(g) that a forfeiture warrant has been issued with regard to such secured property, such secured party must submit proof of the security interest (copy of title and security agreement) to the department within thirty (30) days of receipt of such notification in order for the provisions of this subparagraph to apply. A secured party with a duly perfected interest or any successor in interest to such secured party who does not receive notice of intent to forfeit such interest pursuant to T.C.A. § 40-33-204(b)(3), need not file a claim to preserve any right such party may have to such property. However, it shall be the duty of the lienholder who receives notice pursuant to T.C.A. § 40-33-204(g) to inform the department that there is a successor-in-interest. Upon receiving proof of a security interest, no cost bond or other pleadings need be filed by the

secured party or successor in interest in order to protect its interest in the seized property or to assert a claim to the property as provided in T.C.A. § 40-33-206. If the department notifies a secured party that it intends to seek forfeiture of the secured party's interest, it shall seek a forfeiture warrant against such secured party as provided in T.C.A. § 40-33-204(b). Upon receiving notice that such a forfeiture warrant has been issued, the secured party is required to file a claim for the property as provided in this part.

Any secured party, other than one described above, or any successor-in-interest to such secured party may file a claim for seized property by complying with the provisions of T.C.A. § 40-33-206, within thirty (30) days of the date the forfeiture warrant is issued.

~~Address: Legal Division,~~

~~Tennessee Department of Safety, 1150 Foster Avenue,~~

~~Nashville, TN 37249-1000 37243.~~

~~Telephone number: (615) 251-5296 FAX: (615)532-7918~~

~~Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division--Nashville:~~

~~Bedford Jackson Putnam~~

~~Cannon Lawrence Robertson~~

~~Cheatham Lewis Rutherford~~

~~Clay Lincoln Smith~~

~~Cumberland Macon Stewart~~

~~Davidson Marshall Sumner~~

~~DeKalb Maury Trousdale~~

~~Dickson Montgomery Wayne~~

~~Giles Moore White~~

~~Hickman Overton Williamson~~

~~Houston Perry Wilson~~

~~Humphreys Pickett~~

~~Address: Legal Division -East Tennessee~~

~~Department of Safety, 322 Nancy Lynn Lane, Suite 8 Tennessee Department of Safety, 7175 Strawberry Plains Pike, Ste. 102~~

~~Knoxville, TN 37919 37914~~

~~Telephone Number: (865) 594-6519 FAX: (865) 594-5311~~

~~Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal Division - East:~~

~~Anderson-Grundy-Morgan~~

~~Bledsoe-Hamblen-Polk~~

~~Blount-Hamilton-Rhea~~

~~Bradley-Hancock-Reane~~

~~Campbell-Hawkins-Scott~~

~~Carter-Jefferson-Sequatchie~~

~~Claiborne-Johnson-Sevier~~

~~Cocke-Knox-Sullivan~~

~~Coffee-Loudon-Unicoi~~

~~Fentress-McMinn-Union~~

~~Franklin-Marion-Van-Buren~~

~~Grainger-Meigs-Warren~~

~~Greene-Monroe-Washington~~

~~Address: Legal-Division - West-Tennessee~~

~~Department of Safety, 6174 Macon Road~~

~~Memphis, TN-38134~~

~~Telephone Number: (901) 372-0622 FAX: (901) 372-1294~~

~~Claimants and secured parties whose property was seized in the following counties may file their claims or proof of security interest with Legal-Division - WEST:~~

~~Benton-Gibson-Lauderdale~~

~~Carroll-Hardeman-McNairy~~

~~Chester-Hardin-Madison~~

~~Crockett-Haywood-Obion~~

~~Decatur-Henderson-Shelby~~

~~Dyer-Henry-Tipton~~

~~Fayette-Lake-Weakley~~

- c. Claims, proof of security interests and any other filings in a contested case should be mailed or sent by facsimile to the Legal Office that serves the county in which the seizure took place:

Legal Division - Nashville:

Bedford Cannon Cheatham Clay Cumberland Davidson DeKalb Dickson Giles Hickman Houston Humphreys	Jackson Lawrence Lewis Lincoln Macon Marshall Maury Montgomery Moore Overton Perry Pickett	Putnam Robertson Rutherford Smith Stewart Sumner Trousdale Wayne White Williamson Wilson	Legal Division - Nashville Tennessee Department of Safety 1150 Foster Avenue, Nashville, TN 37243 Telephone number: (615) 251-5296 Facsimile: (615) 532-7918
Legal Division - East:			
Anderson Bledsoe Blount Bradley Campbell Carter Claiborne Cocke Coffee Fentress Franklin Grainger Green	Grundy Hamblen Hamilton Hancock Hawkins Jefferson Johnson Knox Loudon McMinn Marion Meigs Monroe	Morgan Polk Rhea Roane Scott Sequatchie Sevier Sullivan Unicoi Union Van Buren Warren Washington	Legal Division - East Tennessee Tennessee Department of Safety 7175 Strawberry Plains Pike, Ste. 102 Knoxville, TN 37914 Telephone Number: (865) 594-6519 Facsimile: (865) 594-5311
Legal Division - West:			
Benton Carroll Chester Crockett Decatur Dyer Fayette	Gibson Hardeman Hardin Haywood Henderson Henry Lake	Lauderdale McNairy Madison Obion Shelby Tipton Weakley	Legal Division - West Tennessee Tennessee Department of Safety 6174 Macon Road Memphis, TN 38134 Telephone Number: (901) 372-0622 Facsimile: (901) 372-1294

Note: Claimants and secured parties may file at the Nashville address for any property seizure pursuant to the Act, regardless of the county of seizure.

- (5) Cost Bonds. A claim shall have a valid cost bond, or no contested case proceeding will commence. The following will be considered a valid cost bond:
- (a) Cash.
 - (b) (a) Money order or cashier's check.
 - (c) (b) Attorney's check. Only checks from an attorney licensed to practice law in the State of Tennessee will be accepted.
 - (d) (c) Surety. The commissioner may accept a surety signed by an attorney licensed to practice in the State of Tennessee, a bond from a licensed bonding company approved by the commissioner, or a corporate surety bond.
 - (e) (d) ~~In-Forma-Pauperis~~. Pauper's Oath. Any individual claimant may file a claim without ~~also~~ filing a cost bond if the individual claimant submits ~~an affidavit~~ the Pauper's Oath forms, properly

completed, signed and notarized, provided by the department. ~~reflecting the financial position of the individual claimant.~~ The factors that will be considered by the department in determining indigence are yearly income, the value of real and personal property owned, and debts, other household income, and whether or not the claimant has hired an attorney to represent the claimant.

~~An Affidavit of Indigency and The Pauper's Oath forms provided by the Department of Safety shall be completed by any claimant who files a claim in Forma Pauperis.~~

- (f) (e) To be a valid cost bond, any of the above bonds must be filed with the commissioner, Legal Division and not with the seizing agency.
- (g) (f) If a cost bond or a pauper's oath ~~Civil Affidavit of Indigency~~ is rejected, then claimant shall have ten (10) days from receipt of notification by Certified United States Mail Return Receipt Requested, or 10 days from the return to the department of the unclaimed notice:
1. To request a hearing on the improper cost bond or pauper's oath. Failure to request a hearing is deemed a waiver of claimant's right to a hearing on the improper cost bond or pauper's oath and shall result in rejection of the claim; or
 2. To provide a proper cost bond.
- (6) Debarment. No check, surety, or bond shall be accepted from any ~~person~~ attorney or bonding company that has failed to pay costs pursuant to a previous cost bond within thirty (30) days of notice by the department to pay. A claim accompanied by a cost bond from a debarred attorney or bonding company shall not commence a contested case proceeding.
- (7) Bonding Out Seized Property. Bond for release of seized property for safekeeping purposes only shall consist of the following:
- (a) Pending any contested case proceeding to recover a vehicle, aircraft or boat, the commissioner may bond out such seized property for its retail value per the N.A.D.A., Southeastern Edition for vehicles and boats and per a source approved by the commissioner for airplanes to a claimant who has established a right to immediate possession. The bond may be revoked at the discretion of the commissioner.
1. If the property seized was other than the property stated above, the bond shall be in an amount equal to two times the ~~retain~~ retail value of the property.
 2. If the property seized was a motor vehicle titled in the name of one or more persons who are not secured parties, the bond shall be in an amount equal to the N.A.D.A., Southeastern Edition, retail value of the vehicle.
- (b) A secured party may obtain immediate possession of the seized property by executing a bond ~~provided in subparagraph (a)(2)~~ in an amount equal to two (2) times the retail value of the property or by executing an annual bond or letter of credit with a regulated financial institution in the amount of twenty-five thousand dollars (\$25,000). Upon submitting proof of such bond or letter of credit, the department or seizing agency shall release the property to the secured party.
- (c) The following will be considered valid bonds:
1. Cashier's check or money order.
 2. ~~Cash.~~

- 3- 2. Bond from a bonding company licensed in the State of Tennessee and approved by the commissioner.
 - 4- 3. An annual bond or letter of credit with a regulated financial institution in the amount of twenty-five thousand dollars (\$25,000) submitted by a secured party.
- (d) Bonded out property shall be returned in the same condition as of the date of the bond-out order. If the bonded out property is returned in worse condition or not at all, at any settlement or contested case hearing, the bond shall be substituted for the bonded out property.
- (8) ~~Debarment. No bond shall be accepted from any person that has failed to pay a bond within thirty (30) days of notice by the department to pay.~~

Authority: T.C.A. §§ 4-3-2009, ~~4-5-202~~, 4-5-219, 4-5-308, 40-33-201, et seq., as amended, and 53-11-201, et seq.
 Administrative History: Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed August 9, 2007; effective December 28, 2007.

1340-02-02-.08 Representation by Counsel.

- (1) Any individual party in a contested case may represent himself or herself. A business entity may participate through an authorized representative such as an officer, director or appropriate employee.
- (2) Any party to a contested case may be represented, at his or her own expense, by an attorney either licensed in the State of Tennessee or in another state if approved by the administrative judge pursuant to subsection Paragraph 9 of this rule. If a claimant cannot afford to hire an attorney, then free or low-cost counsel might be available from a number of sources.
- (3) A party to a contested case may not be represented by a non-attorney, except where Federal law requires.
- (4) ~~The State Legal Department~~ Division shall notify all parties in a contested case hearing of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (5) Entry of an appearance by counsel shall be made by:
 - (a) the filing of pleadings signed by counsel;
 - (b) the filing of a formal or informal notice of appearance signed by counsel; or
 - (c) appearance as counsel at a prehearing conference or a hearing.
- (6) After appearance, it is the affirmative duty of counsel to keep the Legal Division notified of a current address and telephone number where counsel can be reached by mail and phone.
- (7) After appearance of counsel, all pleadings and other items shall be served by the parties upon counsel and not the claimant.
- (8) Counsel cannot withdraw except upon motion granted by the administrative judge.
- (9) Out-of-state counsel shall comply with T.C.A. § ~~23-3-103(a)~~ 23-1-108 and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the Legal Division and approved by the administrative judge.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-305, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.09 Settlement.

- (1) Settlements are encouraged. After a timely valid claim has been filed, the claimant may enter into a written settlement agreement with either the department or the seizing agency. All settlements are subject to approval by the department. If a claim is filed timely with a settlement agreement, costs may be reduced.
 - (a) A settlement agreement shall reflect the terms of the settlement on a form provided by the Legal Division. It must be signed by the claimant and/or claimant's counsel and the designated authority of the seizing agency and/or the department.
 - (b) The commissioner ~~may~~ shall enter a final order of settlement that incorporates the settlement agreement. The final order shall be ~~filed with the Legal Division and~~ served on the claimant and the seizing agency, with a copy maintained in the Legal Division's case file.
 - (c) Upon entry of a final order of settlement and upon the parties' compliance with its terms, the seized property shall be released to the claimant or forfeited to the state for disposition under the Act.
 - (d) The final order of settlement may provide that the failure of a claimant to comply with the terms of the order may result in the forfeiture of the seized property to the state subject to the disposition of any other timely, valid claim. Prior to the issuance of the final order in a case where the claimant has failed to comply with the order of settlement, the claimant shall have the opportunity to appear in a show cause hearing.
 - (e) The seizing agency shall not release any property until it has received a final order.
- (2) The administrative judge shall not, in any way, interfere in any settlement negotiations or render advice to either party ~~at the hearing~~ during settlement negotiations.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-305, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.10 Motions.

(1) Scope.

- (a) This rule applies to all motions in a contested case proceeding. Motions in a contested case before the administrative judge shall be filed with the APD with a copy certified to the Legal Division and other parties. All other motions shall be filed with the Legal Division with a copy certified to the other parties. Each party shall be responsible for filing its own motions and/or pleadings. The department is not responsible for filing another party's motions or ensuring timely filing with the APD, the commissioner or any court.
- (b) Parties to a contested case proceeding are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion. Motions shall state why the motion should be granted and the grounds upon which movant relies. Each motion which is based on a legal issue shall be accompanied by a memorandum of law. Failure to submit a memorandum in support of a motion will result in the striking of a the motion.
- (c) Parties to a contested case proceeding should bring matters to the attention of the administrative judge and opposing parties before a hearing on the merits in order to avoid delay at the hearing. Certain motions, set out in ~~part~~ subparagraph (3)(b) of this Rule, must be made at a particular time. If there is inadequate prior notice of a motion, then the administrative judge shall grant a continuance to the non-moving party if to proceed would prejudice the non-movant's case.

(2) Rulings and Interlocutory Appeals.

- (a) All decisions on motions shall be made by the administrative judge and shall be reviewable on interlocutory appeal to the commissioner.
- (b) Interlocutory appeals to the commissioner shall be governed by the standards of Rules 9 and 10, the Tennessee Rules of Appellate Procedure, which require first resort to the administrative judge for approval of the appeal. Application to the Commissioner is allowed if approved by the administrative judge under Rule 9 standards or, if appropriate, under the standards of Rule 10. An application to the commissioner shall state why the party is appealing, how the administrative judge erred, and what law and facts are relevant. shall be accompanied by a A memorandum of facts and law. shall accompany each interlocutory appeal to the commissioner.
- (c) This Rule does not preclude the administrative judge from convening a hearing on motions or converting a prehearing conference to a hearing at any time pursuant to T.C.A. §4-5-306(b) to consider any question of law. Per T.C.A. § 40-33-209(c), all hearings shall be recorded.

(3) Time Limits.

- (a) Each A party may file a written response to any motion within seven (7) days of the date the motion was filed. Motions shall be submitted for disposition after responses are filed or after the expiration of time for filing such response, unless oral argument is granted.
- (b) Certain motions shall be made in writing at least ten (10) days prior to a hearing on the merits. These motions are:
 - 1. motions to suppress evidence for any reason,
 - 2. all discovery motions,
 - 3. motions asserting an affirmative defense,
 - 4. motions for the testimony of a departmental keeper of the record, and
 - 5. motions for the testimony of a toxicologist.

Failure to file a motion timely will result in the striking of the motion.

(4) Oral Argument.

- (a) A party may request oral argument on a motion by stating in the caption of a motion underneath the docket number: "Oral Argument Requested." Oral argument may be unnecessary and will be granted within at the discretion of the administrative judge. If oral argument is requested, the motion may be argued electronically per T.C.A. § 4-5-312.

(5) Affidavits; Briefs and Supporting Statements.

- (a) Motions and responses thereto shall be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of to official notice. Affidavits shall set forth only facts which are admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify.
- (b) In the discretion of the administrative judge, a party may be required to submit additional briefs or supporting statements pursuant to a schedule established by the administrative judge.
- (c) Affidavits shall be admitted into evidence pursuant to T.C.A. § 4-5-313 (2).

(6) Disposition of Motions; Drafting the Order.

- (a) The administrative judge shall render a decision on the motion by issuing either a written order or a verbal ruling on the record. The administrative judge may instruct the prevailing party to prepare and submit an order. If the ALJ does not intend to issue a written order, the ALJ shall state such intention on the record and the date of the record shall be the effective date of such order.
- (b) The administrative judge shall file the order in the Administrative Procedures Division and serve the order upon the parties and file it with the Legal Division.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-308, 4-5-312, 4-5-313, 40-33-201, et seq., as amended, and 3-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.11 Service of Notice of Hearing.

- (1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).
- (2) In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-2-2-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant's counsel received notice of the hearing date.
- (3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. ~~The return receipt card may be filed with the Legal Division and serve as a record of notification.~~ Such notice may be proven as set forth in Rule 1340-02-02-.06 (d). Claimants and their attorneys shall have an affirmative duty to notify the Legal Division in writing of any change in address.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-307, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.12 Continuances.

- (1) Because of the volume of cases, continuances are discouraged. However, a continuance may be granted upon good cause shown at any stage of the contested case. ~~The need for a continuance shall be brought to the attention of all parties and the administrative judge as soon as practicable.~~
- (2) If rulings on preliminary motions at a hearing on the merits cause prejudice to a party who received inadequate notice of the motion prior to the date of the hearing, then a continuance shall be granted.
- (3) Any case may be continued by mutual consent of the parties.
- (4) A continuance shall be granted rather than a default or dismissal for failure to appear at the first setting of a case.

Authority: T.C.A. §§4-3-2009, 4-5-219, 4-5-301(b), 4-5-308, 4-5-312, 40-33-201, et seq., as amended, and §53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.13 Discovery.

- (1) Parties are encouraged to conduct discovery informally, in order to avoid undue expense and delay in the resolution of the contested case proceeding. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery may be guided by reference ~~as set out at Rule 1340-2-2-.01(3).~~ to Rule 26.01 of the Tennessee Rules of Civil Procedure.

- (2) Discovery shall be completed at least ten (10) days prior to a hearing on the merits. Upon motion of a party or the administrative judge, the administrative judge may order that the discovery be completed by a date certain.
- (3) Any motion to compel discovery, motion to quash, motion for protective order, motion to enlarge the permitted number of interrogatories, or other discovery-related motion, shall:
 - (a) quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response, if applicable;
 - (b) state the reason or reasons supporting the motion, including a memorandum applying law to facts; and
 - (c) be accompanied by a statement certifying that the movant has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (4) Other than as provided in subsection (3) above, discovery materials need not be filed with the Legal Division, but must be served on opposing counsel.
- (5) Depositions. There shall be at least ten (10) working days notice given before the taking of a deposition, unless otherwise agreed by the parties. If a motion for a protective order is filed with the Legal Division before the deposition takes place, then the deposition is stayed automatically until the motion is stricken or an order on the motion becomes final. An order by an administrative judge allowing a deposition to go forward may be appealed interlocutory in the manner prescribed by Rule 1340-2-2-.10(2) within ten (10) days of the entry of the order.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-311, 40-33-201, et seq., as amended, and 53-11-201, et seq.
 Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.14 Subpoenas.

- (1) The administrative judge, at the request of any party, shall issue signed subpoenas in blank. ~~in accordance with the Tennessee Rules of Civil Procedure, except that Service in contested cases may be proven as set forth in Rule 1340-02-02-.06 (e). in addition to the means of service provided by the Tennessee Rules of Civil Procedure.~~ Parties shall complete and serve their own subpoenas.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-311, 40-33-201, et seq., as amended, and 53-11-201, et seq.
 Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.15 Burden of Proof.

- (1) The "burden of proof" refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation of fact is true or that an issue should be resolved in favor of that party.
- (2) A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.
- (3) The claimant has the burden of proof as to standing, as to any motions or other pleadings advanced by the claimant, and as to any matter set forth in the Act whereby the burden of proof is placed on the claimant. Claimant's burden of proof at a contested case hearing includes proving the requisites of T.C.A. §53-11-201(f)(1) ~~(excluding T.C.A. § 53-11-201(f)(1)(B))~~ and any alleged exception from forfeiture.

- (4) The department has the burden of proof as to the illegal use of the seized property pursuant to the Act and as to any motions or other pleadings advanced by the department.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.16 Order of Proceedings.

- (1) The order of proceedings for the hearing of contested cases is as follows:
- (a) Prior to a hearing, the administrative judge may confer with the parties to discuss the order of proceedings, admissibility of evidence, number of witnesses and other matters, provided, however, that the administrative judge shall not act as an advocate in any contested case.
 - (b) Hearing is called to order by the administrative judge.
 - (c) The parties, their counsel and the administrative judge introduce themselves for the record. If necessary, the administrative judge gives a brief statement about the nature of the proceedings and the making of legal rulings.
 - (d) The administrative judge states what documents the record contains.
 - (e) The witnesses are sworn.
 - (f) The administrative judge asks the parties if they call for the exclusion of witnesses from the hearing under "the Rule." If so, the excluded witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of witnesses, individual parties will be permitted to stay in the hearing room. The seizing agency or any party that is a corporation or other artificial person may have one appropriate individual, other than counsel, who may also be a witness, remain in the hearing room as its representative.
 - (g) Any preliminary motions, stipulations, or agreed orders are entertained.
 - 1. Motions that may be heard at this time include, but are not limited to, a motion to suppress filed at least ten (10) days prior to the date of the hearing, a motion to depauperize a claimant, a motion asserting an affirmative defense, and a motion to strike a claim upon the claimant's lack of standing, and a motion to strike a claim pursuant to T.C.A. §53-11-201(f)(1)(A).
 - 2. The administrative judge shall rule on a motion to suppress before the contested case proceeds further. If any part of a motion to suppress is granted, the department shall have a short recess to reevaluate its case and to decide whether to proceed.
 - 3. The administrative judge shall rule on a motion to strike a claim for lack of standing and a motion to de-pauperize a claimant before the contested case proceeds further. If the motion to strike is granted, then claimant's claim shall be dismissed and the property forfeited to the state. If a motion to depauperize is granted, and if the administrative judge finds that the claimant has committed perjury, then the claim may be dismissed; otherwise, the claimant shall be given ten (10) days within which to provide the cost bond. The hearing will then be reset contingent upon a timely cost bond being filed.
 - (h) The parties make opening statements.
 - (i) The Legal Division calls its witnesses and questioning proceeds as follows:
 - 1. Legal Division questions.

2. Claimant cross-examines.
 3. Legal Division redirects.
 4. Claimant re-cross-examines.
 5. Legal Division continues with its witnesses until it concludes its case.
- (j) Claimant may move to dismiss the department's case for failure to carry its burden of proof. If Claimant's motion is granted, the case is concluded. If the Claimant's motion is not granted then the case proceeds as set out herein.
 - (k) Claimant proceeds with the case, following the above pattern with the parties switched, until claimant's case is concluded.
 - (l) Questioning proceeds as long as is necessary to provide all pertinent testimony by all parties.
 - (m) Claimant and the Legal Division shall be allowed to call appropriate rebuttal and rejoinder witnesses with the examination proceeding as set forth in subparagraph (i). Rebuttal and rejoinder witness may have heard the testimony of the witness to be rebutted or rejoined, in accordance with ~~Tennessee Rule of Evidence 615~~ Rule 615 of the Tennessee Rules of Evidence.
 - (n) Closing arguments are allowed by all parties.
 - (o) If the commissioner is hearing the case, then the parties are informed that a Final Order will be ~~written~~ entered and sent to the parties, with appeal rights explained. If an administrative judge hears the case, the parties are informed that an Initial Order will be ~~written~~ entered and sent to the parties, with appeal rights explained. Either the commissioner or the administrative judge may make an oral ruling at the conclusion of the contested case proceeding; however, an oral ruling shall be placed into appropriate written form as an order and sent to the parties, with appeal rights explained. If the ALJ does not intend to issue a written order, the ALJ shall state such intention on the record and the date of the record shall be the effective date of such order
- (2) Paragraph (1) of this ~~rule~~ Rule is intended to be a general outline as to the conduct of a contested case proceeding and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure fairness of proceedings, would be in violation of this ~~rule~~ Rule. In all cases, preliminary motions on suppression, affirmative defenses, standing and ~~motion~~ motions to strike pursuant to T.C.A. § 53-11-201(f)(1)(A) shall be decided before a hearing proceeds.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.17 Default and Uncontested Proceedings.

- (1) Default. A motion for default may be in writing or oral.
 - (a) The failure of a party to attend or to participate in a prehearing conference, a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. § 4-5-309.
 - (b) The failure of a party to comply with any lawful order of the administrative judge that is necessary to maintain the orderly conduct of a hearing may be deemed a failure to participate in a stage of a contested case and be cause for a holding of default.

- (c) In any situation set out in ~~parts~~ subparagraphs (a) and (b) of this Rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.
- (d) No default shall be entered against a claimant for failure to attend except upon proof, ~~by the filing of the return receipt card,~~ that the Legal Division has given notice of a the hearing per Rule 1340-02-02-.06 (e).
- (e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding. An order under this part must be in writing, with reasons given and appeal rights stated. Uncontested proceedings may go forward at the time of default. These orders must subsequently be filed with the Legal Division.
- (f) The defaulting party, no later than ten (10) days after service of an order may file a motion for reconsideration under T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The administrative judge may ~~make any order in regard to such motion as is appropriate,~~ enter an order pursuant to T.C.A. § 4-5-317. These orders by an administrative judge are reviewable by the commissioner.
- (g) No party shall be required by the administrative judge to call or inquire as to the whereabouts of a missing party.
- (h) A default shall be deemed effective as of the date and time that the party failed to appear after having been properly noticed to the hearing.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-309, 40-33-201, et seq., as amended, and 53-11-201, et seq.
 Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.18 Common Evidentiary Problems and Precedent.

- (1) Privileges. All privileges recognized by constitution, statute, common law, or by these or other applicable rules, apply to contested case proceedings under the Act.
 - (a) Fifth Amendment. In ~~accord~~ accordance with state and Federal law:
 - i. A person who asserts the Fifth Amendment right against ~~self-incrimination~~ self-incrimination in response to any discovery or at a hearing shall personally assert that right.
 - ii. If a claimant invokes the Fifth Amendment, then the inference is that the response called for is adverse to the claimant's case. This inference ~~may~~ shall be taken by an administrative judge and ~~may~~ shall be used to support the ~~agency's~~ department's burden of proof in accordance with applicable law.
 - (b) Informant's Privilege. The name of a confidential informant shall not be revealed, provided, however, that in the event the name of a confidential informant is ordered revealed, the ~~Department~~ department may, in its discretion, either dismiss its case or appeal such order. If an appeal is taken, the case shall be stayed until such appeal is concluded.
- (2) The Rule. In all contested cases, the testimony of witnesses shall be taken in open hearings. Under the rule, witnesses may be excluded prior to their testimony, except that a representative of the seizing agency or business entity may sit with counsel as provided in Rule 1340-02-02-.16(1)(f).
- (3) Admissibility. The standard for admissibility of evidence is set forth at T.C.A. § 4-5-313. These proceedings are not governed exclusively by the Tennessee Rules of Evidence.

- (4) Toxicology. Any controlled substance, controlled substance analogue, counterfeit, intoxicant, marijuana, narcotic drug producing stimulating effects on the central nervous system, legend drug, any scheduled drug, prescription drug or any other substance set forth in T.C.A. § 39-17-401, *et seq.* may be identified for the purpose of the contested case by the testimony of a qualified representative of a seizing agency, statements of the claimant or claimant's co-conspirator(s), field test, breath alcohol content (BAC) test, toxicology report or testimony of a toxicologist.
 - (a) If the claimant objects to the introduction of a toxicologist report without the testimony of the toxicologist, the claimant may request that a toxicologist testify at the hearing.
 - (b) The department shall be granted a continuance, in the event of such request, to subpoena the toxicologist, and the hearing shall be reset to allow introduction of the toxicologist's testimony and report.
 - (c) Failure to request a toxicologist or keeper of the records within ten (10) days of the date of the hearing constitutes a waiver.
- (5) Statements against interest of the claimant by persons in possession of seized property are relevant and may be admitted into evidence pursuant to T.C.A. § 4-5-313.
- (6) Affidavits shall be filed pursuant to T.C.A. § 4-5-313.
- (7) A final order by the Commissioner on an issue that has not been reversed, remanded, or significantly modified by a court, or that has been affirmed by a court, establishes legal precedent that administrative judges shall follow in cases under the Act.
- (8) A Certified Driving Record shall be admissible in these hearings without requiring the Legal Division State to produce the keeper of the records.
 - (a) If the claimant objects to the introduction of a Certified Driving Record without the testimony of the keeper of the records, the claimant may request that the keeper of the records testify at the hearing.
 - (b) The ~~Department~~ department shall be granted a continuance, in the event of such request, to subpoena the ~~records~~ keeper of the records and the hearing shall be reset to allow introduction of the testimony of the keeper of the records and ~~the reports~~.
 - (c) Failure to request ~~a toxicologist~~ the appearance of the keeper of the records within ten (10) days of the hearing constitutes a waiver.
- (9) Any Field Test for alcohol and controlled substances and breath alcohol tests shall be admissible in these hearings to meet the preponderance of the evidence without requiring the State to produce the person who administered the Field Test.
 - (a) If the claimant objects to the introduction of a Field Test without the testimony of those who administered the tests, the claimant may request that those who administered the tests testify at the hearing.
 - (b) The ~~Department~~ department shall be granted a continuance, in the event of such request, to subpoena those who administered the tests, and the hearing shall be reset to allow introduction of the testimony of those who administered the tests.
 - (c) Failure to request the appearance of those who administered the tests within ten (10) days of the date of the hearing constitutes a waiver.
- (10) Arrest records shall be admissible in these hearings.

Authority: T.C.A. §§4-3-2009, 4-5-219, §4-5-312, 4-5-313, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995. Amendment filed October 31, 1996; effective February 28, 1997.

1340-02-02-.19 Clerical Mistakes.

- (1) Clerical mistakes in orders or other parts of the record, and errors arising from oversight or omissions, may be corrected by the respective administrative judge or the ~~Commissioner~~ commissioner on motion of any party or on their own motion, as the interest of justice requires, provided, however, that the administrative judges shall correct clerical errors on their own motion when so notified by the Legal Division of errors in the initial orders. The entering of a corrected order will not affect the dates of the original appeal time period.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq. as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.20 Intervention.

- (1) All petitions for leave to intervene in a pending contested case shall be filed in accordance with T.C.A. §4-5-310, with a legal memorandum attached that states any and all facts and legal theories under which the petitioner asserts to be qualified as an intervenor.
- (2) In deciding whether to grant a petition to intervene, the following factors shall be considered:
 - (a) Whether the petitioner asserts an interest relating to the case, and whether the petitioner is so situated that the disposition of the case may as a practical matter impair or impede petitioner's ability to protect that interest;
 - (b) Whether the petitioner's assertion of interest and the main case have a question of law or fact in common;
 - (c) Whether petitioner's interests are adequately represented;
 - (d) Whether admittance of a new party will render the hearing unmanageable or interfere with the interests of justice and the orderly and prompt conduct of the proceedings.
- (3) In deciding a petition to intervene, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as set forth at T.C.A. §4-5-310(c).
- (4) As prohibited by Rule 1340-02-02-.07(4), the provisions of this rule do not permit the inclusion of an additional claimant or additional seized property to pending contested cases.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-301(b), 4-5-310, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.21 The Appeals Division.

- (1) The Appeals Division is designated by the Commissioner to administer contested case appellate matters that involve the Commissioner, including but not limited to, final orders, Interlocutory Appeals, Petitions for Reconsideration of a Commissioner's Order, Petitions for a Stay, Appeals of an Initial Order, and Notices of Review of an Initial Order. The original of all appellate matters must be filed with the Appellate Division, with a ~~copy-certified~~ service to the Legal Division and to the appropriate party.

- (2) However, any appeals or reconsiderations of an initial order rendered by an administrative judge must be filed within the specified time period with the APD, with a copy certified to the other party. All other appeals must be filed with the Appellate Appeals Division with a copy certified to the other party.
- (3) If transfer of the record from the Legal Division is necessary for the administration of an appellate matter, the Legal Division shall transfer the record upon request by the Appeals Division. The record must be logged in and out of the Legal Division by a member of to the Appeals Division. Upon completion of the appeal, such file shall be returned to the appropriate Legal Division.
- (4) The Appeals Division may advise the commissioner on appellate matters in accordance with T.C.A. § 4-5-304. By filing a delegation order in a specific case, the commissioner may delegate to the Appeals Division the authority to enter a final administrative order. Any delegation order must be served upon all parties. The commissioner may file a blanket order delegating to the Appeals Division the authority to enter a final administrative order on all settlements per Rule 1340-02-02-.09(1)(b) and administrative forfeitures. Every administrative order entered by the Appeals Division shall recite the authority under which it is entered.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-315, 40-33-201, et seq., as amended, and 53-11-201, et seq.
Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.22 Petition for Reconsideration or Stay.

- (1) Petitions for Reconsideration.
 - (a) Any party may file a petition for reconsideration within ~~ten (10)~~ fifteen (15) days after entry of an initial or final order. The filing of a petition is not a prerequisite for seeking administrative or judicial review.
 - (b) A petition for reconsideration shall be disposed of by the same person who rendered the initial or final order, if available.
 - (c) Any petition for reconsideration shall include the specific grounds upon which relief is requested. It shall be accompanied by a memorandum applying law to facts and stating why the petition should be granted. Failure to submit such a memorandum will result in the striking of a petition.
 - (d) If a party seeks to present new evidence, the petition shall include a statement showing good cause for the failure to introduce the proposed new evidence in the original proceeding and a detailed description of any such proposed new evidence, including copies of documents, identities and addresses of witnesses, and summaries of testimony. Documents that are unavailable at the time the petition is filed shall be described in as much detail as is possible and shall be provided at a later time, should a hearing be granted, but not later than three (3) working days prior to any hearing on the petition.
 - (e) A petition for reconsideration may be granted or denied pursuant to T.C.A. § 4-5-317, to the following extent:
 1. Any such petition not granted within the 20-day time period set at T.C.A. § 4-5-317(c) shall be deemed denied.
 2. If a petition is granted, then a new order may issue or the matter may be set for further hearing by written order served upon all parties. Such hearing may be conducted electronically per T.C.A. § 4-5-312.
 3. If a hearing is ordered, the order shall state that: the parties may make oral argument on the merits of the petition, the party seeking reconsideration may present new evidence only if good cause is shown for the failure to introduce the new evidence in the original

hearing, and the opposing party may present rebuttal proof if the party seeking reconsideration is allowed to present new evidence.

4. Any new evidence introduced by the party seeking reconsideration shall be limited to that described in the petition for reconsideration as required in subparagraph (1)(d) of this rule.

(2) Petitions for Stays.

- (a) A party may submit to the administrative procedures division or the Appeals Division a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. The Appeals Division may take action on the petition for stay, either before or after the effective date of the initial or final order.
- (b) A hearing may be scheduled on a petition for a stay. Such hearing may be conducted electronically per T.C.A. §4-5-312.
- (a) (c) Automatic Stay. By operation of this rule, an automatic stay shall be in effect for every initial or final order under the Act to prohibit the disposition of the property seized and forfeited, pending the expiration of time for administrative and judicial appeals, unless otherwise provided by a settlement order. The automatic stay does not toll the running of any time limits.
- (b) (d) If time for a judicial appeal expires, then so does the automatic stay.
- (c) (e) If a judicial appeal is timely filed by a claimant, then the automatic stay continues until modified by the court.
- (d) (f) Either the ~~agency-~~ department or the claimant may move either the administrative judge, the commissioner, or the Chancery Court of Davidson County for relief from the automatic stay. Moreover, the ~~agency~~ department and the claimant may agree to dissolve the automatic stay.
- (e) ~~Other Stays. If a petition for a stay is filed on any other issue, it shall be filed within seven (7) days after entry of an initial or final order, unless otherwise provided by statute or stated in the initial or final order.~~
- (f) (g) Any petition for a stay shall include the specific grounds upon which relief is requested. It shall be accompanied by a memorandum applying law to facts and stating why the petition should be granted. Failure to submit such a memorandum will result in the striking of a the petition.
- (g) ~~A hearing may be scheduled on a petition for a stay. Such hearing may be conducted electronically per T.C.A. §4-5-312.~~

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-316, 4-5-317, 40-33-201, et seq., as amended, and 53-11-201, et seq.
Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-23 Filing of Orders.

- ~~(1) Administrative costs of \$350.00 shall accompany a petition for hearing and shall attach when a hearing date is set by the Legal Division.~~
 - ~~(a) In certain circumstances, in the discretion of the department, the administrative costs may be reduced as part of settlement negotiations.~~
 - ~~(b) If the final order determines that all the seized property from the claimant shall be returned to the claimant, then no administrative costs shall attach and any such costs received by the commissioner will be refunded.~~

~~(c) No final order shall be issued to a claimant until all administrative costs of that claimant have been satisfied.~~

- (1) After the administrative judge has made a decision in a contested case hearing, the order will be filed with the Administrative Procedures Division and the administrative judge shall serve copies on all parties and the regional Legal Division in which the contested case was heard. The order shall state that it is entered upon the date that it is filed with the Administrative Procedure Division. The administrative judge shall insure that a copy of the order with its entry date filled in is mailed to all opposing parties on the date of entry. All orders shall contain a clear and concise statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. All orders of the commissioner shall state thereon the date of entry and shall be filed with the Legal Division, with copies served on the opposing parties. All such orders shall be accompanied by a clear and concise statement of the available procedures and time limits for seeking reconsideration and the time limits for seeking judicial review.
- (2) Any order rendered by an administrative judge shall be an Initial Order with findings of fact and conclusions of law, provided, however, that orders or rulings rendered verbally on the record shall contain a short, concise statement of the law and facts, if applicable, supporting the administrative judge's decision.
- (3) The department may assess wrecker fees and other reasonable costs that arise from the transportation and storage of the seized property, except against a prevailing claimant.
- (4) No seizing agency shall release seized property to a claimant unless in possession of a Final Order.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.

Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.24 Costs of Administration and Proceedings.

- (1) Administrative costs of \$350.00 shall accompany a petition for hearing and shall attach when a hearing date is set by the Legal Division.
 - (a) In certain circumstances, in the discretion of the department, the administrative costs may be reduced as part of settlement negotiations.
 - (b) If the final order determines that all the seized property from the claimant shall be returned to the claimant, then no administrative costs shall attach and any such costs received by the commissioner will be refunded.
 - (c) No final order shall be issued to a claimant until all administrative costs of that claimant have been satisfied.
- (2) Storage Costs.
- (3) The department may assess wrecker fees and other reasonable costs that arise from the transportation and storage of the seized property, except against a prevailing claimant.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-312, 40-33-201, et seq., as amended, and 53-11-201, et seq.

Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.25 Code of Conduct.

(1) Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendment thereto, shall apply to all administrative judges and to personnel in the Appeals Division. However, any complaints regarding the conduct under the code of any individual administrative judge shall be made to the chief administrative judge or other comparable entity with supervisory authority over the administrative judge, and any complaints about the chief administrative judge shall be made to the appointing authority. Complaints about the Appeals Division shall be made to the commissioner.

(2) The Appeals Division shall be entirely separate in personnel and functions from the other divisions of the department. Personnel in the Appeals Division shall work only for the Appeals Division.

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

1340-02-02-.26 Declaratory Orders.

(1) Any affected person may petition the commissioner for a declaratory order as to the validity or the applicability of a statute, rule or order within the primary jurisdiction of the commissioner under the Act.

The language of Paragraphs (2), (3) and (5) of Rule 1340-02-02-.26 is deleted in its entirety and new language substituted, so that, as amended, the Paragraphs shall read:

(2) The petition seeking a declaratory order shall be filed in writing with the ~~agency~~ department.

~~(3) The form of such petitions shall be substantially as follows:~~

~~Petition for Declaratory Order Before the Commissioner.~~

~~1. Name of Petitioner _____~~

~~2. Address of Petitioner _____~~

~~3. Department rule, order, or statutory provision on which declaratory order is sought~~

~~4. Statement of the facts of the controversy and description of how this rule, order or statute affects or could affect the Petitioner.~~

~~5. Description of requested ruling _____~~

~~_____~~

~~_____~~

~~Signature of Petitioner~~

~~_____~~

~~Address~~

~~_____~~

Date

(3) The form of such petitions shall be substantially as follows:

a. Caption—Petition for Declaratory Order Before the Commissioner of the Tennessee Department of Safety

- b. Name of Petitioner
 - c. Address of Petitioner
 - d. Department rule, order, or statutory provision on which declaratory order is sought
 - e. Statement of the facts of the controversy and description of how this rule, order or statute affects or could affect the Petitioner.
 - f. Description of requested ruling
 - g. Signature of Petitioner
 - h. Date of Petition
- (4) A memorandum of law shall accompany the petition setting forth the legal basis why the declaratory order should be granted. Failure to submit a memorandum in support of a petition will result in the denial of the petition. The commissioner may ask for additional facts or law before deciding whether to convene a contested case proceeding or to grant or deny the petition.
- (5) In the event the commissioner convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, the ~~Commissioner~~ commissioner shall determine whether a departmental hearing officer ~~then~~ or an administrative judge, either departmental or from APD, shall hear the case. ~~the Administrative Procedures Division may be notified by the commissioner and~~ If an administrative judge from APD is to hear the case, then the Administrative Procedures Division shall be notified and shall be provided originals or legible copies of all pleadings, motions, objections, etc., ~~if so notified.~~

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 4-5-223, 40-33-201, et seq., as amended, and 53-11-201, et seq.
 Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

~~1340-2-2-.27 BONDING PROCEDURE.~~

- (1) ~~In the event any owner, co-owner or secured party requests immediate possession of seized property prior to the Forfeiture Warrant being received by the department, the following procedure shall apply:~~
- (a) ~~The owner, co-owner or secured party must contact the seizing agency to request immediate possession of the seized property.~~
 - (b) ~~Upon receipt of such request, the seizing agency may withhold possession of the seized property for not more than five (5) days after the date of the seizure, but thereafter may, issue a bond out release, pursuant to Rule 1340-2-2-.07(7)(a) and must issue the release pursuant to Rule 1340-2-2-.07(7)(b) upon receipt of a bond which complies with Rule 1340-2-2-.07(7).~~
 - (c) ~~The seizing agency shall deliver the original bond and a copy of the Bond Out Release to the department along with the Forfeiture Warrant and Affidavit.~~
 - (d) ~~All bond outs of seized property after the department receives the Forfeiture Warrant and Affidavit will be handled by the department in accordance with Rule 1340-2-2-.07(7).~~

Authority: T.C.A. §§ 4-3-2009, 4-5-219, 40-33-201, et seq., as amended, and 53-11-201, et seq. Administrative History: Original rule filed December 5, 1994; effective February 18, 1995.

* 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 Commissioner of Safety on 10/23/2014, 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10/23/2014

Signature: Deborah M. Martin

Name of Officer: Deborah M. Martin

Title of Officer: Staff Attorney/Commissioner's Designee



Subscribed and sworn to before me on: 10-23-2014

Notary Public Signature: Donna L. Elmore

My commission expires on: 1-3-2018

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
November 24, 2014
 Date

Department of State Use Only

Filed with the Department of State on: 12/10/14

Effective on: 3/10/15

Tre Hargett
 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Tennessee Student Assistance Corporation (TSAC)
<u>SUBJECT:</u>	Tennessee Education Lottery Scholarship (TELS)
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, §§ 49-4-903, 49-4-204, and 49-4-924
<u>EFFECTIVE DATES:</u>	March 19, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	Changes to the rule for the TELS program include revising the Dual Enrollment award amounts and adding application deadlines; clarifying the impact on a student's HOPE award if the student takes more than four Dual Enrollment classes; establishing processes and guidelines for payment certification for transient students; adding the Wider-Naifeh Reconnect grant; adding the extension of the five-year terminating event due to medical disability; and addressing numerous housekeeping revisions.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

Pursuant to T.C.A. § 4-5-202, the Tennessee Student Assistance Corporation (TSAC) intends to file proposed rules to amend the current rules of Chapter 1640-01-19 Tennessee Education Lottery Scholarship (TELS) Program, in lieu of a rulemaking hearing. It is the intent of TSAC to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of issue of the Tennessee Administrative Register in which the proposed rules are published.

The proposed rules act to adopt changes to the Tennessee Education Lottery Scholarship (TELS) Program Chapter 1640-01-19 as proposed rules, revising the Dual Enrollment award amounts and adding application deadlines; clarifying the impact on a student's HOPE award if the student takes more than four Dual Enrollment classes; establishing processes and guidelines for payment certification for transient students; adding the Wider-Naifeh Reconnect grant; adding the extension of the five-year terminating event due to medical disability; and addressing numerous housekeeping revisions. These rules regulate a state funded lottery scholarship program designed for qualified Tennessee students attending postsecondary institutions in Tennessee.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

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

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

TSAC expects all education institutions engaged in the administration of the Tennessee Education Lottery Scholarship Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact postsecondary institutions employing fifty (50) or fewer full-time employees.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions,

there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

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

The rules for the Tennessee Education Lottery Scholarship Program Chapter 1640-01-19, as proposed, have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 12-19-14
Rule ID(s): 5850
File Date: 12/19/14
Effective Date: 3/19/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1640-01-19	Tennessee Education Lottery Scholarship Program
Rule Number	Rule Title
1640-01-19-.01	Definitions
1640-01-19-.02	Scholarship Award Amounts and Classifications
1640-01-19-.03	Application Process
1640-01-19-.05	Eligibility – Tennessee Hope Scholarship
1640-01-19-.07	Eligibility – General Assembly Merit Scholarship
1640-01-19-.11	Eligibility – Dual Enrollment Grant
1640-01-19-.12	Retention of Awards – General Requirements
1640-01-19-.14	Retention o Awards – Dual Enrollment Grant
1640-01-19-.16	Continuation of Tennessee Education Lottery Scholarship Award
1640-01-19-.19	Converting from Full-time to Part-time Enrollment
1640-01-19-.20	Personal or Medical Leave of Absence
1640-01-19-.21	Military Mobilization of Eligible Students
1640-01-19-.22	Calculation of Postsecondary Cumulative Grade Point Average

1640-01-19-24	Transient Students
1640-01-19-25	Denial of Initial Eligibility – Failure to Timely Enroll
1640-01-19-26	Extension Of Five-Year Terminating Event Due To Medical Disability
1640-01-19-27	Wilder-Naifeh Reconnect
1640-01-19-28	Appeal and Exception Process

**RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION**

**CHAPTER 1640-01-19
TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM**

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1640-01-19-.04	General Eligibility	1640-01-19-.19	Converting from Full-time to Part-time Enrollment
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1640-01-19-.06	Eligibility – Tennessee ASPIRE Award	1640-01-19-.21	Military Mobilization of Eligible Students
1640-01-19-.07	Eligibility – General Assembly Merit Scholarship	1640-01-19-.22	Calculation of Postsecondary Cumulative Grade Point Average
1640-01-19-.08	Eligibility – Tennessee HOPE Access Grant	1640-01-19-.23	Transfer Students
1640-01-19-.09	Eligibility – Tennessee HOPE Foster Child Grant	1640-01-19-.24	Transient Students
1640-01-19-.10	Eligibility – Wilder-Naifeh Technical Skills Grant	1640-01-19-.25	Denial of Initial Eligibility – Failure to Timely Enroll
1640-01-19-.11	Eligibility – Dual Enrollment Grant	1640-01-19-.26	Appeal and Exception Process Extension of Five-Year Terminating Event Due to Medical Disability
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1640-01-19-.14	Retention of Awards – Dual Enrollment Grant		
1640-01-19-.15	Tennessee Education Lottery Scholarship Award Process		

1640-01-19-.01 DEFINITIONS.

- (1) Academic requirement: The term is defined in T.C.A. § 49-4-902.
- (2) Academic Year: -The term is defined in T.C.A. § 49-4-902.
- (3) ACT: The ACT Assessment administered by ACT, Inc., exclusive of the essay and optional subject area battery tests.
- (4) Adjusted gross income attributable to the student: The term is defined in T.C.A. § 49-4-902.
- (5) Alternative Study program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) an eligible postsecondary institution; or
 - (b) an eligible postsecondary institution in conjunction with either another eligible postsecondary or a postsecondary institution that is accredited by a regional accrediting association.
- (6) ASPIRE Award: -An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE Scholarship and whose adjusted gross income attributable to the student does not exceed the amount as described in T.C.A. § 49-4-915(a)(2).
- (7) Award Year: A period of time, typically nine (9) months, in which a full-time student is expected to complete the equivalent of a minimum of two (2) semesters of academic study.

(Rule 1640-01-19-.01, continued)

- (8) Board of Regents: ~~The board of regents of the state university and community college system of Tennessee.~~
- (9) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.
- (10) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
- (11) Continuous Enrollment: The term is defined in T.C.A. § 49-4-902.
- (12) Cost of Attendance: The term is defined in T.C.A. § 49-4-902.
- (13) Credit Hours Attempted: ~~The number of semester hours for which a degree-seeking or diploma / certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-01-19-.22.~~
- (14) Degree: A two-year associate degree or four-year baccalaureate degree conferred on students by an eligible postsecondary educational institution ~~upon completion of a unified program of study at the undergraduate level.~~
- (15) Dependent Child of a Military Parent: A natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.
- (16) Dependent Child of a Full-time Religious Worker: ~~A natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work.~~
- (17) Distance Education: ~~An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.~~
- (18) Dual Enrollment Grant: ~~The term is defined in T.C.A. § 49-4-902.~~
- (19) Eligible High School: ~~The term is defined in T.C.A. § 49-4-902.~~
- (20) Eligible Independent Postsecondary Institution: ~~The term is defined in T.C.A. § 49-4-902.~~
- (21) Eligible Postsecondary Institution: ~~The term is defined in T.C.A. § 49-4-902.~~
- (22) Eligible Public Postsecondary Institution: ~~The term is defined in T.C.A. § 49-4-902.~~
- (23) Entering Freshman: ~~The term is defined in T.C.A. § 49-4-902.~~
- (24) FAFSA: ~~Free Application for Federal Student Aid or the Renewal FAFSA as authorized by the U. S. Department of Education to indicate eligibility for federal and state financial aid programs~~The term is defined in T.C.A. § 49-4-902.

(Rule 1640-01-19-.01, continued)

- (25) Foster Child: -A child who was in the custody of the Tennessee Department of Children's Services as described in T.C.A. § 49-4-933(b).
- (26) Full-Time Student: -The term is defined in T.C.A. § 49-4-902.
- (27) GED: The term is defined in T.C.A. § 49-4-902.
- (28) General Assembly Merit Scholarship: The term is defined in T.C.A. § 49-4-902.
- (29) Gift Aid: The term is defined in T.C.A. § 49-4-902.
- (30) Grade Point Average (GPA): The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- (31) Home School Student: The term is defined in T.C.A. § 49-4-902.
- (32) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- (33) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.
- (34) Immediate Family Member: Spouse, parents, children or siblings.
- (35) Incarcerated: -Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- (36) Joint Enrollment: -An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- ~~(37) Junior: The term is defined in T.C.A. § 49-4-902.~~
- (3837) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- ~~(38) Medical Disability: A documented condition, as certified by a licensed physician, which requires a HOPE Scholarship recipient to attend part time at an eligibility postsecondary institution.~~
- (39) Military Parent: The term is defined in T.C.A. § 49-4-926(b)(2).
- (40) Nonacademic requirement: -The term is defined in T.C.A. § 49-4-902.
- (41) Non-Traditional student: -The term is defined in T.C.A. § 49-4-902.
- (42) Parent: The term is defined in T.C.A. § 49-4-902.
- (43) Part-time Student: The term is defined in T.C.A. § 49-4-902.
- (44) Regional Accrediting Association: The term is defined in T.C.A. § 49-4-902.
- (45) Religious Worker: -The term is defined in T.C.A. § 49-4-934(b)(2).

(Rule 1640-01-19-.01, continued)

- (46) **Resident:** A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03.
- (4647) **SAT:** -The SAT administered by the College Board, exclusive of the essay and optional subject area battery tests.
- (4748) **Satisfactory Academic Progress:** -Progress in a course of study in accordance with the standards and practices used for Title IV programs by the **eligible** postsecondary institution at which the student is currently enrolled.
- (4849) **Semester:** The term is defined in T.C.A. § 49-4-902.
- (4950) **Semester grade point average:** The grade point average for the semester as calculated by the postsecondary institution utilizing its institutional grading policy.
- (5051) **Semester Hour:** The term is defined in T.C.A. § 49-4-902.
- (5152) **Study Abroad Program:** -Programs of study for which college credit is earned that include travel outside the United States.
- (53) **TCAT: Tennessee College of Applied Technology.**
- (5254) **TELS (Tennessee Education Lottery Scholarship) Award:** -Any scholarship and/or grant provided for by these rules that a student is eligible to receive, excluding the Dual Enrollment Grant.
- (5355) **Tennessee HOPE Access Grant:** The term is defined in T.C.A. § 49-4-902.
- (5456) **Tennessee HOPE Foster Child Tuition Grant:** A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.
- (5557) **Tennessee HOPE Scholarship:** The term is defined in T.C.A. § 49-4-902.
- (5658) **Tennessee National Guard:** -The term is defined in T.C.A. § 49-4-926(b)(3).
- (5759) **Test Date:** -The date designated for the ACT test administered by ACT, Inc., or the date designated for the SAT test administered by the College Board at national **and state** test centers. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship, as well as a statewide test date established by the State Department of Education that is sanctioned by the respective test entities.
- (5860) **Title IV:** The term is defined in T.C.A. § 49-4-902.
- (5961) **Transient Student:** A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which **he-or-she**the student was previously enrolled.
- (6062) **TSAC:** Tennessee Student Assistance Corporation.

(Rule 1640-01-19-.01, continued)

- (6463) Undergraduate Student: -A student attending an eligible postsecondary institution and enrolled in a program leading to a diploma/certificate, an associate degree, or a bachelor's degree.
- (6264) Unweighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.
- (6365) Weighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.
- (6466) Wilder-Naifeh Technical Skills Grant: The term is defined in T.C.A. § 49-4-902.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-912, 49-4-913, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-933, 49-4-934, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendment filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) Award amounts for the following programs shall be determined in accordance with T.C.A. § 4-51-111 and shall be set in the General Appropriations Act:
 - (a) Tennessee HOPE Scholarship Award pursuant to T.C.A. § 49-4-914 (a) and (b);
 - (b) Tennessee ASPIRE supplemental award pursuant to T.C.A. § 49-4-915;
 - (c) General Assembly Merit Scholarship supplemental award pursuant to T.C.A. § 49-4-916;
 - (d) Tennessee HOPE Access Grant award pursuant to T.C.A. § 49-4-920; and
 - (e) Wilder-Naifeh Technical Skills Grant pursuant to T.C.A. § 49-4-921.
- (3) The Dual Enrollment Grant award amounts shall be as follows:
 - (a) One hundred dollars (\$100) per semester hour (or equivalent ~~contact-clock~~ hours at technology centers) for a maximum award of ~~three-six~~ hundred dollars (~~\$300600~~) per semester and ~~one thousand twosix~~ hundred dollars (~~\$6001,200~~) per academic year.
- (4) Effective for the 2015-2016 academic year, the Dual Enrollment Grant award amounts shall be as follows:
 - (a) For students attending an eligible two-year or four-year postsecondary institution, the award amount will be up to five hundred dollars (\$500) per course for the first and second courses attempted and two hundred dollars (\$200) for the third course

(Rule 1640-01-19-.02, continued)

- attempted. Students shall receive no funding from the Dual Enrollment Grant program for the fourth course attempted.
- (b) For students attending a TCAT, the award amount will be one hundred dollars (\$100) per clock hour for all courses attempted.
 - (c) The maximum award for the Dual Enrollment Grant shall be one thousand two hundred dollars (\$1,200) per academic year.
 - (d) All students who attempt a fifth, sixth, seventh, or eighth course will receive one hundred dollars (\$100) per semester hour.
- (45) Tennessee HOPE Foster Child Tuition Grant amounts shall be pursuant to T.C.A. § 49-4-933.
- (56) Recipients of any TELS award as provided by these rules, except for the Dual Enrollment Grant and the Wilder-Naifeh Technical Skills Grant may enroll as a full-time or part-time student at any eligible postsecondary institution. –The amount of the award for part-time students shall be based on the hours attempted. –Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.
- (67) Except for approved medical or personal leaves of absence as provided in Rule 1640-01-19-.20 or emergency military duty as provided in Rule 1640-01-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.
- (78) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, TSAC shall determine the appropriate manner in which the various awards shall be reduced.
- (89) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student's total aid package.
- (910) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Dual Enrollment Grant is contingent upon admission and enrollment at an eligible postsecondary institution. Academically qualifying for any of these awards programs does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-930, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed January 30, 2009; effective May 29, 2009.

1640-01-19-.03 APPLICATION PROCESS.

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA, or Renewal FAFSA, shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the adjusted gross income attributable to the student, ~~he or she~~ the student is required to complete the FAFSA for each academic year ~~in order~~ to apply for and receive a TELS award.
- (2) Students must have a FAFSA received by the U.S. Department of Education on or before September 1 for fall enrollment and February 1 for spring and summer enrollment in determining awards for that academic year. Students enrolling in a ~~Tennessee Technology Center~~TCAT shall have a FAFSA received by the U. S. Department of Education on or before July 1 for the summer trimester, November 1 for the fall trimester and March 1 for the spring trimester. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is received by the above deadlines.
- (3) Students shall apply for the Dual Enrollment Grant during their junior and senior ~~high school years prior to high school graduation by submitting~~ completing the Dual Enrollment Grant Application ~~online to the postsecondary institution to which the student is seeking admission.~~ The student must renew the Dual Enrollment Grant application each postsecondary academic term.
 - (a) ~~The application deadline shall be set by the high school and postsecondary institution participating in the Dual Enrollment Grant program, but shall be no later than the eligible postsecondary institution's census date for that semester.~~ The application deadlines for eligible two-year and four-year institutions are September 15 for the fall semester, February 1 for the spring semester, and May 1 for the summer semester. The application deadlines for the TCATs are November 1 for the fall term, March 1 for the spring term, and May 1 for the summer term.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.04 GENERAL ELIGIBILITY.

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of the date of enrollment in an eligible postsecondary institution; students enrolling in a ~~Tennessee Technology Center~~TCAT must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-01-19-.03; and
 - (d) Be admitted to an eligible postsecondary institution; and

(Rule 1640-01-19-.04, continued)

- (e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and
- (f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
- (g) Meet each qualification relating to the relevant TELS award and applicable to the student; and
- (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
- (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
- (j) Not be incarcerated.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-904, 49-4-905, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP.

- (1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall meet the requirements of T.C.A. § 49-4-907.
- (2) To be eligible for a Tennessee HOPE scholarship as an entering freshmen, a student who completes high school in a Tennessee home school program after December 1, 2003, who obtains a GED after December 1, 2003, or who graduates from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall meet the requirements of T.C.A. § 49-4-908.
- ~~(3) To be eligible for a Tennessee HOPE scholarship, a student who graduates from an eligible high school, who graduates from a high school located in Tennessee that is not an eligible high school, who completes high school in a Tennessee home school program, or who obtains a GED after January 1, 2003, but prior to December 1, 2003, shall meet the requirements of T.C.A. § 49-4-909.~~
- (43) To be eligible for a TELS award, students entering active duty in the United States Armed Services within two (2) years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED, shall meet the requirements of T.C.A. § 49-4-918.
- (54) A student who is a Tennessee citizen and a dependent child of a full-time military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.

(Rule 1640-01-19-.05, continued)

- (a) Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:
 - 1. While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED.
- (b) Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:
 - 1. Operated by the United States; or
 - 2. Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 - 3. Accredited by an accrediting association recognized by the foreign nation in which the school is located.
- (c) Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (b) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED.
- (d) Paragraph (54) shall only apply to:
 - 1. Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and
 - 2. Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.
- (65) A student who is a Tennessee citizen and a dependent child of a full-time religious worker may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.
 - (a) Such student must meet all Tennessee HOPE Scholarship eligibility requirements except that:
 - 1. While the student's parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED.
 - (b) To be eligible for the Tennessee HOPE Scholarship under this paragraph (65), the student must:
 - 1. Graduate from a high school in the foreign nation where the student's parent is a religious worker that is accredited by a regional accrediting association as defined in T.C.A. § 49-4-902 and meet the academic eligibility requirements of T.C.A. § 49-4-907(3); or

(Rule 1640-01-19-.05, continued)

2. Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of T.C.A. § 49-4-908(2)(A).
- (c) Paragraph (65) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.
- (76) In addition to the requirements of T.C.A. § 49-4-931, to be eligible for a Tennessee HOPE Scholarship, a non-traditional student shall meet the general eligibility requirements of Rule 1640-01-19-.04 and:
- (a) Is at least twenty-five years (25) of age; and
 - (b) Has an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2); and
 - (c) Has enrolled in an eligible postsecondary institution and, except as provided by T.C.A. § 49-4-919, has maintained continuous enrollment at the eligible postsecondary institution either as a first time freshmen; or at least two (2) calendar years since the end of the semester of previously attending any postsecondary institution; and
 - (d) Since meeting the requirements of subparagraph (76)(c), has attended an eligible postsecondary institution and has maintained satisfactory progress in a course of study, in accordance with the standards and practices used for Federal Title IV programs at the postsecondary institution attended, either in an associate's degree program at a community college; or in an associate's or bachelor's degree program at a four-year institution; and
 - (e) Meets the GPA requirements at the end of the twelve (12) semester hours as described in T.C.A. § 49-4-931(b); and
 - (f) Enrolls in the semester immediately succeeding the semester in which eligibility is established.
 - (g) If the student fails to maintain continuous enrollment as required by subparagraphs (c) and (g) of this paragraph (76), the student must wait two (2) calendar years from the end of the semester of attending any postsecondary institution, before attempting to establish eligibility.
- (87) To be eligible for a Tennessee HOPE Scholarship, students graduating from a high school located in a neighboring state in a county contiguous to Tennessee shall meet the requirements of T.C.A. § 49-4-935.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-905, 49-4-907, 49-4-908, ~~49-4-909~~, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-934, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28,

(Rule 1640-01-19-.05, continued)

2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 1, 2009; effective May 31, 2010.

1640-01-19-.06 ELIGIBILITY – TENNESSEE ASPIRE AWARD.

- (1) Except as provided in T.C.A. § 49-4-931, any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2) will receive the ASPIRE award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE award. Notwithstanding the provisions of Rule 1640-01-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously receive both awards.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-915, 49-4-917, 49-4-924, 49-4-930, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP.

- (1) To be eligible for the General Assembly Merit Scholarship the student shall meet the requirements of T.C.A. § 49-4-916.
- (2) Students eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously be awarded both.
- (3) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-01-19-.05(87) shall not be eligible for a General Assembly Merit Scholarship supplemental award under T.C.A. § 49-4-916.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-916, 49-4-917, 49-4-924, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT.

(Rule 1640-01-19-.08, continued)

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall meet the requirements of T.C.A. § 49-4-920.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.09 ELIGIBILITY – TENNESSEE HOPE FOSTER CHILD GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for the Tennessee HOPE Foster Child Grant a student shall meet the requirements of T.C.A. § 49-4-933.
- (2) The Tennessee HOPE Foster Child Tuition Grant shall be the cost of attendance less any gift aid, with the total HOPE Foster Child Tuition Grant amount not to exceed the cost of tuition and mandatory fees at the eligible postsecondary institution attended. Additionally, at an eligible independent postsecondary institution, the Tennessee HOPE Foster Child Tuition Grant shall not exceed the statewide average public tuition and mandatory fee rate for the type of institution (two-year or four-year) attended.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.10 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Wilder-Naifeh Technical Skills Grant a student shall meet the requirement of T.C.A. § 49-4-921.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-921, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.11 ELIGIBILITY – DUAL ENROLLMENT GRANT.

(Rule 1640-01-19-.11, continued)

- (1) To be eligible for a Dual Enrollment Grant a student shall meet the requirements of T.C.A. § 49-4-930.
- (2) The student must have completed all of the academic requirements of the 10th grade (high school sophomore) and be classified as an 11th grader (high school junior) or 12th grader (high school senior) by the student's high school or home school program.
- (3) The student must not have already received a high school diploma or GED diploma.
- (4) A student's participation in the Dual Enrollment Grant program is limited to the remaining amount of time normally required to complete the high school diploma, from the time of initial participation in the program. The grant is available for the regular fall and spring semester, and for summer semesters prior to graduation from high school for those students who did not exceed the maximum award during the regular school year.
- (5) Any deduction to a student's HOPE Scholarship as a result of taking additional Dual Enrollment Grant courses provided for under T.C.A. § 49-4-930 shall be applied in full against the amount of the student's HOPE Scholarship in the first semester of enrollment at an eligible postsecondary institution.

If the student's HOPE award in the first semester is less than the amount of the total deduction, then the remaining deduction amount will be applied against the second semester, and subsequent semesters if necessary, until the deduction is eliminated.

Authority: T.C.A §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.12 RETENTION OF AWARDS – GENERAL REQUIREMENTS.

- (1) To retain a TELS award authorized by this chapter, a student, including a non-traditional student, at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA pursuant to Rule 1640-01-19-.03 for the applicable award for each academic year.
- (2) Eligibility for the HOPE Scholarship shall be reviewed in accordance with T.C.A. § 49-4-911. ~~These benchmarks for students receiving the TELS as a non-traditional student shall only apply to grades earned and credit hours attempted after enrolling in accordance with rule 1640-01-19-.05(7)(c).~~
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-01-19-.20 and 1640-01-19-.21, a student may receive a Tennessee HOPE Scholarship until a terminating event as described in T.C.A. § 49-4-913 occurs. ~~For students receiving the TELS as a non-traditional student, the five (5) year limitation will be determined when the sum of the number of years the student received the TELS award as a traditional student, and the years during which the student has received the TELS award as non-traditional student equals five (5) years.~~
- (4) The attempted credit hour includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. ~~These benchmarks for~~

(Rule 1640-01-19-.12, continued)

~~students receiving the TELS as a non-traditional student shall only apply to grades earned and credit hours attempted after enrolling in accordance with Rule 1640-01-19-.05(7)(c).~~

- (5) A student who meets all other requirements for fourth or fifth year eligibility except that ~~he or she~~ the student is classified at the professional level rather than as an undergraduate, and has not met a terminating event and has not been awarded a baccalaureate degree, in accordance with T.C.A. § 49-4-913, is eligible if ~~he or she~~ the student was accepted into the professional level program of study that is an extension of the student's bachelor's degree program.
- (6) If a student ceases to be eligible for any TELS award, except the General Assembly Merit Scholarship, due to failure to achieve the required cumulative grade point average ~~required at the end of the semester in which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or any subsequent multiple of twenty-four (24) semester hours thereafter~~, the student may regain the applicable award or awards by:
- (a) Continuing to meet all applicable non-academic requirements for the applicable award or awards; and
 - (b) Maintaining continuous enrollment at an eligible postsecondary institution without the applicable award or awards; and
 - (c) Attaining grade point average requirements as described in T.C.A. § 49-4-911 at the end of any semester in which eligibility would have been reviewed, had the student not lost the award or awards; and
 - (d) Reapplying for the scholarship as provided in Rule 1640-01-19-.03.
- ~~(7) The provisions of paragraph (6) of this rule shall also apply to any student who:~~
- ~~(a) Completed high school requirements after December 1, 2003, who, for whatever reason, did not receive a TELS award, notwithstanding the fact that the student met the applicable initial eligibility requirements of Rule 1640-01-19-.05(1); or~~
 - ~~(b) Completed high school requirements after January 1, 2003 and prior to December 1, 2003, who completed at least twenty-four (24) semester hours during the 2003-2004 academic year with a cumulative grade point average under 2.75, but met all other applicable initial eligibility requirements of Rule 1640-01-19-.05(3), and is otherwise eligible for the award.~~
- (87) No retroactive awards shall be made for semester hours attempted in order to regain the scholarship.
- (98) A student can utilize the option outlined in paragraph (6) of this rule only one time. A student who, after regaining the award or awards pursuant to paragraph (6) of this rule, subsequently fails to retain any TELS award due to failure to achieve the cumulative grade point average at a regular credit hour checkpoint shall not be eligible to regain the TELS award or become eligible for another TELS award.
- (409) Except as provided by Rule 1640-01-19-.20 or 1640-01-19-.21, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

(Rule 1640-01-19-.12, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, ~~49-4-909~~, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.13 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT.

- (1) In addition to the general requirements for retention of award in Rule 1640-01-19-.12:
 - (a) A Tennessee HOPE Access Grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A student who is eligible for a Tennessee HOPE Scholarship shall be ineligible for a Tennessee HOPE Access Grant.
 - (b) If a student receiving a Tennessee HOPE Access Grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student shall be eligible for a Tennessee HOPE Scholarship. –The student will also receive the ASPIRE award referenced in Rule 1640-01-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed the amount described in T.C.A. § 49-4-915(a)(2).
 - (c) If a student ceases to be eligible due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student may be eligible to regain the HOPE Scholarship by following the procedure outlined in Rule 1640-01-19-.12(6).
 - (d) A student may receive a Tennessee HOPE Scholarship after having received a Tennessee HOPE Access Grant until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-913, 49-4-915, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.14 RETENTION OF AWARDS – DUAL ENROLLMENT GRANT.

- (1) To be eligible for a Dual Enrollment Grant the student must meet the minimum requirements pursuant to T.C.A. § 49-4-930.
- (2) The Dual Enrollment cumulative grade point average used to determine eligibility for a renewal of a Dual Enrollment Grant must be calculated by the institution the student is

(Rule 1640-01-19-.14, continued)

attending, utilizing its institutional grading policy and must be based on all dual enrollment credit hours attempted, ~~except as otherwise provided in~~ under this rule.

- (3) Distance education courses and independent studies courses are eligible for payment with a Dual Enrollment Grant and shall be included in the calculation of the postsecondary cumulative grade point average **for continued eligibility of the Dual Enrollment Grant**.
- (4) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a Dual Enrollment Grant.
- (5) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a Dual Enrollment Grant, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the award may be adjusted in the current award year.
- (6) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for award payment for distance education courses.
- (7) The grant will pay only for lower division (courses numbered 100-200 or 1000-2000) postsecondary credit for general education courses and courses in the disciplines. The grant will not pay for upper division courses (numbered 300-400 or 3000-4000).

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009.

1640-01-19-.15 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS.

- (1) On or before June 30 of each year, all eligible high schools shall submit the name, social security number, grade point averages, and highest composite ACT/SAT score on any single test date, for academically eligible students, cumulative through the eighth semester. Students who graduate from summer school shall have their information reported to TSAC on or before August 15 of each year.
- (2) Eligible postsecondary institutions that enroll students receiving scholarships or grants shall assist in providing and certifying student information necessary for administering, receiving, and evaluating such programs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.16 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD.

- (1) All students receiving a TELS award shall reapply for the award by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-01-19-.03 for each subsequent year.
 - (a) During the certification process, all eligible postsecondary institutions shall certify the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award at the end of the semester, ~~at which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or any subsequent multiple of twenty-four (24) semester hours thereafter or~~ as described in T.C.A. § 49-4-911(a)(2).
 - (b) Notwithstanding the provisions of subparagraph (1)(a) above to the contrary, only those grades earned and credit hours attempted by a non-traditional student, ~~after enrolling in accordance with Rule 1640-01-19-.05(7)(c) while receiving the TELS award,~~ shall count toward the benchmark requirements.
- (2) ~~In order to~~ remain eligible for the HOPE Scholarship, the student must meet the minimum requirements pursuant to T.C.A. § 49-4-911.
- (3) Students who reach a benchmark during the summer semester shall have their continuing eligibility determined based upon the cumulative grade point average and semester grade point average, if required, as of the end of the summer semester.
- (4) Students entering into the provisions of T.C.A. § 49-4-911(a)(2) may enter into these provisions as a part-time student. However, upon receiving the award based on the provisions of T.C.A. § 49-4-911(a)(2), the student must maintain continuous enrollment each semester.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-911, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.17 AWARD MADE IN ERROR.

- (1) If a student receives a TELS award and it is later determined that the award or some portion of the award was made in error, the student or the postsecondary institution may be required to repay the amount awarded in error.
- (2) If TSAC determines that the error was through no fault of the student, the student will not be required to repay the amount of the payment made in error.
- (3) Repayment from the student will be required if TSAC determines that fraud was committed or the error was through fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (4) Repayment from the postsecondary institution will be required if TSAC determines that the error was through the fault of the postsecondary institution.

(Rule 1640-01-19-.17, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.18 REFUND POLICY.

- (1) If a recipient of a TELS award or a Dual Enrollment Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the chargeback, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.19 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT.

- (1) Students enrolled in a full-time status, as of institutionally defined census date, may not convert to part-time status within the same semester and receive a scholarship award for the succeeding semesters unless the student requests and the institution approves the change to part-time status.
- (2) An institution may allow a change from full-time to part-time status within the same semester only when there are documented medical or personal grounds. ~~Such medical or personal grounds shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, or other extraordinary circumstances beyond the student's control where continued full-time attendance by the student creates a substantial hardship.~~ in accordance with Rule 1640-01-19-.20.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time status within the semester. In the event an institution denies a student's request to change from full-time status to part-time status within a semester, the student may appeal the decision pursuant to Rule 1640-01-19-.2628.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds

(Rule 1640-01-19-.19, continued)

returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the chargeback, which shall be noted on the student's record.

- (6) For the purposes of this rule, only courses that are included in the calculation of the grade point average pursuant to Rule 1640-01-19-.22 are to be considered in determining full-time status.
- (7) In the event the student is eligible for the HOPE Scholarship as defined in T.C.A. § 49-4-911(a), ~~(2) then~~ the student shall maintain continuous **full-time** enrollment on a semester-by-semester basis.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-911, 49-4-912, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.20 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which **he/she/the student** is enrolled. -In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-01-19-.~~2628~~.
- (2) Students granted a medical or personal leave of absence who resume their education at an eligible postsecondary institution shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.21 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS.

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in

(Rule 1640-01-19-.21, continued)

progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.

- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- ~~(3) If due to a military mobilization the student elects to receive an "incomplete" in any or all courses, the provisions of Rule 1640-01-19-.22 shall apply.~~
- (43) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.
- (54) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.
- (65) Tennessee residents attending an out-of-state institution, otherwise eligible, shall not have their TELS award eligibility negatively impacted by military mobilization upon their return to the state as a transfer student attending an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.22 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE.

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule and as described in T.C.A. § 49-4-911.
- (a) Notwithstanding the provisions of paragraph (1) above to the contrary, ~~only these~~ grades earned and credit hours attempted by a non-traditional student, ~~after enrolling~~ in accordance with ~~Rule 1640-01-19-.05(7)(e)~~ T.C.A. § 49-4-931, shall count toward the benchmark requirements.
- (2) All credit hours attempted at all postsecondary institutions the student has attended after graduating from high school and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Except as provided in subparagraph (a) of this paragraph, credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation.
- (a) A student shall have a one-time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for

(Rule 1640-01-19-.22, continued)

both attempted courses, however, will be included in the overall number of attempted hours for determining HOPE Scholarship eligibility.

- (b) It shall be the responsibility of the student to advise the appropriate official of the eligible postsecondary institution when this option is being exercised.
- (3) Grades received for courses attempted prior to high school graduation, completion of a home school program in Tennessee or GED attainment, including those attempted with the Dual Enrollment Grant, do not count in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and in the attempted hours for determining HOPE Scholarship eligibility.
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award or included in the attempted hours for determining HOPE Scholarship eligibility.
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (9) A student who obtains a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his or her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded a TELS award retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over-award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, ~~he or she~~ the student may appeal the decision in accordance with Rule 1640-01-19-.2628.
- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance education courses if all other eligibility requirements are met. ~~Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance education courses shall be made in the same manner as transient students as provided in Rule 1640-01-19-.24.~~
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student

(Rule 1640-01-19-.22, continued)

receives college credit from the internship or co-op experience and must pay tuition and fees. The semester hours shall be included in the postsecondary cumulative grade point average.

- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.
- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted, **except as noted in Rules 1640-1-19-.21(2) and 1640-1-19-.21(4).** –The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
 - (a) If the student fails to retain eligibility for a TELS award as a result of the calculation of an incomplete, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, **he/shethe student** may appeal the decision in accordance with Rule 1640-01-19-.~~26~~**28**.
 - (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.
- (14) Courses in which a student withdraws shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.
- (15) Courses in which a student takes a pass/fail course shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-911, 49-4-913, 49-4-919, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.23 TRANSFER STUDENTS.

- (1) To be eligible for a Tennessee HOPE scholarship as a transfer student from a regionally accredited postsecondary institution located outside of Tennessee, a student shall meet the requirements of T.C.A. § 49-4-929.
- (2) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a ~~Tennessee Technology Center~~TCAT and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-910, 49-4-911, 49-4-924, 49-4-929, and 49-4-937.
Administrative History: Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.24 TRANSIENT STUDENTS.

- (1) A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions. ~~The host institution shall award the TELS funds to the transient student based on certification of eligibility from the host institution. The home institution shall certify to TSAC that the student is eligible for a TELS award.~~
- (2) Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester, the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.
- (3) ~~If the home institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.~~
- (4) ~~If, through collaboration with the home institution, the host institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the host institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.~~
- (5) ~~If the host institution chooses not to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.~~
- (6) ~~If the eligible student is concurrently enrolled at the home institution and a host institution, then the home institution shall certify the student at the award amount of the home institution.~~

(Rule 1640-01-19-.24, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008.

1640-01-19-.25 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL.

- (1) A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-01-19-.05 may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons—, in accordance with Rule 1640-01-19-.20. ~~Acceptable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where timely enrollment by the student would create a substantial hardship.~~ In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to ~~the~~ Rule 1640-01-19-.2628.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008.

1640-01-19-.26 EXTENSION OF FIVE-YEAR TERMINATING EVENT DUE TO MEDICAL DISABILITY

- (1) As outlined in T.C.A. § 49-4-913, a HOPE recipient who has a documented medical disability, as verified by a licensed physician, which requires the student to attend part-time, may petition TSAC to receive an extension to the five (5) year period. Such extension may not exceed ten (10) years from the student's date of initial enrollment at any postsecondary institution.
- (2) Documentation from the licensed physician must include a statement that affirms the student's medical disability and reason(s) the student must attend part-time. The extension will be granted one (1) year at a time and documentation must be provided to TSAC prior to the beginning of the academic term in which the part-time status is being applied for. The extension will be reviewed on an annual basis and a determination made of the student's eligibility for the extension.
- (3) A student with a medical disability whose five (5) year period has expired may appeal to TSAC to have the award reinstated, provided the student has maintained eligibility for the HOPE Scholarship. A student whose eligibility has expired may receive up to an additional five (5) years, or the number of years remaining that will equal ten (10) years from initial enrollment, whichever is less.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, 49-4-904, 49-4-905, and 49-4-913. **Administrative History:**

1640-01-19-.27 WILDER-NAIFEH RECONNECT

- (1) To be eligible for a Wilder-Naifeh Reconnect Grant, a student shall meet the requirements of T.C.A. § 49-4-923.

(Rule 1640-01-19-.27, continued)

- (2) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.
- (3) Each TCAT shall be responsible for certifying to TSAC that the student has met all eligibility requirements. The TCAT will certify each student's eligibility for a financial award for the Wilder-Naifeh Reconnect Grant after gift aid has first been credited to the student's tuition and mandatory fees.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-923. **Administrative History:**

1640-01-19-.2628 APPEAL AND EXCEPTION PROCESS.

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of rendering a decision in order to deny or revoke an applicant's TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a meeting and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a meeting is required, the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven (7) calendar days after meeting to consider an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the IRP decision letter to the appellant as soon as practicable.
- (2) The TELS Award Appeals Panel shall be appointed by TSAC's Executive Director for the purpose of meeting to consider appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with TSAC within forty-five (45) calendar days from the date of the IRP decision letter. A complete record of the institutional IRP ruling shall be provided to TSAC by the student. -The Appeals Panel may award or reinstate the student's TELS award without a meeting. -This decision shall be made no later than thirty (30) calendar days after an appeal is properly filed and the record from the IRP meeting is received. If the Appeals Panel determines that a meeting is required the Appeals Panel shall consider the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant prior to the expiration of the forty-five (45) day time period and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after ruling on an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.

(Rule 1640-01-19-.28, continued)

- (3) A student may appeal directly to TSAC without first appealing to the IRP under the following circumstances:
 - (a) Where the reason for the loss of eligibility occurred at a regionally-accredited out-of-state postsecondary institution and the student is now enrolled or attempting to enroll in an eligible postsecondary institution;
 - (b) Where the loss of eligibility occurs at one eligible postsecondary institution prior to the student transferring to another eligible postsecondary institution;
 - (c) Where a student has delayed postsecondary enrollment beyond sixteen (16) months after high school graduation;
 - (d) Where a student withdraws from an eligible postsecondary institution while seeking eligibility as a non-traditional student;
 - (e) Where a student is enrolled part-time and is seeking an extension to the five-year terminating event due to a documented medical disability as certified by a licensed physician; or
 - (f) At TSAC's discretion where the loss of eligibility was due to extraordinary circumstances.

- (4) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or TSAC. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or TSAC by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school or collegiate grade point average.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Richard Rhoda	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson, by Mr. Joseph Woodson	X			
Commissioner Larry Martin, by Mr. Greg Turner	X			
Commissioner Kevin Huffman, by Ms. Emily Carter				X
Chancellor John Morgan, by Mr. David Gregory	X			
Dr. Joe Dipietro, by Dr. Katie High	X			
Dr. Gary Weedman				X
Dr. J. Gary Adcox	X			
Ms. Celena Tulloss	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. Tom Hughes	X			
Ms. Sydney Jones				X
Randy O'Brien				X

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 09/19/2014, 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11.18.14

Signature: *Richard G. Rhoda*

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director, Tennessee Student Assistance Corp.



Subscribed and sworn to before me on: 01-18-14

Notary Public Signature: *Corrina Dickson-Wiley*

My commission expires on: 08-23-16

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

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

December 12, 2014
Date

Department of State Use Only

Filed with the Department of State on: 12/19/14

Effective on: 3/19/15

Tre Hargett
Tre Hargett
Secretary of State

SECRETARY OF STATE
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G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Tennessee Student Assistance Corporation (TSAC)
<u>SUBJECT:</u>	Implementation of Tennessee Promise Scholarship Program
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, §§ 49-4-204 and 708
<u>EFFECTIVE DATES:</u>	March 19, 2015 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The rules replace the emergency rules that implemented Public Chapter 900 of 2014, the Tennessee Promise Scholarship Act of 2014.</p> <p>Changes to the rules include adding language to clarify that tuition waivers and discounts shall first be deducted from the student's tuition and fees before the gift aid is credited; stipulating that a student is ineligible for the scholarship if an associate's degree is earned prior to enrolling in the fall term; adding deadline dates for FAFSA verification; clarifying community service deadlines and processes; and clarifying partnering organizations' deadline and reporting requirements.</p>

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

Pursuant to T.C.A. § 4-5-202, the Tennessee Student Assistance Corporation (TSAC) intends to file proposed rules to amend the current rules of Chapter 1640-01-26 Tennessee Promise Scholarship Program, in lieu of a rulemaking hearing. It is the intent of TSAC to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of issue of the Tennessee Administrative Register in which the proposed rules are published.

The proposed rules act to adopt changes to the Tennessee Promise Scholarship Program Chapter 1640-01-26 as proposed rules, adding language to clarify that tuition waivers and discounts shall first be deducted from the student's tuition and fees before the gift aid is credited; stipulating that a student is ineligible for the scholarship if an associate's degree is earned prior to enrolling in the fall term; adding deadline dates for FAFSA verification; clarifying community service deadlines and processes; and clarifying partnering organizations' deadline and reporting requirements.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

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

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, Tennessee Board of Regents, and Tennessee Colleges of Applied Technology, University of Tennessee System, and partnering organizations that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

TSAC expects the eligible institutions engaged in the administration of the Tennessee Promise Scholarship Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact postsecondary institutions employing fifty (50) or fewer full-time employees.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

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

The rules for the Tennessee Promise Scholarship Program Chapter 1640-01-26, as proposed, have no projected impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 12-20-14
Rule ID(s): 5851
File Date: 12/19/14
Effective Date: 3/19/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to 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 twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1640-01-26	Tennessee Promise Scholarship Program
Rule Number	Rule Title
1640-01-26.01	Definitions
1640-01-26.02	Scholarship Award Amounts and Classifications
1640-01-26.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26.07	Community Service Program Requirements
1640-01-26.09	Participating Organization Requirements

**RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION**

**CHAPTER 1640-01-26
TENNESSEE PROMISE SCHOLARSHIP PROGRAM**

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1640-01-26-.01 DEFINITIONS.

- (1) Academic Requirement: A requirement of a specified grade point average or satisfactory academic progress that determines the continuing eligibility for postsecondary financial assistance from the Tennessee Promise Scholarship.
- (2) Board of Directors: The board of directors of the Tennessee Student Assistance Corporation.
- (3) Board of Regents: The board of regents of the state university and community college system of Tennessee.
- (4) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible postsecondary institution. ~~The term is defined in T.C.A. § 49-4-902.~~
- (5) Continuous Enrollment: The term is defined in T.C.A. 49-4-708.
- (6) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.
- (7) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.
- (8) Eligible High School: The term is defined in T.C.A. § 49-4-902.
- (9) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.
- (10) Entering Freshman: A student who enrolls in an eligible postsecondary institution as a participant in the Tennessee Promise Scholarship program in the fall term immediately following high school graduation, completion of a home school program, or attainment of a GED or HiSET diploma. Exceptions to this enrollment requirement may be made for students enrolled in a TCAT or for personal or medical leaves of absence as outlined in these rules.
- (11) FAFSA: The term is defined in T.C.A. § 49-4-902.

(Rule 1640-01-26-.01, continued)

- (12) Full-Time Student: The term is defined in T.C.A. § 49-4-708.
- (13) GED: The term is defined in T.C.A. § 49-4-902.
- (14) Gift Aid: The term is defined in T.C.A. § 49-4-~~902~~708.
- (15) HiSET: The High School Equivalency Test credential awarded by a state-approved institution or organization.
- (16) Home School Student: The term is defined in T.C.A. § 49-4-708.
- (17) Immediate Family Member: Spouse, parents, children, or siblings.
- (18) Mentor: An individual ~~of at least 21 years of age~~ who is assigned by a Partnering Organization to assist Tennessee Promise Scholarship program participants in the college application and financial aid process. Mentors may serve in a volunteer or employed capacity at the discretion of the Partnering Organization. **Volunteer mentors shall be at least twenty-one (21) years of age.**
- (19) Parent: The parent or legal guardian of a student.
- (20) Partnering Organization: A not-for-profit organization selected by TSAC to administer the Tennessee Promise Scholarship program.
- (21) Resident: A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03.
- (22) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the TCAT at which the student is currently enrolled.
- (23) Semester: The term is defined in T.C.A. § 49-4-902.
- (24) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET.
- (25) TCAT: Tennessee College of Applied Technology.
- (26) Tennessee Promise Scholarship: A last-dollar scholarship to be applied to a participating student's tuition and mandatory fees after ~~all~~ other gift aid for which a student is eligible is applied first to tuition and mandatory fees.
- (27) Tennessee Promise Scholarship Program ("Program"): A scholarship program which provides last-dollar financial aid, mentoring, and community service opportunities for Tennessee students upon graduation from high school or home school, or attainment of a GED or HiSET.
- (28) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-708(c)(8).
- (29) Title IV: The term is defined in T.C.A. § 49-4-902.
- (30) TSAC: Tennessee Student Assistance Corporation.

(Rule 1640-01-26-.01, continued)

- (31) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of a student at an eligible postsecondary institution that are charged to all students, and shall not include fees charged for the Regents Online Degree Program, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-902. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

- (1) The Tennessee Promise Scholarship program is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing postsecondary education after ~~all~~ other gift aid has been credited to tuition and mandatory fees.
- (2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-708 and shall be set in the General Appropriations Act.
- (3) In the event that funds are insufficient to fully fund the Tennessee Promise Scholarship award program, TSAC may reduce the award amount in accordance with these rules.
- (4) Recipients of a Tennessee Promise Scholarship award as provided by these rules must be enrolled and attending full-time in an eligible postsecondary institution.
- (5) Except for approved medical or personal leaves of absence, award recipients must be continuously enrolled and maintain the required grade point average or satisfactory academic progress at an eligible postsecondary institution as provided in Tenn. Comp. R. & Regs. 1640-01-26-.04(1)(e).
- (6) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.
- (67) All-g Gift aid from sources other than the Tennessee Promise Scholarship shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Promise Scholarship award. If ~~all~~ other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Promise Scholarship award, but shall remain eligible for all other services available through the Tennessee Promise Scholarship program, provided the student maintains all academic and non-academic requirements.
- (78) The receipt of a Tennessee Promise Scholarship is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Promise Scholarship does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.03 APPLICATION PROCESS.

- (1) Students participating in the Tennessee Promise Scholarship program shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions.
- (2) Students enrolled in a community college, public four-year postsecondary institution, or private institution shall file the FAFSA or renewal FAFSA according to the following deadlines:

(Rule 1640-01-26-.03, continued)

- (a) No later than February 15 for fall enrollment, or
 - (b) No later than November 1 for spring and summer enrollment.
- (3) Students enrolled in a TCAT shall file the FAFSA or renewal FAFSA according to the following deadlines:
- (a) No later than February 15 for summer and fall enrollment, or
 - (b) No later than November 1 for spring enrollment.
- (4) Students are required to complete the Tennessee Promise Scholarship award application for the initial year of enrollment no later than November 1 of their senior year of high school. For each successive year of participation students shall submit a renewal application no later than July 1 prior to the successive academic year giving notice to TSAC of their intent to participate in the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.04 ELIGIBILITY – TENNESSEE PROMISE SCHOLARSHIP PROGRAM.

- (1) To be eligible to receive a Tennessee Promise Scholarship a student shall:
- (a) Be a Tennessee resident;
 - (b) Graduate from an eligible high school, complete high school as a home school student, or obtain a GED or HiSET diploma, provided that the student obtains a GED or HiSET diploma prior to the student reaching nineteen (19) years of age;
 - (c) Attend full time in an eligible postsecondary institution in the fall term immediately following graduation from an eligible high school or home school, or attainment of the GED or HiSET diploma; except that a student enrolling in a certificate or diploma program at a TCAT may enroll in the summer prior to the fall term;
 - (d) Maintain continuous enrollment as a full-time student at an eligible postsecondary institution unless granted a medical or personal leave of absence;
 - (e) Maintain a minimum cumulative grade point average of 2.0, as determined by the eligible postsecondary institution, at the end of each academic year if enrolled in an associate degree program, or maintain satisfactory academic progress as determined by the TCAT ~~if enrolled in a certificate or diploma program~~;
 - (f) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;
 - (g) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program;
 - (j) Not be incarcerated;

(Rule 1640-01-26-.04, continued)

- (k) Not have earned an associate degree prior to enrolling in the initial academic term following graduation from a high school or home school program;
- (kl) Prior to initial fall enrollment in a postsecondary institution, attend one mandatory meeting related to financial aid and FAFSA completion, and the college application process; and a second mandatory meeting related to college orientation. Participants may, but are not required to, attend additional meetings as offered by a Partnering Organization; and
- (lm) Complete a minimum of eight (8) hours of community service for each semester while participating in the Tennessee Promise Scholarship program; and
- (n) Complete FAFSA verification, if selected by the postsecondary institution, by August 1 if enrolled at a two-year or four-year eligible institution or by October 1 if enrolled at a TCAT.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.05 ELIGIBILITY - EARLY HIGH SCHOOL GRADUATION.

- (1) A student who graduates early from an eligible high school, or completes an eligible home school program or obtains a GED or HiSET diploma prior to the spring semester preceding the initial fall enrollment may immediately enroll in an eligible postsecondary institution. Such student shall not be eligible for the Tennessee Promise Scholarship until the subsequent fall semester, but shall otherwise meet all initial eligibility requirements, and upon receipt of a Tennessee Promise Scholarship meet all continuing eligibility requirements as outlined in these rules.
- (2) Notwithstanding the provisions of this section, a student may be eligible for a Tennessee Promise Scholarship at a TCAT prior to the subsequent fall term if eligible for an exception as provided in these rules.
- (3) During all academic terms in which a student is enrolled in a postsecondary institution prior to the fall term following graduation from an eligible high school, the student shall:
 - (a) Enroll in an eligible postsecondary institution;
 - (b) Attend all mandatory meetings provided by the Partnering Organization;
 - (c) Not be required to participate in community service, except that the student must complete the amount of community service required by Tenn. Comp. R. & Regs. 1640-01-26-.07(1) before the subsequent fall semester; and
 - (d) Have no minimum requirement for credit hours or academic performance.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.06 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

- (1) A student may be granted a medical or personal leave of absence from timely enrollment in the initial semester, full-time attendance, or continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an

(Rule 1640-01-26-.06, continued)

immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment expected of members of that faith; fulfillment of required military service; the program of study at a TCAT only begins in the spring or summer academic term or openings are unavailable for the fall academic term; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.

- (2) A student granted a medical or personal leave of absence who resumes full-time attendance at an eligible postsecondary institution shall retain the Tennessee Promise Scholarship until a terminating event occurs. However, a leave of absence of six (6) months or less shall not count against the two and one-half years from the date of the student's initial enrollment at an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.07 COMMUNITY SERVICE PROGRAM REQUIREMENTS.

- (1) A student participating in the Tennessee Promise Scholarship program shall perform a minimum of eight (8) hours of community service for each semester the scholarship is received. Service shall be performed prior to the beginning of each academic semester, including the initial fall semester, in which the Promise Scholarship is received **according to the following deadlines:-**
- (a) **August 1 for students attending the fall academic term.**
 - (b) **December 1 for students attending the spring academic term.**
 - (c) **May 1 for students attending the summer academic term.**
- (2) A student who is granted a leave of absence which precludes the performance of community service shall complete the community service in the first academic term following the period for which the leave of absence was granted. Such community service shall be in addition to any other community service required in the same academic term.
- ~~(23) The community service shall be approved in advance by the Partnering Organization. Upon completion of the community service, each student shall verify to the Partnering Organization a description of service performed, the date(s) the service was performed, the total hours of service provided, and the name and address of the organization for which the service was provided. Provide documentation to the Partnering Organization of the community service performed.~~
- (43) Community Service shall not include:
- (a) ~~Community service~~ Service performed prior to the January preceding the initial academic term ~~the student graduating from high school, completing a home school program, or obtaining a GED or HiSET diploma;~~
 - (b) ~~Work Service~~ resulting in payment or remuneration of any kind; ~~or~~
 - ~~(c) Work that results in academic credit by the postsecondary institution; or~~
 - (dc) ~~Work Service~~ that directly benefits family members.

(Rule 1640-01-26-.07, continued)

- (54) Community service may be performed with or under the direction of a faith-based organization, but shall not include religious persuasion or proselytizing.
- (65) Community service in excess of eight (8) hours performed in any semester shall not be carried over into subsequent semesters. Unless the student is on an approved leave of absence, failure to complete the eight (8) hours of community service prior to an academic semester will result in the immediate termination of eligibility for the Tennessee Promise Scholarship.
- (76) A student who knowingly provides false verification of community service shall be ineligible to receive additional benefits under the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.08 SELECTION OF PARTNERING ORGANIZATIONS.

- (1) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall be recommended by the mayor or executive of each county in which the Partnering Organization participates and approved by the Board of Directors.
- (2) An approved Partnering Organization may continue to serve in such capacity unless it is no longer recommended by a county mayor or executive or approved by the Board of Directors. Final approval to serve as a Partnering Organization shall be given at the discretion of the Board of Directors and based on the Partnering Organization's satisfactory performance and compliance with these rules.
- (3) A negative recommendation by one county mayor or executive shall not automatically disqualify the Partnering Organization from participating in other counties but will be considered in the Board of Directors' evaluation of the Partnering Organization's continued participation in the Program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.09 ~~PARTICIPATING-PARTNERING~~ ORGANIZATION REQUIREMENTS.

- (1) Partnering Organizations that participate in the Tennessee Promise Scholarship program shall meet the following requirements:
 - (a) ~~Each Partnering Organization shall be~~ established as a not-for-profit organization, except that a postsecondary institution that receives funding under the Tennessee Promise Scholarship program shall not be permitted to participate as a partnering organization.
 - (b) Operate as a college access and success program serving Tennessee residents at an eligible postsecondary institution.
 - (c) Demonstrate annually to TSAC that funding exists within the Partnering Organization's budget to provide all services under the Tennessee Promise Scholarship program for a minimum of one (1) year. No funds under this program shall be provided for the direct or indirect benefit of a Partnering Organization.
 - (d) Adhere to rules promulgated by TSAC for the administration of this program.

(Rule 1640-01-26-.09, continued)

- (e) Provide a mentoring program with a ratio of one (1) volunteer mentor to no more than ten (10) eligible student applications. This ratio shall apply to eligible student applications and may be reduced in proportion to the number of students who drop from participation in the program.

The minimum ~~age and ratio requirements~~ shall not apply to ~~Partnering Organizations that employ~~ full- or part-time paid mentors or counselors that work directly with students.

- (f) Select volunteer mentors prior to December 1 for the following academic year and provide ~~a minimum of~~ one (1) ~~mandatory~~ training meeting for all paid and volunteer mentors prior to January 31. ~~This meeting may be offered on multiple dates prior to the January 31 deadline. Mentors shall be required to attend one training meeting.~~ This meeting shall cover at least the following topics:

1. Program overview,
2. Appropriate mentor-student relationships,
3. Financial aid,
4. FAFSA completion,
5. College applications and admissions, and
6. Community service requirements.

- (g) Provide ~~a minimum of~~ one (1) ~~mandatory~~ meeting for all Tennessee Promise Scholarship program participants prior to March 1 preceding the initial enrollment in an eligible postsecondary institution. ~~This meeting may be offered on multiple dates prior to the March 1 deadline, and This meeting~~ shall provide training, ~~at a minimum,~~ on the following topics:

1. An overview of the Tennessee Promise Scholarship program,
2. Appropriate relationships with mentors,
3. Financial aid opportunities,
4. FAFSA completion, and
5. The college application process.

- (h) Provide ~~a minimum of~~ one (1) ~~mandatory~~ meeting for all Tennessee Promise Scholarship program participants ~~after March 1 and~~ prior to May 31 preceding the initial enrollment in an eligible postsecondary institution. ~~This meeting may be offered on multiple dates prior to the May 31 deadline and This meeting~~ shall provide training, ~~at a minimum,~~ on topics related to college orientation, ~~and~~ making the transition from high school to college, ~~and community service requirements.~~

- (i) Where a student cannot attend either mandatory meeting due to extenuating circumstances, Partnering Organizations shall provide opportunities for the student to receive the training prior to the March 1 and May 31 deadline, or as soon thereafter as practicable.

(Rule 1640-01-26-.09, continued)

- (j) Provide a minimum of one (1) mentor contact monthly with each assigned Tennessee Promise Scholarship program participant beginning February 1 of the senior year of high school. Contact shall be maintained throughout the student's participation in the Program.
- (k) ~~To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall o~~Organize a local advisory council to serve as an advocate for the Program. The advisory council shall be comprised of a minimum of five (5) members, with at least one (1) member representative from each the local education agency, the county mayor's or executive's office, and a local postsecondary institution. Organizations that have been in existence for a minimum of three (3) years may use existing boards or boards of trustees as the local advisory council if the board or board of trustees is substantially similar to the requirements of this subsection.
- (l) Obtain a certified background check on all mentors prior to service as a mentor. A mentor shall not be eligible to participate in the Tennessee Promise Scholarship program if convicted of any felony or offense listed at T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, and 40-35-501(i)(2). For purposes of this section, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.
- (m) Submit to audits on a periodic basis as determined by TSAC.
- (n) Enter into a memorandum of understanding with TSAC regarding program requirements and Partnering Organization obligations and provide requested information to TSAC as required in the memorandum of understanding.
- (o) Provide electronic notification to TSAC when Tennessee Promise participants have completed their ~~mentoring~~ mandatory meetings, and community service requirements. ~~Reporting of community service performed in the previous academic term shall be provided to TSAC for each student no later than:~~
 - 1. ~~August 15 for students attending the fall academic term.~~
 - 2. ~~December 15 for students attending the spring academic term.~~
 - 3. ~~May 15 for students attending the summer academic term.~~
- (p) Provide performance metrics as outlined in the memorandum of understanding entered into with TSAC.
- (q) Obtain an insurance policy that, at a minimum, limits liability of the Partnering Organization against physical and sexual abuse or misconduct directed toward participants of the Program by its officers, directors, employees, and volunteers.

Authority: T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, 40-35-501, 49-4-201, 49-4-204, and 49-4-708.

Administrative History: Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.10 PARTNERING ORGANIZATIONS – SERVICE IN COUNTIES.

- (1) A Partnering Organization that agrees to provide Tennessee Promise Scholarship program services in a county shall make the program available to all eligible high school, home school, and GED/HiSET students in that county. The Partnering Organization shall continue to work with students from that county through a terminating event, regardless of which eligible postsecondary institution the student attends.

(Rule 1640-01-26-.10, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.11 TERMINATING EVENTS

- (1) A student shall receive the Tennessee Promise Scholarship until reaching a terminating event.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.12 TENNESSEE PROMISE SCHOLARSHIP REFORMS.

- (1) In the event funds are insufficient to fully fund the cost of Tennessee Promise scholarships, TSAC is authorized to take one or more of the following actions:
 - (a) Establish a maximum award amount,
 - (b) Establish additional eligibility criteria for new applicants entering the program,
 - (c) Administer the program on a first-come, first-served basis.
- (2) Any action taken by TSAC as described in subsection (1) shall require approval by TSAC's board of directors and notification shall be provided to the chairs of the Senate and House Education Committees of the Tennessee General Assembly.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.13 CERTIFICATION OF ELIGIBILITY.

- (1) TSAC will create a master certification roster of students for each institution. The master list will contain students who have met all requirements for the Tennessee Promise Scholarship.
- (2) The eligible postsecondary institution will be responsible for certifying each student's eligibility for a financial award from the Tennessee Promise Scholarship. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after ~~all~~ other gift aid has first been applied to the student's tuition and mandatory fees.
- (3) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.
- (4) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Promise Scholarship recipients who are eligible for a financial award. No funds shall be disbursed directly to the Partnering Organizations or to the students.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.14 EVALUATION OF THE TENNESSEE PROMISE SCHOLARSHIP.

- (1) TSAC, along with the Tennessee Higher Education Commission, shall review the Tennessee Promise Scholarship program annually. The review shall include, at a minimum, the number of recipients, total cost of the program, student persistence, hours of community service completed, and scholarship retention. These findings shall be reported to the education

(Rule 1640-01-26-.14, continued)

committee members of the Senate and House of Representatives of the Tennessee General Assembly.

- (2) TSAC shall convene a meeting of its Special Advisory Committee at least annually to review the effectiveness and best practices of the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.15 AWARD MADE IN ERROR.

- (1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.
- (2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (3) Repayment from the postsecondary institution will be required if TSAC determines that the error was due to the fault of the postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.16 REFUND POLICY.

- (1) If a recipient of a Tennessee Promise Scholarship award fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the refund, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.17 TRANSFER STUDENTS.

- (1) A student who meets all academic and non-academic requirements of the Tennessee Promise Scholarship may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship, provided the student is able to complete the diploma or associate degree in the amount of time remaining before reaching a terminating event as outlined in T.C.A. § 49-4-708.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

1640-01-26-.18 APPEAL AND EXCEPTION PROCESS.

- (1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Promise Scholarship program. The IRP shall use the same procedures and timelines as

(Rule 1640-01-26-.18, continued)

those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.

- (2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP. The same guidelines shall exist for appeals of the Tennessee Promise Scholarship program as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg. 1640-01-19.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-924. **Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Richard Rhoda	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson, by Mr. Joseph Woodson	X			
Commissioner Larry Martin, by Mr. Greg Turner	X			
Commissioner Kevin Huffman, by Ms. Emily Carter				X
Chancellor John Morgan, by Mr. David Gregory	X			
Dr. Joe Dipietro, by Dr. Katie High	X			
Dr. Gary Weedman				X
Dr. J. Gary Adcox	X			
Ms. Celena Tulloss	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. Tom Hughes	X			
Ms. Sydney Jones				X
Randy O'Brien				X

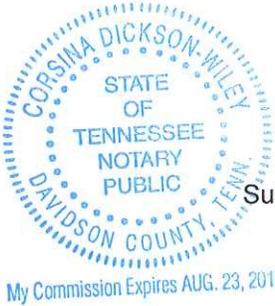
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 09/19/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 11.18.14

Signature: *Richard G. Rhoda*

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director, Tennessee Student Assistance Corp.



Subscribed and sworn to before me on: 11-18-14

Notary Public Signature: *Corsima Dickson-Wiley*

My commission expires on: 08-23-16

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

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

December 12, 2014
Date

Department of State Use Only

SECRETARY OF STATE
RECEIVED
2014 DEC 19 PM 3:17

Filed with the Department of State on: 12/19/14

Effective on: 3/19/15

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid power seating accessories and exclusions

STATUTORY AUTHORITY: Tennessee Code Annotated, §§ 71-5-105 and 71-5-109.

EFFECTIVE DATES: March 23, 2015 through June 30, 2015

FISCAL IMPACT: Minimal.

STAFF RULE ABSTRACT: According to the Bureau, the rules clarify and expand the coverage of power wheelchair accessories and exclude some common items from coverage, such as pillows, while clarifying other excluded items, such as breast implant removal. Definitions have been added to the rules to cover the exclusions changes.

Public Hearing Comments

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

There were no public comments received on these rules before or at the hearing.

Regulatory Flexibility Addendum

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

The rules are not anticipated to have a negative 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

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 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 12-25-14
 Rule ID(s): 5056
 File Date: 12/23/14
 Effective Date: 3/23/15

Rulemaking Hearing Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.01	Definitions
1200-13-13-.10	Exclusions

Rule 1200-13-13-.01 Definitions

(93) PERSONAL CARE SERVICES shall refer to an optional Medicaid benefit defined at 42 CFR 440.167 that, per the Tennessee Medicaid State Plan, Tennessee has not elected to include in the TennCare benefit package. To the extent that such services are available to children under the age of 21 when medically necessary under the provisions of EPSDT, the Bureau of TennCare designates home health aides as the providers qualified to deliver such services. When medically necessary, personal care services may be authorized outside of the home setting when normal life activities temporarily take the recipient outside of that setting. Normal life activity for a child under the age of 21 means routine work (including work in supported or sheltered work settings); licensed child care; school and school-related activities; religious services and related activities; and outpatient health care services (including services delivered through a TennCare home and community based services waiver program). The home health aide providing personal care services may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

(94) PHYSICIAN shall mean a person licensed pursuant to chapter 6 or 9 of title 63 of the Tennessee Code Annotated.

(95) POVERTY LEVEL shall mean the poverty level established by the Federal Government.

(96) Power Seating Accessories. Accessories available to modify a power wheelchair base are covered by TennCare when all listed criteria are met as follows:

(a) Power Seat Elevation System.

1. It is ordered by the Enrollee's treating physician.
2. An assessment conducted by a licensed physical therapist or licensed occupational therapist establishes that:
 - (i) The Enrollee has the cognitive ability and enough upper extremity function to carry out mobility-related activities of daily living such as feeding, grooming, dressing, and transferring; and
 - (ii) The activities for which the accessory will be used are conducted primarily in the enrollee's home.

(b) Power Standing System.

1. It is ordered by the Enrollee's treating physician.
2. An assessment conducted by a licensed physical therapist or licensed occupational therapist establishes that the Enrollee:
 - (i) Has a chronic condition that causes him to have limited or no ability to stand; and
 - (ii) Has a physical condition that allows him to stand, when supported, for meaningful periods of time, i.e., he will not suffer loss of blood pressure or have problems with bowel or urine retention; and
 - (iii) Has the cognitive ability and enough upper extremity function to carry out mobility-related activities of daily living such as feeding, grooming, dressing, and transferring; and

(iv) Meets at least one other complex rehabilitation criterion for a power seat accessory such as a tilt seat and also qualifies for a Group 3 base Power Wheelchair.

(97) Power Wheelchair Accessories. All powered wheelchair accessories not defined in this rule as Power Seating Accessories are excluded from TennCare coverage but may be provided by an MCO as a cost effective alternative service as defined in this rule.

~~(9698)~~PRESCRIBER. An individual authorized by law to prescribe drugs.

~~(9799)~~PRIMARY CARE PHYSICIAN shall mean a physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. A primary care physician is a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/ Gynecologist, or Family Practitioner.

~~(98100)~~PRIMARY CARE PROVIDER shall mean health care professional capable of providing a wide variety of basic health services. Primary care providers include practitioners of family, general, or internal medicine; pediatricians and obstetricians; nurse practitioners; midwives; and physician's assistant in general or family practice.

~~(99101)~~PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by the TennCare Bureau or the MCC prior to the delivery of services.

etc

Rule 1200-13-13-.10 Exclusions

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

1. ~~— Air cleaners, purifiers, or HEPA filters~~

~~21.~~ Audiological therapy or training

~~32.~~ Augmentative communication devices

~~43.~~ Beds and bedding equipment as follows:

(i) Powered air flotation beds, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress

For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in body position to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired

nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.

- (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - ~~(vii) Pillows, hypoallergenic~~
 - ~~(viii)~~ (vii) Springbase beds
 - ~~(ix)~~ (viii) Vail beds, or similar bed
- ~~54. Bed baths and Sitz baths~~
64. Biofeedback
75. Chiropractor's services
86. Cushions, pads, and mattresses as follows:
- (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs
97. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.
408. Ear plugs
- ~~419. Floor standers~~
429. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by T.C.A. §56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight ($BMI < 15 \text{ kg/m}^2$) and physically

incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

~~43~~10. Hearing services, including the prescribing, fitting, or changing of hearing aids

~~44~~11. Humidifiers (central or room) and dehumidifiers

~~45~~12. Inpatient rehabilitation facility services

~~46~~13. Medical supplies, over-the-counter, as follows:

- (i) Alcohol, rubbing
- (ii) Band-aids
- (iii) Cotton balls
- (iv) Eyewash
- (v) Peroxide
- (vi) Q-tips or cotton swabs

~~47~~14. Methadone clinic services

~~48~~15. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered

~~49~~16. Orthodontic services, except as defined in Rule 1200-13-13-.04(1)(b)5. or 1200-13-14-.04(1)(b)5.

~~20~~17. Certain pharmacy items as follows:

- (i) Agents when used for anorexia or weight loss
- (ii) Agents when used to promote fertility
- (iii) Agents when used for cosmetic purposes or hair growth
- (iv) Agents when used for the symptomatic relief of cough and colds
- (v) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
- (vi) Nonprescription drugs
- (vii) Generic buprenorphine, Subutex (buprenorphine), and Suboxone (buprenorphine/naloxone) in dosage amounts that exceed the covered dosage amounts listed below:
 - (l) Sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy; or

- (II) Eight milligrams (8 mg) per day after the sixth (6th) month of therapy.
- (viii) Sedative hypnotic medications in dosage amounts that exceed the dosage amounts listed below:
 - (I) Fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta;
 - (II) One hundred forty milliliters (140 ml) per month of chloral hydrate; or
 - (III) One (1) bottle every sixty (60) days of Zolpimist.
- (ix) Allergy medications
- 2418. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
- 2429. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
- 2320. Radial keratotomy
- 2421. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
- 2522. Repair of DME items not covered by TennCare
- 2623. Repair of DME items covered under the provider's or manufacturer's warranty
- 2724. Repair of a rented DME item
- 2825. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
- 2926. Standing tables
- 3027. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery
 - (ii) LASIK
 - (iii) Orthoptics

- (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
- 1. Air cleaners, purifiers, or HEPA filters
 - 42. Alcoholic beverages
 - 23. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 34. Art therapy
 - 45. Autopsy
 - 56. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 67. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Pillows
 - (iii) Waterbeds
 - 78. Bioenergetic therapy
 - 89. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy
 - (iv) Breast implant removal that is not medically indicated
 - (v) Ear piercing
 - (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos

(viii) Tongue splitting or repair of tongue splitting

(ix) Wigs or hairpieces

910. Breathing equipment as follows:

(i) Intrapulmonary Percussive Ventilators (IPVs)

(ii) Spirometers, except for peak flow meters for medical management of asthma and incentive spirometers

(iii) Vaporizers

4011. Carbon dioxide therapy

4412. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:

(i) Day care

(ii) Evening care centers

(iii) Respite care, except as a component of Mental Health Crisis Services benefits or Hospice Care benefits as provided at Rule 1200-13-13-.04(1)(b).

(iv) Rest cures

(v) Social or diversion services related to the judicial system

4213. Carotid body tumor, excision of, as treatment for asthma

4314. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.

4415. Clothing, including adaptive clothing

4516. Cold therapy devices

4617. Comfort and convenience items including, but not limited to:

(i) Corn plasters

(ii) Garter belts

(iii) Incontinence products (diapers/liners/underpads) not needed for a medical condition; not covered for children age 3 and younger for persons younger than 3 years of age

- (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.

4718. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device

4819. Convalescent care.

1920. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services

2021. Cosmetic prosthetic devices

2422. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:

- (i) Reconstructive surgery to correct the results of an injury or disease
- (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
- (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
- (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
- (v) Surgery for the improvement of the functioning of a malformed body member
- (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.

2223. Dance therapy

2324. Dental services for adults age 21 and older

2425. Services provided solely or primarily for educational purposes, including, but not limited to:

- (i) Academic performance testing
- (ii) Educational tests and training programs
- (iii) Habilitation
- (iv) Job training

- (v) Lamaze classes
- (vi) Lovaas therapy
- (vii) Picture illustrations
- (viii) Remedial education
- (ix) Sign language instruction
- (x) Special education
- (xi) Tutors

2526. Encounter groups or workshops

2627. Environmental modifications including, but not limited to:

- (i) Air conditioners, central or unit
- (ii) Microclimate environmentals, and similar devices
- (iii) Pollen extractors
- (iv) Portable room heaters
- (v) Vacuum systems for dust filtering
- (vi) Water purifiers
- (vii) Water softeners

2728. Exercise equipment including, but not limited to:

- (i) Exercise equipment
- (ii) Exercycles (including cardiac use)
- (iii) Functional electrical stimulation
- (iv) Gravitronic traction devices
- (v) Gravity guidance inversion boots
- (vi) Parallel bars
- (vii) Pulse tachometers
- (viii) Tilt tables when used for inversion
- (ix) Training balls
- (x) Treadmill exercisers
- (xi) Weighted quad boots

29. Floor standers, meaning stationary devices not attached to a wheelchair base and not built into the operating system of a power wheelchair that are designed to hold in an upright position an Enrollee who uses a wheelchair and who has limited or no ability to stand on his own

2830. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-13-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:

- (i) Low-phenylalanine or phenylalanine-free
- (ii) Gluten-free
- (iii) Casein-free
- (iv) Ketogenic

2931. Generators and auxiliary power equipment that may be used to provide power for covered medical equipment or for any purpose

3032. Grooming services including, but not limited to:

- (i) Barber services
- (ii) Beauty services
- (iii) Electrolysis
- (iv) Hairpieces or wigs
- (v) Manicures
- (vi) Pedicures

3133. Hair analysis

3234. Home health aide services or services from any other individual or agency that are for the primary purpose of safety monitoring

3335. Home modifications and items for use in the home

- (i) Decks
- (ii) Enlarged doorways
- (iii) Environmental accessibility modifications such as grab bars and ramps
- (iv) Fences
- (v) Furniture, indoor or outdoor
- (vi) Handrails
- (vii) Meals

- (viii) Overbed tables
- (ix) Patios, sidewalks, driveways, and concrete slabs
- (x) Plexiglass
- (xi) Plumbing repairs
- (xii) Porch gliders
- (xiii) Rollabout chairs
- (xiv) Room additions and room expansions
- (xv) Telephone alert systems
- (xvi) Telephone arms
- (xvii) Telephone service in home
- (xviii) Televisions
- (xix) Tilt tables when used for inversion
- (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
- (xxi) Utilities (gas, electric, water, etc.)

~~3436~~. Homemaker services

~~3537~~. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)

~~3638~~. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service

~~3739~~. Hypnosis or hypnotherapy

~~3840~~. Icterus index

~~3940~~. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:

- (i) Cannot sit upright unassisted, and
- (ii) Infant/child care seats are too small or do not provide adequate support, and
- (iii) Safe automobile transport is not otherwise possible.

~~4041~~. Infertility or impotence services including, but not limited to:

- (i) Artificial insemination services
- (ii) Purchase of donor sperm and any charges for the storage of sperm
- (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
- (iv) Cryopreservation and storage of cryopreserved embryos
- (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
- (vi) Fertility drugs
- (vii) Home ovulation prediction kits
- (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
- (ix) Reversal of sterilization procedures
- (x) Any other service or procedure intended to create a pregnancy
- (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence

4442. Injections for the treatment of pain such as:

- (i) Facet/medial branch injections for therapeutic purposes
- (ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year
- (iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months
- (iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth

4243. Lamps such as:

- (i) Heating lamps
- (ii) Lava lamps
- (iii) Sunlamps
- (iv) Ultraviolet lamps

4344. Lifts as follows:

- (i) Automobile van lifts
- (ii) Electric powered recliner, elevating seats, and lift chairs

- (iii) Elevators
- (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.
- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators

4445. Ligation of mammary arteries, unilateral or bilateral

4546. Megavitamin therapy

4647. Motor vehicle parts and services including, but not limited to:

- (i) Automobile controls
- (ii) Automobile repairs or modifications

4748. Music therapy

4849. Nail analysis

4950. Naturopathic services

5051. Necropsy

5152. Organ and tissue transplants that have been determined experimental or investigational

5253. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-13-.04(1)(b)23., including, but not limited to:

- (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
- (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
- (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
- (iv) Any costs incurred by the next of kin of the donor
- (v) Any services provided outside of any "bundled rates" after the donor is discharged from the hospital

5354. Oxygen, except when provided under the order of a physician and administered under the direction of a physician

5455. Oxygen, preset system (flow rate not adjustable)

5556. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
5657. Play therapy
5758. Primal therapy
5859. Prophylactic use of stainless steel crowns
5960. Psychodrama
6061. Psychogenic sexual dysfunction or transformation services
6162. Purging
6263. Recertification of patients in Level 1 and Level II Nursing Facilities
6364. Recreational therapy
6465. Religious counseling
6566. Retreats for mental disorders
6667. Rolfing
6768. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
- (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
6869. Sensitivity training or workshops
6970. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
- (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines
 - (iv) Poof chairs
 - (v) Sensory balls

- (vi) Sky chairs
- (vii) Suspension swings
- (viii) Trampolines
- (ix) Therapy balls
- (x) Weighted blankets or weighted vests

7071. Sensory stimulation services

7472. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household

7273. Sex change or transformation surgery

7374. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices

7475. Sitter Services.

7576. Speech devices as follows:

- (i) Phone mirror handivoice
- (ii) Speech software
- (iii) Speech teaching machines

7677. Sphygmomanometers (blood pressure cuffs)

7778. Stethoscopes

7879. Supports

- (i) Cervical pillows
- (ii) Orthotrac pneumatic vests

7980. TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain

8081. Thermograms

8482. Thermography

8283. Time involved in completing necessary forms, claims, or reports

8384. Tinnitus maskers

8485. Toy equipment such as: Flash switches (for toys)

8586. Transportation costs as follows:

- (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
- (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
- (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)
- (iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.

8687. Transsexual surgery

8788. Urine drug screens in excess of twelve (12) during a calendar year

8889. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.

8990. Weight loss or weight gain and physical fitness programs including, but not limited to:

- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
- (ii) Health clubs, membership fees (e.g., YMCA)
- (iii) Marathons, activity and entry fees
- (iv) Swimming pools

9091. Wheelchairs and wheelchair accessories as follows:

- (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support) ~~Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.~~
- (ii) Standing wheelchairs. However a power standing system is covered as set out in the definition of Power Seating Accessories in Rule 1200-13-13-.01.
- (iii) Stair-climbing wheelchairs.

(iv) Recreational wheelchairs.

~~9492~~. Whirlpools and whirlpool equipment such as:

- (i) Action bath hydro massage
- (ii) Aero massage
- (iii) Aqua whirl
- (iv) Aquasage pump, or similar devices
- (v) Hand-D-Jets, or similar devices
- (vi) Jacuzzis, or similar devices
- (vii) Turbojets
- (viii) Whirlpool bath equipment
- (ix) Whirlpool pumps

GW10214150redline

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 11/14/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/13/14

Rulemaking Hearing(s) Conducted on: (add more dates). 08/13/14

Date: 11/14/2014

Signature: D. J. Gordon

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 11/14/14

Notary Public Signature: Cheryl D. Kline

My commission expires on: AUG 23 2016

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.

Harber H. Flatz III
Attorney General and Reporter

12/23/2014 Date

Department of State Use Only

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

Tre Hargett
Secretary of State

SECRETARY OF STATE
RECEIVED

2014 DEC 23 PM 3:08

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Standard power seating accessories and exclusions

STATUTORY AUTHORITY: Tennessee Code Annotated, §§ 71-5-105 and 71-5-109.

EFFECTIVE DATES: March 23, 2015 through June 30, 2015

FISCAL IMPACT: Minimal.

STAFF RULE ABSTRACT: According to the Bureau, the rules clarify and expand the coverage of power wheelchair accessories and exclude some common items from coverage, such as pillows, while clarifying other excluded items, such as breast implant removal. Definitions have been added to the rules to cover the exclusions changes.

Public Hearing Comments

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

There were no public comments received on these rules before or at the hearing.

Regulatory Flexibility Addendum

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

The rules are not anticipated to have a negative 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

15.

Department of State Division of Publications 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower Nashville, TN 37243 Phone: 615-741-2650 Email: publications.information@tn.gov	For Department of State Use Only	
	Sequence Number:	12-26-14
	Rule ID(s):	5857
	File Date:	12/23/14
	Effective Date:	3/23/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.01	Definitions
1200-13-14-.10	Exclusions

Rule 1200-13-14-.01 Definitions

(99) PERSONAL CARE SERVICES shall refer to an optional Medicaid benefit defined at 42 CFR 440.167 that, per the Tennessee Medicaid State Plan, Tennessee has not elected to include in the TennCare benefit package. To the extent that such services are available to children under the age of 21 when medically necessary under the provisions of EPSDT, the Bureau of TennCare designates home health aides as the providers qualified to deliver such services. When medically necessary, personal care services may be authorized outside of the home setting when normal life activities temporarily take the recipient outside of that setting. Normal life activity for a child under the age of 21 means routine work (including work in supported or sheltered work settings); licensed child care; school and school-related activities; religious services and related activities; and outpatient health care services (including services delivered through a TennCare home and community based services waiver program). The home health aide providing personal care services may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

(100) PHYSICIAN shall mean a person licensed pursuant to chapter 6 or 9 of title 63 of the Tennessee Code Annotated.

(101) POVERTY LEVEL shall mean the poverty level established by the Federal Government.

(102) Power Seating Accessories. Accessories available to modify a power wheelchair base are covered by TennCare when all listed criteria are met as follows:

(a) Power Seat Elevation System.

1. It is ordered by the Enrollee's treating physician.
2. An assessment conducted by a licensed physical therapist or licensed occupational therapist establishes that:
 - (i) The Enrollee has the cognitive ability and enough upper extremity function to carry out mobility-related activities of daily living such as feeding, grooming, dressing, and transferring; and
 - (ii) The activities for which the accessory will be used are conducted primarily in the enrollee's home.

(b) Power Standing System.

1. It is ordered by the Enrollee's treating physician.
2. An assessment conducted by a licensed physical therapist or licensed occupational therapist establishes that the Enrollee:
 - (i) Has a chronic condition that causes him to have limited or no ability to stand; and
 - (ii) Has a physical condition that allows him to stand, when supported, for meaningful periods of time, i.e., he will not suffer loss of blood pressure or have problems with bowel or urine retention; and
 - (iii) Has the cognitive ability and enough upper extremity function to carry out mobility-related activities of daily living such as feeding, grooming, dressing, and transferring; and

(iv) Meets at least one other complex rehabilitation criterion for a power seat accessory such as a tilt seat and also qualifies for a Group 3 base Power Wheelchair.

(103)Power Wheelchair Accessories. All powered wheelchair accessories not defined in this rule as Power Seating Accessories are excluded from TennCare coverage but may be provided by an MCO as a cost effective alternative service as defined in this rule.

(402104) PREMIUM. A specified amount of money that an insured person is required to pay on a regular basis in order to participate in a health plan.

(403105)PRESCRIBER. An individual authorized by law to prescribe drugs.

(404106)PRIMARY CARE PHYSICIAN shall mean a physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. A primary care physician is a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/ Gynecologist, or Family Practitioner.

(405107)PRIMARY CARE PROVIDER shall mean health care professional capable of providing a wide variety of basic health services. Primary care providers include practitioners of family, general, or internal medicine; pediatricians and obstetricians; nurse practitioners; midwives; and physician's assistant in general or family practice.

etc.

Rule 1200-13-14-.10 Exclusions

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21.

~~1. Air cleaners, purifiers, or HEPA filters~~

~~21. Audiological therapy or training~~

~~32. Augmentative communication devices~~

~~43. Beds and bedding equipment as follows:~~

~~(i) Powered air flotation beds, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress~~

~~For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in body position to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.~~

- (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - ~~(vii) Pillows, hypoallergenic~~
 - (viii) Springbase beds
 - ~~(ix) Vail beds, or similar bed~~
- ~~54. Bed baths and Sitz baths~~
64. Biofeedback
75. Chiropractor's services
86. Cushions, pads, and mattresses as follows:
- (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs
97. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.
108. Ear plugs
- ~~119. Floor standers~~
129. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by T.C.A. §56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight (BMI < 15 kg/m²) and physically incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

~~43~~10. Hearing services, including the prescribing, fitting, or changing of hearing aids

~~44~~11. Humidifiers (central or room) and dehumidifiers

~~45~~12. Inpatient rehabilitation facility services

~~46~~13. Medical supplies, over-the-counter, as follows:

- (i) Alcohol, rubbing
- (ii) Band-aids
- (iii) Cotton balls
- (iv) Eyewash
- (v) Peroxide
- (vi) Q-tips or cotton swabs

~~47~~14. Methadone clinic services

~~48~~15. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered

~~49~~16. Orthodontic services, except as defined in Rule 1200-13-13-.04(1)(b)5. or 1200-13-14-.04(1)(b)5.

~~20~~17. Certain pharmacy items as follows:

- (i) Agents when used for anorexia or weight loss
- (ii) Agents when used to promote fertility
- (iii) Agents when used for cosmetic purposes or hair growth
- (iv) Agents when used for the symptomatic relief of cough and colds
- (v) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
- (vi) Nonprescription drugs
- (vii) Generic buprenorphine, Subutex (buprenorphine), and Suboxone (buprenorphine/naloxone) in dosage amounts that exceed the covered dosage amounts listed below:
 - (I) Sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy; or
 - (II) Eight milligrams (8 mg) per day after the sixth (6th) month of therapy.

- (viii) Sedative hypnotic medications in dosage amounts that exceed the dosage amounts listed below:
 - (I) Fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta;
 - (II) One hundred forty milliliters (140 ml) per month of chloral hydrate; or
 - (III) One (1) bottle every sixty (60) days of Zolpimist.
- (ix) Allergy medications
- 2418. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
- 2219. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
- 2320. Radial keratotomy
- 2421. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
- 2522. Repair of DME items not covered by TennCare
- 2623. Repair of DME items covered under the provider's or manufacturer's warranty
- 2724. Repair of a rented DME item
- 2825. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
- 2926. Standing tables
- 3027. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery
 - (ii) LASIK
 - (iii) Orthoptics
 - (iv) Vision perception training

- (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
 - 1. Air cleaners, purifiers, or HEPA filters
 - 42. Alcoholic beverages
 - 23. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 34. Art therapy
 - 45. Autopsy
 - 56. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 67. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Pillows
 - (iii) Waterbeds
 - 78. Bioenergetic therapy
 - 89. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy
 - (iv) Breast implant removal that is not medically indicated
 - (v) Ear piercing
 - (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos
 - (viii) Tongue splitting or repair of tongue splitting

(ix) Wigs or hairpieces

910. Breathing equipment as follows:

- (i) Intrapulmonary Percussive Ventilators (IPVs)
- (ii) Spirometers, except for peak flow meters for medical management of asthma and incentive spirometers
- (iii) Vaporizers

4011. Carbon dioxide therapy

4412. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:

- (i) Day care
- (ii) Evening care centers
- (iii) Respite care, except as a component of Mental Health Crisis Services benefits or Hospice Care benefits as provided at Rule 1200-13-14-.04(1)(b).
- (iv) Rest cures
- (v) Social or diversion services related to the judicial system

4213. Carotid body tumor, excision of, as treatment for asthma

4314. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.

4415. Clothing, including adaptive clothing

4516. Cold therapy devices

4617. Comfort and convenience items including, but not limited to:

- (i) Corn plasters
- (ii) Garter belts
- (iii) Incontinence products (diapers/liners/underpads) not needed for a medical condition; not covered for children age 3 and younger for persons younger than 3 years of age

- (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.

4718. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device

4819. Convalescent care.

4920. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services

2021. Cosmetic prosthetic devices

2422. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:

- (i) Reconstructive surgery to correct the results of an injury or disease
- (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
- (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
- (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
- (v) Surgery for the improvement of the functioning of a malformed body member
- (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.

2223. Dance therapy

2324. Dental services for adults age 21 and older

2425. Services provided solely or primarily for educational purposes, including, but not limited to:

- (i) Academic performance testing
- (ii) Educational tests and training programs
- (iii) Habilitation
- (iv) Job training

- (v) Lamaze classes
- (vi) Lovaas therapy
- (vii) Picture illustrations
- (viii) Remedial education
- (ix) Sign language instruction
- (x) Special education
- (xi) Tutors

2526. Encounter groups or workshops

2627. Environmental modifications including, but not limited to:

- (i) Air conditioners, central or unit
- (ii) Micronaire environmentals, and similar devices
- (iii) Pollen extractors
- (iv) Portable room heaters
- (v) Vacuum systems for dust filtering
- (vi) Water purifiers
- (vii) Water softeners

2728. Exercise equipment including, but not limited to:

- (i) Exercise equipment
- (ii) Exercycles (including cardiac use)
- (iii) Functional electrical stimulation
- (iv) Gravitronic traction devices
- (v) Gravity guidance inversion boots
- (vi) Parallel bars
- (vii) Pulse tachometers
- (viii) Tilt tables when used for inversion
- (ix) Training balls
- (x) Treadmill exercisers
- (xi) Weighted quad boots

29. Floor standers, meaning stationary devices not attached to a wheelchair base and not built into the operating system of a power wheelchair that are designed to hold in an upright position an Enrollee who uses a wheelchair and who has limited or no ability to stand on his own

2830. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-14-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:

- (i) Low-phenylalanine or phenylalanine-free
- (ii) Gluten-free
- (iii) Casein-free
- (iv) Ketogenic

2831. Generators and auxiliary power equipment that may be used to provide power for covered medical equipment or for any purpose

3032. Grooming services including, but not limited to:

- (i) Barber services
- (ii) Beauty services
- (iii) Electrolysis
- (iv) Hairpieces or wigs
- (v) Manicures
- (vi) Pedicures

3433. Hair analysis

3234. Home health aide services or services from any other individual or agency that are for the primary purpose of safety monitoring

3335. Home modifications and items for use in the home

- (i) Decks
- (ii) Enlarged doorways
- (iii) Environmental accessibility modifications such as grab bars and ramps
- (iv) Fences
- (v) Furniture, indoor or outdoor
- (vi) Handrails
- (vii) Meals

- (viii) Overbed tables
- (ix) Patios, sidewalks, driveways, and concrete slabs
- (x) Plexiglass
- (xi) Plumbing repairs
- (xii) Porch gliders
- (xiii) Rollabout chairs
- (xiv) Room additions and room expansions
- (xv) Telephone alert systems
- (xvi) Telephone arms
- (xvii) Telephone service in home
- (xviii) Televisions
- (xix) Tilt tables when used for inversion
- (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
- (xxi) Utilities (gas, electric, water, etc.)

3436. Homemaker services

3537. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)

3638. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service

3739. Hypnosis or hypnotherapy

~~3840. Icterus index~~

3940. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:

- (i) Cannot sit upright unassisted, and
- (ii) Infant/child care seats are too small or do not provide adequate support, and
- (iii) Safe automobile transport is not otherwise possible.

4041. Infertility or impotence services including, but not limited to:

- (i) Artificial insemination services

- (ii) Purchase of donor sperm and any charges for the storage of sperm
- (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
- (iv) Cryopreservation and storage of cryopreserved embryos
- (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
- (vi) Fertility drugs
- (vii) Home ovulation prediction kits
- (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
- (ix) Reversal of sterilization procedures
- (x) Any other service or procedure intended to create a pregnancy
- (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence

4142. Injections for the treatment of pain such as:

- (i) Facet/medial branch injections for therapeutic purposes
- (ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year
- (iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months
- (iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth

4243. Lamps such as:

- (i) Heating lamps
- (ii) Lava lamps
- (iii) Sunlamps
- (iv) Ultraviolet lamps

4344. Lifts as follows:

- (i) Automobile van lifts
- (ii) Electric powered recliner, elevating seats, and lift chairs
- (iii) Elevators

- (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.
- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators

4445. Ligation of mammary arteries, unilateral or bilateral

4546. Megavitamin therapy

4647. Motor vehicle parts and services including, but not limited to:

- (i) Automobile controls
- (ii) Automobile repairs or modifications

4748. Music therapy

4849. Nail analysis

4950. Naturopathic services

5051. Necropsy

5152. Organ and tissue transplants that have been determined experimental or investigational

5253. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)23., including, but not limited to:

- (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
- (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
- (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
- (iv) Any costs incurred by the next of kin of the donor
- (v) Any services provided outside of any "bundled rates" after the donor is discharged from the hospital

5354. Oxygen, except when provided under the order of a physician and administered under the direction of a physician

5455. Oxygen, preset system (flow rate not adjustable)

5556. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
5657. Play therapy
5758. Primal therapy
5859. Prophylactic use of stainless steel crowns
5960. Psychodrama
6061. Psychogenic sexual dysfunction or transformation services
6162. Purging
6263. Recertification of patients in Level 1 and Level II Nursing Facilities
6364. Recreational therapy
6465. Religious counseling
6566. Retreats for mental disorders
6667. Rolfing
6768. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
- (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
6869. Sensitivity training or workshops
6970. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
- (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines
 - (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs

- (vii) Suspension swings
- (viii) Trampolines
- (ix) Therapy balls
- (x) Weighted blankets or weighted vests

7071. Sensory stimulation services

7472. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household

7273. Sex change or transformation surgery

7374. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices

7475. Sitter Services.

7576. Speech devices as follows:

- (i) Phone mirror handivoice
- (ii) Speech software
- (iii) Speech teaching machines

7677. Sphygmomanometers (blood pressure cuffs)

7778. Stethoscopes

7879. Supports

- (i) Cervical pillows
- (ii) Orthotrac pneumatic vests

7980. TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain

8081. Thermograms

8482. Thermography

8283. Time involved in completing necessary forms, claims, or reports

8384. Tinnitus maskers

8485. Toy equipment such as: Flash switches (for toys)

8586. Transportation costs as follows:

- (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
- (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
- (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)
- (iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.

8687. Transsexual surgery

8788. Urine drug screens in excess of twelve (12) during a calendar year

8889. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.

8990. Weight loss or weight gain and physical fitness programs including, but not limited to:

- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
- (ii) Health clubs, membership fees (e.g., YMCA)
- (iii) Marathons, activity and entry fees
- (iv) Swimming pools

9091. Wheelchairs and wheelchair accessories as follows:

- (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support) ~~Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.~~
- (ii) Standing wheelchairs, However a power standing system is covered as set out in the definition of Power Seating Accessories in Rule 1200-13-14-.01.

(iii) Stair-climbing wheelchairs,

(iv) Recreational wheelchairs,

9492. Whirlpools and whirlpool equipment such as:

(i) Action bath hydro massage

(ii) Aero massage

(iii) Aqua whirl

(iv) Aquasage pump, or similar devices

(v) Hand-D-Jets, or similar devices

(vi) Jacuzzis, or similar devices

(vii) Turbojets

(viii) Whirlpool bath equipment

(ix) Whirlpool pumps

GW10114150redline

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 11/14/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/13/14

Rulemaking Hearing(s) Conducted on: (add more dates). 08/13/14

Date: 11/14/2014

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 11/14/14

Notary Public Signature: [Handwritten Signature]

My commission expires on: AUG 23 2016

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]
Attorney General and Reporter

12/23/2014
Date

Department of State Use Only

Filed with the Department of State on: 12/23/14

Effective on: 3/23/15

[Handwritten Signature]

Tre Hargett
Secretary of State

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Sequence Number: 12-13-14
 Rule ID(s): _____
 File Date: 12/10/2014
 Effective Date: 12/10/2014

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

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Division of Postsecondary School Authorization
Contact Person:	Julie M. Woodruff
Address:	Parkway Towers, Suite 1900, 404 James Robertson Parkway, Nashville
Zip:	37243-0830
Phone:	(615) 253-8857
Email:	julie.woodruff@tn.gov

Type of Action on Rule:

Stay of Effective Date of Rules

Rule Filing Date: (mm/dd/yy)
 Rule Original Effective Date: (mm/dd/yy)
 Length of Stay (not to exceed 75 days): _____
 New Effective Date of Rule Filing: (mm/dd/yy)

Notice of Withdrawal of Stay

Stay Filing Date: (mm/dd/yy)
 Stay Effective Date: (mm/dd/yy)
 New Effective Date of Rule Filing: (mm/dd/yy)

Notice of Withdrawal of Rules

Rule Filing Date: 09/02/2014
 Rule Effective Date: 12/31/2014

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/Rule Title per row)

Chapter Number	Chapter Title
1540-01-02	Authorization and Regulation of Postsecondary Institutions and Their Agents
Rule Number	Rule Title
1540-01-02-.03	Definitions
1540-01-02-.05	Exemption
1540-01-02-.07	Institutional Applications
1540-01-02-.08	Regulations for Specific School Types
1540-01-02-.11	Institutional Catalog

1540-01-02-13	Enrollment Agreements and Disclosure Standards
1540-01-02-14	Financial Standards
1540-01-02-16	Personnel and Instructor Qualifications
1540-01-02-19	Fair Consumer Practices and Student Complaints
1540-01-02-26	Return of Regulatory Fees

Date: 12/10/2014

Signature: _____

Richard G. Rhoda

Name of Officer: Dr. Richard G. Rhoda

Title of Officer: Executive Director



My Commission Expires AUG. 23, 2016

Subscribed and sworn to before me on: 12-10-14

Notary Public Signature: _____

Corsina Dickson-Wiley

My commission expires on: 08-23-2016

Department of State Use Only

Filed with the Department of State on: 12/10/2014

Tre Hargett

Tre Hargett
Secretary of State

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12-27-14

JUDD MATHENY
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47TH LEGISLATIVE DISTRICT
COFFEE & WARREN COUNTIES

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House of Representatives
State of Tennessee
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CHAIRMAN, GOVERNMENT
OPERATIONS
AGRICULTURE & NATURAL
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December 22, 2014

Tre Hargett, Secretary of State
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SECRETARY OF STATE

Re: Tennessee Board of Optometry Rule Number 1045-02-.17

Secretary Hargett,

This letter serves as notice that on Wednesday December 17, 2014, the Joint Government Operations Committee of the Tennessee General Assembly exercised the authority conferred by Tennessee Code Annotated Section 4-5-226(j)(1) and expressed its disapproval of Tennessee Board of Optometry Rule Number 1045-02-.17 by voting to allow the Rule to expire upon its established expiration date. Tennessee Board of Optometry Rule Number 1045-02-.17 is currently subject to a 60-day stay and will take effect on January 15, 2015. Pursuant to Tennessee Code Annotated Section 4-5-226(a) and passage of the 2015 Rules Omnibus Bill, the established expiration date of Tennessee Board of Optometry Rule Number 1045-02-.17 is June 30, 2015. You are requested to assist the committee in complying with the requirements of Tennessee Code Annotated Section 4-5-226(j)(1) by posting notice on the Administrative Register web site of the Committee's disapproval of Tennessee Board of Optometry Rule Number 1045-02-.17 by a vote to allow the rule to expire on its scheduled termination date of June 30, 2015.

Sincerely,

Judd Matheny