G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Higher Education Commission (THEC)
DIVISION:	Postsecondary State Authorization
SUBJECTS:	Authorization and Regulation of Postsecondary Education Institutions and Their Agents; Regulation of Postsecondary Educational Institutions With Optional Expedited Authorization (OEA)
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-7-2005(a)(6)
EFFECTIVE DATES:	October 3, 2016 through April 1, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to THEC, the revisions to Rule Chapter 1540-01-02 are intended to improve consistency, organization, clarity, and notice to institutions. The internal consistency as well as consistency between the rules and 2016 Public Acts Chapter 868, the Higher Education Authorization Act of 2016 ("HEM") was improved by reviewing the rules alongside the statutes. The organization of the rules was enhanced by moving similar topics under a single section, for example, all exemption language will now appear in Rule 1540-01-02-.05. Also, language was added to clarify requirements, such as in Rule 1540-01-02-.13 where the order of enrollment documentation is explained. Other rules were expanded to provide additional information where the rules were previously silent. For example, the rules now provide notice to institutions of what will be required from an institution that changes its name. The rule revisions also include the addition of Rule Chapter 1540-01-10. This revision will ensure the orderly implementation of the optional expedited authorization process created by the HEM. When drafting the revisions, THEC considered comments made during meetings held on May 5 and 6 with authorized institutions and sought to improve the overall effectiveness of the Division of Postsecondary State Authorization ("DPSA"), the office and

Commission Staff responsible for oversight of the HEM and the related 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)

These rule revisions will have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The revisions to Rule Chapter 1540-01-02 are intended to improve consistency, organization, clarity, and notice to institutions. The internal consistency as well as consistency between the rules and 2016 Public Acts Chapter 868, the Higher Education Authorization Act of 2016 ("HEAA") was improved by reviewing the rules alongside the statutes. The organization of the rules was enhanced by moving similar topics under a single section, for example, all exemption language will now appear in Rule 1540-01-02-.05. Also, language was added to clarify requirements, such as in Rule 1540-01-02-.13 where the order of enrollment documentation is explained. Other rules were expanded to provide additional information where the rules were previously silent. For example, the rules now provide notice to institutions of what will be required from an institution that changes its name.

The rule revisions also include the addition of Rule Chapter 1540-01-10. This revision will ensure the orderly implementation of the optional expedited authorization process created by the HEAA.

When drafting the revisions, the Tennessee Higher Education Commission ("THEC") took into consideration comments made during meetings held on May 5 and 6 with authorized institutions and sought to improve the overall effectiveness of the Division of Postsecondary State Authorization ("DPSA"), the office and Commission Staff responsible for oversight of the HEAA and the related rules.

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

The HEAA passed the General Assembly earlier this year. HEAA contemplates the promulgation of new rules as a result of: (1) a directive to the Executive Director to consider the efficiency, adequacy, and overall effectiveness of the current regulatory function and (2) substantive changes to the regulatory framework in Title 49, Chapter 7, Part 20. The HEAA took effect for purposes of promulgating rules on April 19, 2016, and for all other purposes will take effect on October 1, 2016.

When proposing these rule revisions, THEC relies on T.C.A. § 49-7-2005(a)(6), which states that THEC has the power and duty to: "Promulgate rules, regulations, performance standards and procedures necessary or appropriate for the conduct of its work and the implementation of this part, which rules and regulations shall have the force of law, and to hold hearings as it deems advisable or as required by law in developing the rules, regulations and procedures or in aid of any investigation or inquiry." Additionally, the HEAA at Section 5, directs THEC "to promulgate rules to effectuate the purposes of [Part 20]" and mandates that the "rules shall be promulgated in accordance with the Uniform Administrative Procedures Act."

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

These rule revisions will affect the operation of postsecondary educational institutions subject to the provisions of Title 49, Chapter 7, Part 20. DPSA held meetings with authorized postsecondary educational institutions on May 5 and 6. Attendees provided feedback on what the institution representatives liked and disliked about the regulatory function and which rules were duplicitous or needed clarification. The feedback provided by institutions was taken into consideration when drafting the rules, and THEC will receive additional feedback during the rulemaking hearing process later this year.

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

None

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

THEC anticipates a reduction of approximately 1.6 million dollars in fee revenues. These fees are credited to a special agency account to administer Part 20. The revenue reduction is due to the change in metric used to calculate annual fees and the implementation of the optional expedited authorization process. It is expected that THEC will adjust staffing levels within DPSA in response to the revenue loss.

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

Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization
Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization

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

Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization
Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization
Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs

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

Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization
(615) 532-7495; stephanie.bellard@tn.gov
Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization
(615) 253-8857; julie.woodruff@tn.gov
Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs
(615) 741-7571; scott.sloan@tn.gov

All persons are located at:
Tennessee Higher Education Commission
Parkway Towers, Suite 1900
404 James Robertson Parkway
Nashville, TN 37243-0830

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

Additional information available upon request.

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

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Sequence Number: 08-15-16
Rule ID(s): 6281-6282
8/15/16 File Date (effective date): 10/3/16
End Effective Date: 4/1/17

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Division of Postsecondary State Authorization
Contact Person:	Julie M. Woodruff
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Rule Type:
X Emergency Rule

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

Statement of Necessity:

The enclosed rules are submitted as Emergency Rules as a result of 2016 Public Acts Chapter 868, referred to as The Higher Education Authorization Act of 2016 ("HEAA"), that passed the General Assembly earlier this year. The HEAA requires the promulgation of new rules as a result of: (1) a directive to the Executive Director to consider the efficiency, adequacy, and overall effectiveness of the current regulatory function and (2) substantive changes to the regulatory framework in Title 49, Chapter 7, Part 20. The HEAA took effect for purposes of promulgating rules on April 19, 2016, and for all other purposes, the HEAA will take effect on October 1, 2016.

Pursuant to T.C.A. § 49-7-2005(a)(6), the Tennessee Higher Education Commission ("THEC") has the authority to promulgate rules "necessary or appropriate for the conduct of its work and the implementation of [Part 20] . . . and to hold hearings as it deems advisable or as required by law in developing the rules." Additionally, the HEAA at Section 5, directs THEC "to promulgate rules to effectuate the purposes of [Part 20]" and mandates that the "rules shall be promulgated in accordance with the Uniform Administrative Procedures Act."

Of relevance to this discussion are three points. Firstly, the HEAA at Section 2 directs the THEC Executive Director to reexamine the Part 20 regulatory function considering specifically, "efficiency, adequacy, and overall effectiveness." Secondly, in Section 6, the HEAA eliminates the explicit use of gross tuition revenues as a metric for determining the amount of fees. As all reauthorization fees are currently set in rule by this metric, rule revisions are necessary. Thirdly, the HEAA created Optional Expedited Authorization as an alternative to the current authorization process. Rules are required to ensure this new alternative is available to institutions on the first possible business day, that is, October 3, 2016.

These points highlight the need created by the passage of the HEAA for Emergency Rules. Given the October 1, 2016 effective date of substantive changes, there is not adequate time to complete the traditional rulemaking hearing process set forth in the Uniform Administrative Procedures Act ("UAPA"). At the time that the Commission approved the enclosed rules for filing as Emergency Rules, it also approved the same rules for

purposes of filing the Notice of Rulemaking Hearing. THEC expects to conduct a rulemaking hearing as soon as is allowed by the UAPA so that it can consider comments of interested institutions and other parties and adopt 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 make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Repealed and Amended:

Chapter Number	**Chapter Title**
1540-01-02	Authorization and Regulation of Postsecondary Education Institutions and Their Agents
Rule Number	**Rule Title**
1540-01-02-.01	Preface
1540-01-02-.02	Role of Commission, Committee and Staff
1540-01-02-.03	Definitions
1540-01-02-.04	Determinations for Required Authorization
1540-01-02-.05	Exemption
1540-01-02-.06	Minimum Authorization Standards and Requirements
1540-01-02-.07	Institutional Applications
1540-01-02-.08	Regulations for Specific School Types
1540-01-02-.09	Annual Renewal for Authorization
1540-01-02-.10	Required Minimum Standards
1540-01-02-.11	Institutional Catalog
1540-01-02-.12	Admissions Standards
1540-01-02-.13	Enrollment Agreements and Disclosure Standards
1540-01-02-.14	Financial Standards
1540-01-02-.15	Institutional and Student Records
1540-01-02-.16	Personnel and Instructor Qualifications
1540-01-02-.17	Cancellation and Refund
1540-01-02-.18	Prohibited Acts
1540-01-02-.19	Fair Consumer Practices and Student Complaints
1540-01-02-.20	Advertising and Solicitation
1540-01-02-.21	Authorization Status
1540-01-02-.22	Causes for Adverse Action
1540-01-02-.23	Institutional Closure
1540-01-02-.24	Tuition Guarantee Fund (TGF)
1540-01-02-.25	Fees
1540-01-02-.26	Reserved

New:

Chapter Number	**Chapter Title**
1540-01-10	Regulation of Postsecondary Educational Institutions with Optional Expedited Authorization (OEA)
Rule Number	**Rule Title**
1540-01-10-.01	Incorporation of Rules
1540-01-10-.02	Definitions
1540-01-10-.03	Eligibility and Application Requirements
1540-01-10-.04	Required Notifications to Commission Staff
1540-01-10-.05	Denial of OEA Status
1540-01-10-.06	Revocation of OEA Status
1540-01-10-.07	Complaints
1540-01-10-.08	Filing Method and Requirements
1540-01-10-.09	Fees

RULES OF THE TENNESSEE HIGHER EDUCATION COMMISSION
CHAPTER 1540-01-02
AUTHORIZATION AND REGULATION OF REGULARLY AUTHORIZED POSTSECONDARY EDUCATIONAL INSTITUTIONS ~~AND THEIR AGENTS~~

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1540-01-02-.01 PREFACE.

(1) The Commission invites continuous, constructive cooperation with institutions, civic organizations, governmental agencies, Better Business Bureaus, students and others to ensure the enforcement and improvement of these standards for better service to all consumers. The observance of these rules is the responsibility of each institution for the inherent advantage to each institution and for the common good of all institutions.

(2) These rules are complementary to the Tennessee ~~Postsecondary Education Authorization Act~~Higher Education Authorization Act of 2016 at Title 49, Chapter 7, Part 20. Institutions and agents must comply with the current language of the Act and these rules ~~Many sections of the Act are so specific that the need for related rules is diminished or negated. Institutions or agents must comply with the current language of the Act and these rules as the total administrative reference~~.

(3) These rules are filed as emergency rules and shall be effective on October 3, 2016, the first business day following the effective date of substantive changes made by the Tennessee Higher Education Authorization Act of 2016. ~~Unless otherwise noted, general statements shall be in reference to institutions, businesses, services or any entity~~

~~seeking, holding or required to hold a certificate of authorization under the Act and these regulations.~~

Authority: T.C.A. § 49-7-2014.

1540-01-02-.02 ROLE OF THE COMMISSION, EXECUTIVE DIRECTOR, COMMITTEE, AND COMMISSION STAFF.

(1) Role of the Tennessee Higher Education Commission (THEC or Commission):

(a) The ~~Tennessee Higher Education~~ Commission at each quarterly meeting shall consider recommendations from ~~the Commission staff and/or Postsecondary Education Institution Committee~~the Committee on Postsecondary Educational Institutions ~~regarding all~~ and the Division of Postsecondary State Authorization regarding authorizations~~,~~, program approvals ~~awarding educational credentials (including authority to grant degrees)~~ and any other matter at the request of the Commission's Executive Director.

~~(a) No institution may solicit, recruit, award credentials or operate as a postsecondary educational institution until such authorization is granted by affirmative vote of the Commission.~~

(2) Role of the Tennessee Higher Education Commission Executive Director:

(a) The Executive Director is empowered to take any urgent action in furtherance of the Act~~, based on these rules and Act, necessary to conduct this consumer protection regulatory function,~~ during the periods between ~~authorization action meetings of the~~ Commission meetings, ~~subject to ratification by the Commission~~ provided that:

1. the Executive Director ~~shall give~~gives written notice of such action to the affected party;

2. the Executive Director ~~shall instruct~~notifies the affected party that they may notify the Commission within ten (10) business days ~~ten (10) days~~ if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final; and

3. at the same time the Executive Director ~~shall give~~gives written notice of the action to members of the Commission.

(b) Whenever ~~the~~ Commission ~~authorization~~ staff cannot resolve a complaint or a dispute involving the Act or ~~to the administration of~~ these rules, the Executive Director upon a written request from an aggrieved party ~~which~~ that in the view of the Executive Director is justifiable~~,~~ will provide a review and/or hearing for parties involved prior to presentation of the unresolved complaint or dispute to the Commission.

(c) On the ~~the~~ advice of Commission Staff ~~of the Committee on Postsecondary Education Institutions,~~ the Executive Director, in consultation with the Commission, ~~in consultation with the Commission,~~ is authorized to ~~recommend the~~ waive~~ing of deadlines or~~ these rules~~regulations developed pursuant to this Chapter,~~ upon well- documented extraordinary cause~~,~~, where necessary to protect ~~carry out the provisions of this part in~~ the public interest,

and when~~re~~ consistent with ~~T.C.A. §§ 49-7-2001 etseq.~~the Act.

(d) The Executive Director may exempt a program or activity from authorization or from compliance with a specific ~~regulation~~ rule if such an exemption can be demonstrated to be in the public ~~good or~~ interest. Such exemptions should be temporary and narrow in scope and be subject to annual review.

(e) The Executive Director is empowered to act in the following matters, subject to a hearing and review by the Commission upon the request of the aggrieved party in the manner provided by T.C.A. § 49-7-2010(b)~~.~~:

1. ~~A~~assess fines under ~~this Part~~the Act and these rules~~.~~;

2. ~~I~~intervene to alter, place conditions on, suspend, or revoke, in full or in part, an institution's or agent's authorization to operate; and~~.~~

3. ~~I~~issue temporary or ~~,~~ conditional~~, limited, or probationary~~ authorization.

~~(f) Advise the Tennessee Student Assistance Corporation to notify the appropriate lending and guarantee agencies of the institution's closure.~~

(3) Role of the ~~Postsecondary Education Institution Committee~~Committee on Postsecondary Educational Institutions (Committee):

(a) The ~~Postsecondary Education Institution Committee~~Committee shall meet quarterly or ~~y or at other times on~~ at the call of the Chairman of ~~said~~ the Committee, at the call of a majority of the Committee ~~or pursuant to the call of the majority of Committee~~ members, or at the call of the Chairman of the Commission to serve as an advisory committee to the Commission. ~~, and make recommendations on:~~

(b) At meetings, the Committee may take any action delegated to it by the Commission pursuant to T.C.A. § 49-7-207, including, but not limited to, making recommendations on:

1. ~~all initial~~ applications for ~~temporary~~ authorization;

2~~2~~. ~~all applications for regular authorization;~~

~~3. all applications for reauthorization;~~

~~4. the awarding of educational credentials~~applications for program approvals;

3~~5~~. proposed rules; and

4. consideration of such other matters relating to the ~~Postsecondary Education~~ Act at the request of the ~~Commission's~~ Executive Director~~.~~;

(c) The Committee~~,~~ and, as needed, other experts appointed by the Executive Director, ~~shall~~ may participate in institutional site visits for purposes of evaluating compliance with ~~legislation and rules~~the Act and these rules;

(d) The Committee shall exercise such other powers and undertake such other

obligations as are delegated to it by the Commission under the provisions of the Act ~~Part 20 of this chapter. Such delegations shall include the authority to initiate and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval and/or disapproval by the Commission~~.

(e) The Chairman of the Committee may appoint sub-committees as needed.

(4) Role of the Commission Sstaff:

~~(a) Designated Commission staff members shall oversee and administer for purposes of compliance TCA §§ 49-7-2001 et seq. and the related Postsecondary Regulations chapter 1540-01-02.~~

(~~a~~b) Beginning ~~July 1, 1997~~October 1, 2016, the office and Commission Sstaff responsible for oversight of the Act~~TCA §§ 49-7-2001 et seq.~~ and Rule Chapters 1540-01-02 and 1540-01-10 ~~the related Postsecondary Regulations chapter 1540- 01-02~~ shall be officially referred to as the Tennessee Higher Education Commission, ~~Office of Postsecondary School Authorization (Professional, Business, Vocational and Career)~~Division of Postsecondary State Authorization (DPSA).

(~~e~~b) Commission Staff shall ~~P~~perform site visits and/or audits to review, inspect, and investigate locations as necessary to ensure compliance with the Act and these rules~~, institutions seeking, holding or required to hold a certificate of authorization for verification of compliance~~. ~~This includes but is not limited~~Site visits or audits may be conducted at the discretion of Commission Staff for reasons including, but not limited to, ~~to~~ ~~initial~~ authorization determinations ~~for new institutions~~, program approvals,~~new program reviews, authorization inspections for nonexempt Tennessee institutions, follow up to written and signed~~ complaints, investigations,~~or adverse publicity~~ compliance checks, or any situation that may adversely affect students or ~~consumers~~people at the institution.

(~~d~~c) Commission Staff shall ~~I~~investigate as necessary any activity believed to create a physical presence ~~all non-authorized postsecondary educational activities operating~~ in Tennessee to verify adherence to the Act and these rules ~~by all institution~~or to determine whether an exemption is appropriate~~s not exempted by the Act~~.

(~~e~~d) Commission Staff shall ~~E~~establish ~~a deadline~~due dates for submission of all fees, applications,~~initial authorization packages, new program applications~~ and ~~any~~ other materials to be included on the agenda for ~~each quarterly~~ meetings of the ~~Postsecondary~~ Committee. ~~(Institutional Applications(1540-01-02-.07)).~~

(~~f~~e) Commission Staff may ~~S~~share with state or federal agencies information ~~for~~on institutions seeking, holding, or required to ~~hold a certificate of authorization~~be authorized by the Commission as well as any~~and~~ unauthorized educational operations. Commission Staff may ~~P~~s~~rovide state or federal agencies information pertaining to school closures under any condition. S~~hare with appropriate accrediting bodies any adverse action recommended or taken by Commission Staff, ~~taken by~~ the Executive Director, Committee, or Commission.

(f) Commission Staff may recommend that the Executive Director take adverse action as described in Rule .22 of these rules.

Authority: T.C.A. §§ 49-7-2004 and 49-7-2014.

1540-01-02-.03 DEFINITIONS.

~~(1) The following definitions are complementary to definitions in T.C.A. § 49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:~~

(~~a~~1) "Ability-to-benefit" or "ATB" as ~~used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means~~an adjective describes:

(a) a ~~student~~s~~, regardless of financial condition,~~ who ~~do not possess~~has not provided proof of receiving a ~~a~~ high school diploma ~~diploma or GED~~or equivalency, but who have~~s~~ demonstrated by successfully passing an ability-to-benefit test that the student~~y~~ ~~can~~ possesses the cognitive or physical skills needed to benefit ~~profit materially or personally~~ from a course or ~~certain course of study~~certificate or diploma program; or

(b) a test given by an authorized institution to determine whether a student possesses the cognitive or physical skills to benefit from a certificate or diploma program.~~.~~

(~~b~~2) "Academic" as an adjective describing a degree~~in description of a program or institution~~ means a degree that ~~which~~ is organized primarily for academic training or transfer. Academic degrees include: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.

(3) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs by private educational associations of regional and national scope that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.

(~~c~~4) "Act" means the Tennessee ~~Postsecondary Education Authorization Act of 1974~~Higher Education Authorization Act of 2016, ~~Tennessee Code Annotated~~T.C.A. §§ 49-7-2001, et seq., as amended.

(~~d~~5)) "Adverse action" means action taken by the Executive Director or Commission to ~~penalize~~fine, limit, change, suspend, or cause to cease activity that is ~~in non-~~not compliance~~t~~ with the Act and these rules. Such adverse action ~~may include but not be limited to~~includes fines of five hundred dollars ($500) per violation per day~~;~~, suspension of activity~~;~~, conditional authorization, or revocation of authorization or approval.

(~~e~~6) "Agent" means ~~a person employed full- or part-time by the institution, whether the institution is located within or without the state of Tennessee, to act as representative, solicitor, broker, or independent contractor to directly procure or induce people to become students or enrollees for the institution at an off-campus location~~ any person representing a postsecondary educational institution for payment, who solicits in any form and enrolls, or seeks to enroll, a student for education offered by an authorized institution, or offers to

award educational credentials, for remuneration, on behalf of any such institution. Persons owning an interest in an institution and the institution's full-time employees and directors shall not be considered agents under this part.

(7) "Agent's permit" means a nontransferable written authorization issued to a natural person by Commission Staff that allows that person to solicit, recruit, or enroll students for education in an authorized postsecondary educational institution.

(8) "Articulation and transfer of credit agreement" means an arrangement between two (2) higher education institutions that is approved and signed by authorized institutional representatives and constructed by faculty in the discipline that (1) equates for transfer of a defined set or block of academic credits that will meet requirements of a specified program at a degree-awarding institution or (2) provides that a specific credential from one institution will meet the admission education requirement for a program leading to a higher credential at a second institution.

(f9) "Associate's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours, or ninety (90) quarter credit hours of instruction, or the equivalent.

(10g) "Authorization to operate" means approval of the Commission to operate or to contract to operate a postsecondary educational institution in this state as described in T.C.A. § 49-7-2007(1) – (3) or (5). Authorization to operate is permission or licensure to operate for a specified time atin a specified place(s)location. Institutions shall not use Aan authorization to operateinstitution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the letter or certificate which specify or to connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."

(11h) "Authorization site visit" means an institutional site visit conducted by Commission staffCommission Staff or Postsecondary a Committee members to verify a location or program is compliancet with Postsecondary Education Authorizationthe Act and these rules of 1974, Tennessee Code Annotated §§ 49-7-2001, et.seq. as amended and the chapter 1540-01-02 of the Postsecondary Regulations. The authorization visit is commonly called a 'site visit'.

(12i) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least one hundred and twenty (l120) semester credit hours, or one hundred and eighty (180)l80 quarter hours, or the equivalent.

(13j) "Certificate program" generally means one (1) or more technical courses usually completed in one (1) to twenty-six (26) weeks, or up to and including five hundred (500) contact contact hours normally with a single skill objective.

(k) "Certified" when used to modify audit refers to an audit in accordance with Generally Accepted Auditing Standards (GAAS) and in accordance with the auditing standards set forth in the book, "Government Auditing Standards" issued by the Comptroller of the United States (often referred to as the "yellow book" standards). If, However, the entity is required for other reasons to have conducted a certified audit in accordance with O.M.B., Circular A-133, such an audit shall be an acceptable substitute for the audit required pursuant to these regulations.

(14) "Clock Hour" has the same meaning as contact hour.

(~~l~~15) "Closed enrollment" means instruction provided ~~between an educator or educational service~~ to a group or business ~~on a private contractual bases~~by a postsecondary educational institution, whereby public solicitation does not occur and the ~~instructional provider~~institution is given a list of enrollees to train at no cost to the students.

(~~m~~16) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary educational institution offering courses of study leading to a degree. ~~traditional undergraduate college degrees Some examples of traditional degrees are: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, and Bachelor of Fine Arts.~~

(~~n~~17) "Commission" means the Tennessee Higher Education Commission.

(18) "Committee" means the Committee on Postsecondary Educational Institutions.

(19) "Completion rate" shall have the same meaning as "graduation rate," and shall mean the number of completions as a percentage of the number of students not currently enrolled minus the number of withdrawals due to special circumstances, that is, Completion Rate = Number of Completions/(Number Not Currently Enrolled - Special Circumstance Withdrawals) × 100.

(~~o~~20) "Contact h~~H~~our"- means a sixty (60) minute period of time that contains at least fifty (50) minutes of actual directed or supervised instructional time. ~~(clock hour) refers to actual directed or supervised instructional time, not to be less than 50 minutes for every 60 minutes of time.~~

~~(p) "Credential" refers to educational credentials which include but are not limited to: certificates, diplomas, letters of designation, degrees, transcripts or any other papers generally taken to signify progress or completion of education / training at a postsecondary educational institution.~~

(~~q~~21) "Degree" means ~~letters of designation or~~an educational credential ~~or a title~~ from a postsecondary educational institution with ~~level program acceptable to and so authorized by the Commission and/or an accrediting body recognized by the U.S. Department of Education. Typically used in some form is~~ the term 'associate', 'bachelor', 'masters,' specialist, or 'doctor' in the credential designation.

(22) "Degree-granting postsecondary educational institution" includes institutions offering education or training above the high school level and where the institution awards degrees, such as associate, bachelors, masters, specialist, or doctoral degrees.

(~~r~~23) "Diploma program" means a program of instruction offering technical and some basic course work. ~~Some g~~General education ~~or peripheral~~ courses may be included. ~~The p~~Program requirements~~shall~~ generally range ~~for~~from more than five hundred (500) ~~contact~~ contact hours ~~but~~to less than the ~~contact~~ requirements for ~~the~~an Associate~~s~~ degree.

(24) "Distance learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.

(25) "Division of Postsecondary State Authorization" or "DPSA" means the office and Commission staff responsible for oversight of the Act and Rule Chapters 1540-01-02 and 1540-01-10.

(~~s~~26) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least ninety (90) semester hours of graduate credit, ~~or~~ one hundred and thirty-five (135) quarter hours of graduate credit, or the equivalent.

(~~t~~27) "Enrollment" refers to those students who ~~have completed the institution's application forms, submitted a financial deposit where required, and~~ have ~~actually~~ attended one (1) ~~or more~~ sessions of class, ~~es, or,~~ turned in one (1) assignment, or received one (1) distance learning lesson~~in the case of home study programs, received one or more lessons~~.

(28) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers or words which signify, purport or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution.

(~~u~~29) "Educational service" ~~means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, non-accredited courses or non-college training~~means any class, course or program of training, instruction or study.

(30) "Federal student financial aid programs" means any of the various loans or grants offered to students, parents, or institutions through Title IV of the Higher Education Opportunity Act, as amended.

(~~v~~31) "General education courses" means~~are general education core or~~ academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student and give balance to the total program beyond the area of vocational or professional concentration.~~,~~

(~~w~~32) "Independent certified public accountant" means a ~~CPA~~ certified public accountant not associated with the institution, ~~or~~ its owners, or its affiliated businesses~~, especially in such a way that a conflict of interest or appearance of conflict arises~~.

(33) "In-field placement rate" means the Number Placed In-Field as a percentage of number placeable, that is, In-Field Placement Rate = Number Placed In-Field/Number Placeable × 100.

~~(x) "Institute" means a postsecondary institution offering courses of study and training not usually associated with traditional liberal arts degrees. Appropriate credentials awarded would include applied science degrees, certificates, and diplomas such as the Associate of Applied Science (A.A.S).~~

(~~y~~34) "Institutional director" means the ~~institutional executive~~individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within ~~these rules and the Act~~the Act and these rules. ~~Further, the institutional director will serve as the official contact for all business conducted between the institution and the Commission and maintain complete authorization files.~~

(35) "License" or "Licensure" includes similar terms, such as registration and certification, and means a designation from a subject matter expert state agency, board, or commission

indicating that the recipient has met certain requirements for obtaining the designation, for example, a licensed massage therapist or educator.

(36) "Location" means an address that is zoned for commercial purposes for use as a postsecondary educational institution.

~~(z) "Long Distance Learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.~~

(~~aa~~37) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least thirty (30) semester credit hours, ~~or~~ forty-five (45) quarter credit hours, or the equivalent.

(38) "Non-degree-granting postsecondary educational institution" includes all postsecondary educational institutions that do not meet the definition of a degree-granting postsecondary educational institution. Non-degree granting postsecondary institutions are frequently referred to as "career," "vocational," or "technical" schools. Non-degree granting postsecondary educational institutions are institutions offering programs designed primarily for job entry or upgrading of skills and usually measured in contact hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to affect outcomes.

(39) "Other fees" means fees, other than tuition, paid to the institution or third parties for products or services, including, but not limited to, fees paid for tangible goods, laboratory fees, technology fees, student activity fees, graduation fees, or fees paid for housing, meals, or transportation.

~~(bb) "Non-exempt institution" means all postsecondary institutions not specifically exempted under provisions of T.C.A. §49-7-2004 of the Act or Section 1540-01-02-.05 of these rules and means all instructional sites which must have separate authorization unless, in the view of the Commission, the instructional locations are in sufficient proximity for facilitation of support services and administration.~~

(~~cc~~40) "Out-of-state institution", ~~as applied to describe~~ means an authorized postsecondary educational institution, ~~means an institution~~ that maintains its primary campus in another state, but has a physical presence in Tennessee.

(41) "Ownership" means ownership of a controlling interest in the institution or in the event the institution is owned or controlled by a corporation or other legal entity other than a natural person or persons, ownership of a controlling interest in the legal entity owning or controlling the institution.

(~~dd~~42) "Physical presence" means ~~actual~~ presence within the state of Tennessee for the purpose of conducting activity related to~~:~~ a postsecondary educational institution as given in T.C.A. § 49-7-2007~~; an educational service; dissemination of educational credentials; enrollment; solicitation or advertising~~. Physical presence as further outlined for purposes of authorization shall include ~~but not be limited to~~:

~~1.~~(a) operating ~~A~~an instructional site within the state;~~.~~

~~2.~~(b) offering ~~I~~instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors ~~etc.,~~ or computer resources, ~~or~~ computer linking ~~(e.g. internet)~~, or any form of electronic ~~telecommunications~~means;

~~3.~~(c) ~~Dissemination of~~granting an educational credential from a location within the state;

~~4.~~(d) using ~~A~~an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; or

~~5.~~(e) ~~A~~advertising, disseminating~~,~~ promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to ~~hold a certificate of authorization~~be authorized by the Commission.

(43) "Placement rate" means the number placed as a percentage of the number placeable, that is, Placement Rate = Number Placed/Number Placeable × 100.

(~~ee~~44) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.~~means an entity which maintains a place of business within Tennessee, or solicits business in Tennessee, and which offers or maintains a course or courses of instruction or study, or at which place of business such a course or courses of instruction or study are available through field instruction, classroom instruction or by long distance learning or both to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, service or industrial occupation, for a vocation, or for the award of an educational credential, except as excluded by the provisions of these rules and the Act.~~

(~~ff~~45) "Quarter" is a period of instruction into which the academic year ~~may be~~is divided. A quarter must consist of at least ten (10) weeks.

(~~gg~~46) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction for one (1) quarter of one (1) classroom lecture hour per week ~~for one quarter, or~~ two (2) hours of laboratory experience per week ~~for one quarter~~, or three (3) hours of intern/externship experience per week, or the equivalent number of hours.

(47) "Refundable fees" means any fees paid by or on behalf of the student to the institution but excluding fees paid for (1) tangible goods retained by the student or (2) services provided in full to the student.

(~~hh~~48) "~~Residence~~ Residential course" means a course in which the student comes to an institution'~~sal~~ ~~campus or instructional site~~authorized location as opposed to a course where the student ~~stays at home (i.e. Long Distance Learning)~~and the instructor are in different locations.

~~(ii) "SACS Commission on Colleges" means the Commission of the Southern Association of Colleges and Schools which accredits degree-granting postsecondary institutions.~~

~~(jj) "School" means (1) A unit within a college or university that offers specialized instruction~~

~~(i.e., a school of engineering). (2) An institution that offers specialized instruction in areas (i.e., driving, modeling, basic travel training) not usually associated with college or university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.~~

(~~kk~~49) "Semester" is a period of instruction into which the academic year ~~may bi~~se divided. A semester must consist of at least fifteen (15) weeks.

(~~ll~~50) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction during one (1) semester of one (1) classroom lecture hour per week ~~for one semester or~~ , two (2) hours of laboratory experience per week ~~for a semester~~, or three (3) hours of intern/externship experience per week or the equivalent number of hours.

(~~mm~~51) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents. ~~inducing or attempting to induce a resident of Tennessee to sign, at any off-campus location, an enrollment agreement to attend a postsecondary educational institution.~~

(52) "Specialist Degree" means an advanced master's degree or post-master's degree with requirements less than those required for a doctoral degree.

(53) "These rules" means all rules contained in Rule Chapter 1540-01-02.

(54) "Time to completion" means the total number of days from a student's start date until the completion date.

(~~nn~~55) "Tuition" ~~shall~~ means ~~but not be limited to,~~ any ~~money or~~ fee involving the student, actually charged or tracked as a bookkeeping item for instruction ~~/ training~~ provided. Pursuant to Rule .15(4) of these rules, all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."

(56) "Tuition guaranty fund" means the tuition guaranty fund created by T.C.A. § 49-7-2018 and the related rules in Rule Chapter 1710-01-02.

(~~oo~~57) "Unearned tuition" means the dollar amount calculated pursuant to T.C.A. § 49-7-2018 and the related rules in Rule Chapter 1710-01-02~~means at any given time, the total of refunds due former students, all tuition and fees that have or will be collected from students prior to graduation and which would be refundable pursuant to 1540-01-02-.17 of these rules, and any tuition and fees collected in advance from prospective students~~.

(~~pp~~58) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers ~~traditional~~ academic undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs. ~~Some examples of traditional degrees are: Bachelor of Arts, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, and Doctor of Education.~~

(~~qq~~59) "Vocational" in the description of a program or institution means that which is organized primarily for job entry or upgrading of job skills that would result in a new job title or

position and is not intended for academic transfer.

(60) "Withdrawal rate" means the number of withdrawals minus the number of withdrawals due to special circumstances as a percentage of program enrollment, that is, Withdrawal Rate = (Number of Withdrawals - Special Circumstance Withdrawals)/Program Enrollment × 100.

Authority: T.C.A. §§ 49-7-2003 and 49-7-2005

1540-01-02-.04 DETERMINATION FOR REQUIRED AUTHORIZATION.

(1) No location of a postsecondary educational institution ~~entity~~ may create a physical presence ~~advertise, solicit, recruit, enroll or operate a postsecondary educational institution as given in the Act and these regulations until so authorized for operation in the state~~ unless the location is authorized by an affirmative vote of the ~~Tennessee Higher Education~~ Commission during a ~~scheduled~~ public meeting or is exempt. Authorization includes regular, temporary, and conditional authorization referred to in this Rule Chapter as well as optional expedited authorization referred to in Rule Chapter 1540-01-10.

~~(2) Depending upon the individual circumstance in reference to exemption categories, any of the following determining factors along with physical presence may qualify an operation for required authorization:~~

~~(a) Operating under the definition of postsecondary educational institution as given in the Act and these regulations.~~

~~(b) Issuance or award of any educational credential as given in TCA § 49-7-2003(7).~~

~~(c) Fees and/or tuition charged, tracked or maintained on the books for instruction or training in a postsecondary educational institution or business operating as such.~~

~~(3) Businesses with vocational training programs that solicit or recruit students as 'employees' with phrases such as, but not limited to, "inexperience - will train" or "experience not required" must provide all training related to that job at no cost to the individual. Payroll deductions, minimum employment periods as a result of a company's 'investment' in the employee, or fees levied if an individual leaves that employment, or similar practices, shall constitute a fee and/or tuition for training which requires authorization for the operation as a postsecondary educational institution.~~

~~(4) Institutions with a physical presence in Tennessee providing postsecondary training / education, that forward student records to another school or any other source whether in this state or elsewhere for the award of an degree or any other educational credential shall be required to be authorized for operation.~~

(~~5~~2) Commission Staff may recommend that the Executive Director take adverse action against any unauthorized ~~i~~individuals, businesses, or institutions requiring authorization as a postsecondary educational institution ~~determined by Commission staff to be currently operating as a postsecondary educational institution pursuant to the Act and these regulations and not expressly exempted by complete conformance to TCA § 49-7-2004 and/or Postsecondary Regulation 1540-01-02-.05 shall be subject to review by Commission staff for recommendation to the Executive Director for action or referral.~~

~~(a) U~~. Such entities~~nauthorized schools determined to be operating as a postsecondary~~

~~educational institution~~ must make an immediate good faith efforts toward compliance by submitting an ~~complete~~ Initial Authorization Application or Optional Expedited Authorization Application, as provided in Rule Chapter 1540-01-10, and the applicable fee by the due date provided by Commission Staff. ~~package with appropriate fees. Failure to comply may result in adverse action and/or referral to other state or federal agencies for review.~~

~~(6) Institutions seeking authorization should refer to Minimum Authorization Standards and Requirements 1540-01-02-.06.~~

Authority: T.C.A. §§ 49-7-2002, 49-7-2003,49-7-2005, 49-7-2006, ~~and~~ 49-7-2011, and 2016 Public Acts Ch. 868.

1540-01-02-.05 ~~Exemption~~EXEMPTIONS.

(1) T.C.A. § 49-7-2004 of the Act includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2004. ~~In addition to institutions exempt by Tennessee Code Annotated, Chapter § 49-7-2004, the following institutions are exempt from the annual reporting and the provisions of these regulations:~~

(a) ~~any entities offering e~~Subject to subparagraph (b) of this rule, education ~~, instruction or training~~ that ~~are~~is:

1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing at no cost to the individual~~without charge, which shall include taking a payroll deduction or requiring a minimum length of employment~~; ~~or~~

2. maintained or given by a U.S. Department of Labor or state recognized labor organization~~, without charge,~~ (1) to its membership or apprentices, or (2) at no cost to the individual~~; or~~;

3. financed and/or subsidized by public funds, at no cost to the individual~~without charge to the students~~, and having a closed enrollment; or

4. given under a contract agreement, having a closed enrollment, ~~at no cost to the student~~at no cost to the individual, and does not offer ~~degrees or~~ educational credentials ~~such as but not limited to diplomas or special certifications~~ that in the opinion of ~~the Commission~~Commission Staff are specifically directed toward new or additional vocational, professional, or academic goals.

(b) For purposes of subparagraph (a) of this rule, payroll deductions, minimum employment periods as a result of a company's investment in the employee, fees levied if an individual leaves that employment, or similar practices shall constitute cost to the individual, except that the employer may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by Commission Staff.

(c) Programs, seminars, or workshops that are recreational or avocational, including, but not limited to, motivational or enrichment programs, as determined by

Commission Staff shall be considered exempt from authorization requirements. Upon review by Commission Staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.

(d) Short-term programs, seminars, or workshops that are solely for professional enhancement as determined by Commission Staff shall be considered exempt from authorization requirements. Education resulting in specialized certifications clearly used to denote technical, professional, or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation.

(e) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams shall be considered exempt from authorization requirements. This exemption applies only when the review course is not designed to provide the initial training in the subject area.

(f) Training designed to prepare students for credit-by-examination tests may be considered exempt from authorization requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and refrain from any misleading representations. Such misleading representations include:

1. suggesting in any way that the training results in receipt of an educational credential, such as a degree;

2. listing anticipated salary amounts; and

3. suggesting that the entity is accredited.

(g) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers directly related to a sale of equipment or services are exempt from the provisions of authorization.

(h) Businesses offering short-term computer courses in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of Commission Staff the courses are offered concurrently toward a vocational goal.

~~(2) *To operate within exemption status, the following guidelines shall be used:*~~

(a2) Any ~~I~~institutions or program that ~~clearly qualify~~qualifies as exempt~~tion~~ under the Act and~~or~~ ~~these regulations~~these rules ~~after Commission staff review shall be considered~~is exempt from authorization without a determination of the ~~vote of the~~ Commission. However, institutions can request that Commission Staff issue a written determination of exemption for the institution as a whole or for any program. Commission Staff can revoke or amend an exemption determination if the basis for the exemption changes or no longer exists

~~(b) Institutional exemption is subject to annual staff review and/or revocation any time the activity deviates from the original determination factors for exemption.~~

~~(c) Exemptions secured under this section of the rules are effective for each authorization~~

~~year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.~~

~~(d) Exemptions can be revoked or amended by the Commission as they pertain to individual institutions whenever it is determined by the Commission that an institution exempted by the Act or these regulations has not acted in accordance to the purpose of T.C.A. § 49-7-2002, 'Legislative intent'.~~

(3) Except as provided in paragraph (4) of this rule, to request a determination of exemption, institutions shall submit an Exemption Application along with a descriptive narrative explaining how the institution or program qualifies for an exemption. The application shall require a citation to the exemption provision relied on in the Act and these rules and documentation supporting the requested exemption such as: ~~Institutions or educational providers seeking an exemption status (or not wanting to pursue authorization) that in the opinion of Commission staff do not clearly qualify under the exemption categories given in the Act and these rules will be required to complete an Exemption Request Form. The form shall include but not be limited to:~~ copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers ~~and a descriptive narrative of how the organization qualifies for exemption specifically citing the Act and/or rules~~. Upon receipt of an Exemption Application, Commission Staff shall make a written determination and, if denied, provide a date by which an aggrieved institution may submit a request for further review by the Executive Director. Such date shall not be earlier than ten (10) business days after the date of the written determination.

(4) Institutions that are exempt pursuant to T.C.A. § 49-7-2004(a)(6) shall submit the Information Request Form in order to obtain a determination of exemption.

~~(a) Based upon the submitted material Commission staff shall make a written determination of institutional status. If the institution is aggrieved by that determination, the party may appeal in the manner provided by Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b).~~

(5) If the institution is aggrieved by a determination concerning exemption status, the institution may seek review as provided for in Rule .02(2)(b) of these rules. Any request for review shall be in writing, signed, list each instance where Commission Staff erred, and provide a detailed explanation of each alleged error with references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in paragraph (3) of this rule.

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2004, 49-7-2005, 49-7-2006 and 49-7-2008.

1540-01-02-.06 MINIMUM ~~AUTHORIZATION~~ STANDARDS FOR AUTHORIZATION ~~AND REQUIREMENTS~~.

~~(1)~~ (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum ~~requirements~~ standards for authorization stated in the Act and these rules ~~Tennessee Code Annotated § 49-7-2006 and as further defined in these regulations.~~ Commission Staff shall verify that an institution meets minimum standards for authorization through review of applications, including, but not limited to, Initial Authorization Applications, New Program Applications, Program Revision Notification, School Personnel Applications, and Reauthorization Applications.

~~(2) Meet the definition of a postsecondary educational institution as given in the Act and/or these postsecondary regulations.~~

~~(3) Have physical presence in the state as given in these regulations.~~

~~(4) Establish a charter or business license in the state of Tennessee for the proposed institution.~~

~~(5) Financial stability to start up and initially operate a postsecondary educational institution demonstrated through a certified audit or statement acceptable to the Commission of the resources to be utilized in the school.~~

~~(6) Ability to secure an institutional surety bond or like security described in rule 1540-01-02-.07(7).~~

~~(7) Have an educational program(s) consistent with standards in Tennessee for length, content and quality for the educational credential offered in compliance with the Act and these regulations.~~

~~(8) All programs must include training and substantive content to attain outcomes stated as the program purpose and mission of the institution.~~

~~(9) No principal party, owner or administrator involved with the proposed institution has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime.~~

~~(10) Before an institution is granted temporary authorization, the following requirements and standards required of an approved school must be met in preauthorization and maintained operationally.~~

~~(a) Complete all required initial authorization materials in package provided by the Commission staff with payment of all corresponding fees.~~

~~(b) Verification of a stable physical presence and/or a physical site acceptable to the Commission and these rules.~~

~~(c) Establish and maintain all Operational and Administration Standards, such as educational, financial, admissions, enrollment, instructor, etc., as given in these rules.~~

~~(d) New or revised programs must conform with all requirements given in these rules under New Program or Change in Program.~~

~~(e) Compliance for each of the educational credential(s) offered by the applicant institution, with requirements as given under Non Degree Granting Institutions or Degree Granting Institutions.~~

~~(f) Demonstrate compliance for branch sites or expansion of programs by prior approval or prior notification with the institution's accrediting body wherever necessary to be consistent with the requirements of the accrediting body and the federal regulations.~~

(~~11~~2) No out-of-state institution will be considered for authorization if it is not authorized in the state where it is primarily located.

~~(12) Any institution based primarily outside of Tennessee which proposes to set up a branch in Tennessee and is not accredited by an agency recognized by the Commission must forward reasons why resources would not best be spent on accreditation at current site.~~(3) In relation to the size and scope of the institution, it shall furnish adequate student services and resources to fulfill the mission and claims of the institution. Such services must have staff available to students with the knowledge and skills in areas such as: academic standing and satisfactory progress, admissions, employment opportunities or placement, intern/externships, library, and financial aid.

(4) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective operation of the institution such that the institution is able to comply with and, as applicable, coordinate federal, state and accreditation requirements in a positive and educationally enriching environment to the benefit of students. Indicators of a breakdown of administrative capability include: reoccurring violations in the same area, numerous student complaints during the year, failure to correct compliance issues, frequent or sudden turnover in faculty or staff, or multiple findings in several different areas.

~~(13) An exception to any part of the Minimum Authorization Standards must be reviewed on an individual basis by the Commission.~~

(~~14~~5) ~~School~~ Institution Name:

(a) An institution's name may not duplicate another institution name or mislead potential students in violation of fair consumer practices or suggest guaranteed employment, completion, or other outcomes.

(b) ~~No p~~An~~ostsecondary educational~~ institution ~~under the Act and these rules~~ may not ~~-~~use the word "university" in ~~their~~ its name unless the ~~school~~ institution meets the definition of university in these rules and has been so approved by a regional accrediting body so recognized by the U.-S. Department of Education.

(~~b~~c) ~~No p~~An~~ostsecondary educational~~ institution ~~under the Act and these rule~~s may use the word "college" in its name without a qualifier if the institution:

1. ~~their~~meets the definition of college as set forth in these rules;

2. has been approved by an accrediting body recognized by the U.S. Department of Education to offer degree level programs; and

3. offers or is seeking approval to offer at least one (1) degree program.

(d) An unaccredited or non-degree granting postsecondary educational institution may use the word college in its name as long as the name contains~~name unless the school has been so approved by a regional accrediting body recognized by the U. S. Department of Education, or uses~~ an appropriate qualifier~~along with the word "college"~~, such as "career", "vocational", or Bible. For institutions authorized after October 1, 2016~~"business", "technical", "art" etc.~~, the qualifier shall precede the word college.~~ or in the case of a religious institution, "Bible" or a denominational term.~~

~~(c) All institutions authorized after July 1, 1997 using "college" in accordance with item 14(b) above, must achieve regional or national accreditation from an~~

~~accrediting body recognized by the U. S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal.~~

~~1. New institutions authorized after July 1, 1997 that demonstrate in the application process, that the school is capable by program length, content, adequate physical site and administrative capability of achieving accreditation, may initially use "college" in the institutional title as outlined in 1540-01-02-.06(14)(b) above.~~

~~2. Institutions may use "Junior College" as a qualifier in the name of the institution provided that the institution has a current articulation agreement with a regionally accredited college or university. Loss of the articulation agreement will require removal of "Junior" as a qualifier, to be replaced on a schedule agreeable to the Commission with an institutional name in compliance with these rules.~~

~~3. Institutions that fail to make good faith efforts toward accreditation or achieve accreditation in a timely manner shall be required to remove "college" from the institutional title.~~

~~4. The Executive Director may consider an exception to 1540-01-02-.06(14)(a), (b) given above for special or unique circumstances. Institutional waivers will be null and void with a change in ownership.~~

Authority: T.C.A. §§ 49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008.

1540-01-02-.07 INSTITUTIONAL APPLICATIONS.

(1) Application ~~deadline~~due dates and deferrals:

(a) For each quarterly meeting of the Committee, Commission Staff shall establish a due date that is no more than ninety (90) days before the date of the meeting. Unless stated by Commission Staff, the established due date shall apply to Initial Authorization Applications, New Program Applications, and Reauthorization Applications. Applications shall be received at the Commission on the due date. Applications received after that date will be deemed late and may be deferred to the next due date.

(b) An application submitted without the appropriate fee will be considered incomplete and will not be reviewed until all applicable fees are received. In any event, Commission Staff may defer the application to the next due date.

(c) Further, an ~~i~~incomplete ~~submissions~~ application is an application that is missing any information or contains noncompliant information. Commission Staff ~~as given below in Authorization - What Constitutes a Complete Application, or applications submitted after the established deadline~~ may ~~be~~ defer consideration of the application ~~red~~ to the next ~~quarterly meeting~~due date ~~at the discretion of staff.~~

(d) If an application is deferred, the institution shall have until the next established due date to complete the application.

(~~b~~e) An application can be deferred either by the ~~i~~institution or Commission Staff a total of two (2) times. After the second deferral, the application will be deemed

withdrawn if the institution does not submit a completed application by the next due date.s that voluntarily or involuntarily defer an application before the Committee will have two additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.

1. Exceptions must be requested in writing and granted by the Executive Director.

(2) Initial Authorization Application:Authorization - What Constitutes a Complete Application:

(a) Institutions must demonstrate through the Initial Authorization Application that the institution meets minimum standards for authorization as provided for in the Act and these rules. Prior to operation, which includes advertising, recruitment and solicitation, institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed The application which shall includesrequire at least the followinga minimum:

1. a title or name of the institution that compliesin compliance with the Act and these rules;

2. documentation demonstrating the institution is operating lawfully in the state. Institutions registered by the Tennessee Secretary of State shall submit a Certificate of Existence issued no more than two (2) months prior to the date of the application. Institutions that are not registered with the Secretary of State shall submit a local business licensea copy of the Tennessee state charter as filed with the Secretary of State (incorporated) or local business license (sole proprietorship);

3. evidence of a business account with a financial institution that is federally insured in said institution's name;

34. a description of the ownership of the institution, including names and contact information for owners or board of director members, percentage of ownership, and, when applicable, a corporate flowchart showing the institution's position in relationship to all affiliated corporate entitiesownership and/or controlling officers;

45. the address and general description of facilities such that a determination can be made that the institution has adequate space, equipment, and instructional material to provide education of good quality;

6. evidence demonstrating that the location is commercially zoned and that possession of the location is stable such that the institution will be able to use the location for a minimum of one (1) year from the date of application. Month-to-month leases are not acceptable;

5. list of instructional equipment for each program (owned or leased);

67. qualifications for instructional staff and supervisors;

78. designation of and contact information for an institutional director for each location and an affirmation from the director that he or she will conduct the institution in accordance with the Act and rulessite responsible for authorization contracts and maintenance of records and

~~all other duties as described under Personnel and Instructor Qualifications (1540-01-02-.16);~~

~~8~~9. a description ~~definition~~ of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the director is replaced;

~~9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;~~

~~10~~10. a continuous institutional surety bond ~~as described by rule 1540-01-02-.07 or as prescribed by T.C.A. §49-7-2013~~;

~~11~~11. a copy of the enrollment ~~contract or~~ agreement ~~described in these regulations~~the institution will use following receipt of authorization;

~~12~~12. a copy of the pre-enrollment checklist the institution will use following receipt of authorization~~Enrollment Disclosure Standards (1540-01-02-.13) checklist if not incorporated within the enrollment agreement (contract)~~;

~~13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held). Instructional equipment (specify owned or leased) must be listed and described. Current verification of fire and sanitation inspections of educational facilities (and student housing owned by institution) must be filed as described in 1540-01-02-.07 of these rules;~~

~~14~~13. a ~~draft or~~ copy of the institutional catalog the institution will use following receipt of authorization ~~(see 1540-01-02-.11)~~;

14. a copy of the student transfer of credit disclosure statement required by T.C.A. § 49-7-144;

~~15. a complete description of the proposed educational programs in compliance with the Act and these rules;~~

~~16. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;~~

~~17~~15. any specific requirements as outlined under ~~degree granting and/or non-degree granting sections of these regulations~~Rule .08 of these rules;

16. affirmation that the institution is maintained and operated in compliance with all pertinent ordinances and laws, including, but not limited to, rules and regulations adopted pursuant to ordinances and laws relative to the safety and health of all persons upon the premises;

~~18~~17. if participating in Title IV federal student financial aid programs,

(i) the institution's Office of Postsecondary Education Identification (OPEID) number;

(ii) the most recently calculated three-year official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education; and

(iii) documentation demonstrating that the institution is currently maintaining financial standards and institutional stability deemed acceptable for eligibility in Title IV federal student financial aid programs. Documentation shall include at a minimum:

(I) the most recent independent audit completed, in part, for purposes of calculating the institution's federal financial composite score as described in 34 C.F.R. § 668.172; and

(II) any correspondence issued in the past twenty-four (24) months from the Federal Student Aid Office of the U.S. Department of Education concerning eligibility for financial aid, including, but not limited to, financial ratios, a letter of credit alternative, or a provisional certification alternative as well as any related correspondence from the institution;~~a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the United States Department of Education;~~

~~19~~18. institutions must provide current or pro forma financial statements **evidencing~~e of~~ institutional financial** ~~stability as follows:~~resources adequate to fund and maintain the following:

(i) facility maintenance and overhead;

(ii) staff and faculty payroll;

(iii) books, supplies or equipment utilized by students; and

(iv) general operating costs;

19. provide financial statements as follows:

(i) as to institutions that are not currently operating a location in Tennessee or out-of-state, pro forma financial statements demonstrating that the location for which authorization is being sought will within the first three (3) years following receipt of initial authorization meet the ratios described in Rule .14(6)(d) of these rules and financial statements of all owners; or

(ii) as to institutions that are operating a location in Tennessee or out-of-state, pro forma financial statements demonstrating that the location for which authorization is being sought will within the first three (3) years following receipt of initial authorization meet

the ratios described in Rule .14(6)(d) of these rules and the most recent financial statements of the existing entity; and

20. such other information or clarification deemed necessary by Commission Staff.

~~(i) sufficient finances to establish and conduct proposed operation;~~

~~(ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;~~

~~20. the balance sheet in the financial statement must reflect owner's (proprietorship, partnership, corporation, other, etc.) assets and liabilities.~~

~~(3) Each application for a certificate of authorization or change of ownership must be signed by the applicant and signature(s) must correspond with required names on surety bonds. If the applicant is a partnership, all partners must sign. If the applicant is a corporation, it must be signed and certified by the president and secretary; all officers of the corporation must be listed.~~

(4b) A separate application for authorization~~, which is site specific,~~ must be made for each location located outside of reasonable walking distance from a previously authorized location~~from the main site~~. ~~The Commission staff~~Commission Staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where~~, in view of the Commission,~~ administrative requirements are limited and precise.

~~(5) The applicant institutional director must sign and date, on forms provided by the Commission, the director's intention to:~~

~~(a) conduct the institution in accordance with the Act and rules established by the Commission;~~

~~(b) advertise or solicit using institutional employees familiar with these rules;~~

~~(c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;~~

~~(d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;~~

~~(e) advise the Commission of any application to operate in another state (Tennessee institutions only);~~

~~(f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and~~

~~(g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the United States Department of Education.~~

~~(6) Bond Requirements for Institutions:~~

~~(a) Institutions not exempted from surety bond provisions, must on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a surety bond for the penal sum of $10,000 for in-state institution and $20,000 for out-of-state education institution, including branch campuses as specified in T.C.A. 49-7-2013, except as follows:~~

~~1. In-state institutions with substantially less unearned tuition or student exposure than $10,000 may post a surety bond equal to 125% of the maximum unearned tuition or student exposure rounded upward to the nearest thousand dollars (prior written administrative agreement by the Commission staff is required).~~

~~(7) Out of state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of $5,000 per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a $5,000 surety bond.~~

~~(8) Bonds provided by institutions under Section 1540-01-02-.07(7) must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.~~

~~(9) Bonds provided by institutions under Section 1540-01-02-.07(7) must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.~~

~~(10) Certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond with approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.~~

~~(11) Fire and Sanitation Inspections:~~

~~(a) Applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.~~

~~(b) Tennessee institutions seeking initial authorization and renewal must maintain documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve months and, further, the institution must notify the Commission of the most recent inspection dates as part of the renewal application. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.~~

~~(c) Out-of-state institutions must forward to the Commission a copy of fire and sanitation inspection reports and these reports must be made at least every twelve months.~~

~~(d) Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.~~

(3) Reauthorization Application:

(a) Effective January 1, 2018, institutions with regular, temporary, or conditional authorization shall file a reauthorization application by the due date for the Committee meeting that is approximately one (1) year from the institution's initial authorization date. In order to efficiently transition to this process in 2017, Commission Staff will post on its website by October 3, 2016, a schedule for institutions to follow in 2017 to obtain reauthorization prior to the current authorization expiration date of June 30, 2017. If necessary to effectuate the transition, the Executive Director may extend an institution's authorization.

(b) Institutions must demonstrate through the Reauthorization Application that the institution continues to meet the minimum standards for authorization as provided for in the Act and these rules. The application shall require at a minimum:

1. updates to information previously submitted as part of other applications;

2. information related to required student enrollment documentation, such as enrollment agreements and disclosures;

3. financial statements for the most recent institutional fiscal year as given under Rule .14 of these rules;

4. a list of institutional personnel;

5. funding data for students enrolled during the reporting year, including, but not limited to, the amount of self-pay and state or federal aid program funds;

6. student data related to licensure examination passage rates as further explained in Rule .08(4) of these rules;

7. statistical data as described in Rule .27 of these rules; and

8. such other information or clarification deemed necessary by Commission Staff.

(~~12~~4) ~~New Ownership /~~ **Change** ~~in~~of **Ownership** Application:

(a) Authorization to operate cannot be transferred.

(b) The sale or transfer of an ownership interest after the death of an owner of an institution to either an approved partner or current stockholder of the corporation is not considered a change in ownership. The Executive Director may determine that other similar transfers should also be excluded from these requirements.

(c) In the event of a change of ownership, as defined in Rule .03(41) of these rules, the new owner or governing body must submit to Commission Staff within ten (10) business days after the change in ownership is finalized:

1. a Change of Ownership Application and

2. a request that the Executive Director grant the new owner or governing body conditional authorization to operate until the new owner or governing body obtains temporary authorization.

~~The following constitutes new ownership:~~

~~1. in the case of ownership by an individual, when more than 50% of the institution has been sold or transferred;~~

~~2. in the case of ownership by a partnership or a corporation, when more than 50% of the institution or of the owning partnership or corporation has been sold or transferred;~~

~~3. when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.~~

(~~b~~d) ~~A person or persons purchasing~~The new owner or governing body shall submit an Initial Authorization Application by the first quarterly filing due date after filing the Change of Ownership Application. ~~an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program.~~

(e) The Change of Ownership Application shall ~~In addition, a copy of the~~require that the new owner or governing body provide the sales contract~~(s)~~, bill~~(s)~~ of sale, deed~~(s)~~, or~~and all~~ other ~~instruments~~ documents necessary to transfer ownership of the institution ~~shall be submitted to the Commission~~.

~~(c) In the event of a change of ownership, a new owner or governing body must notify the Commission within 10 days after the change in ownership and request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under standard established procedure by recommendation of the Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.~~

~~(d) The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or a current stockholder of the corporation is not considered a change in ownership, and the executive director may determine that other transfers should also be excluded from these requirements.~~

(~~13~~5) New Program ~~or Change in Program~~Application and Program Revision Notification:

~~(a) Vocational program names and objectives must generally coincide with or be equated with the Dictionary of Occupational Titles published by the U.S. Department of Labor and/or the Classification of Instructional Programs published by the U.S. Office of Education, National Center for Education Statistics.~~

~~(b) New institutions proposing to offer programs similar to those conducted by Tennessee institutions under the Tennessee desegregation plan must submit a description of the anticipated effect of the proposal on the racial composition of higher education institutions in Tennessee.~~

(~~e~~a) In order to offer a program, an institution must submit a New Program Application either along with an Initial Authorization Application or, for previously authorized

institutions, as a stand-alone application. Program approval by the Commission is required prior to offering the program, which includes enrolling, advertising, recruiting or soliciting. Applications must be received by the quarterly due date established by Commission Staff.

~~New institutions must submit a rationale with supporting data to justify initiation of programs proposed.~~

(b) The New Program Application shall include at a minimum:

1. general program information, such as the program name, proposed start date, anticipated initial enrollment, itemized tuition and other fees, delivery mode, length, number of credits or contact hours, and accreditation status. When program lengths exceed standard times or program periods established by these rules, the institution must justify expansion of training in terms of exceptional student benefits;

2. designation of the credential awarded which conforms to the requirement that no institution may offer instruction leading to an academic degree unless the institution is approved by a regional accrediting body recognized by the U.S. Department of Education. An exception may be approved by the Executive Director upon recommendation of Commission Staff. Any request for exception shall be made in writing and include proof of the following:

   (i) the institution is accredited by an U.S. Department of Education approved accreditor for the specific degree type; the program is accredited by the appropriate accrediting agency if such accreditation is necessary for employment in or licensure by the state; and the institution has articulation and transfer of credit agreements with two (2) regionally accredited institutions both having a physical location in the Southeast region; or

   (ii) special or unique circumstances.

3. if applicable, evidence of approval from any subject matter expert state agency, board, or commission;

4. a program overview;

5. syllabi for courses or, for short programs, an outline and description of the training;

6. a job title and the associated Classification of Institutional Programs (CIP) code applicable to the job title;

7. the most currently available entry level salary or wage data for those CIP codes from a Tennessee or federal website;

8. admission criteria;

9. instructor qualifications and, when applicable, School Personnel Applications;

10. library holdings and in-house resources available to students related to the program;

11. a list of training equipment, indicating whether the equipment is owned or leased;

12. a description of how this program is consistent with the institution's mission;

13. a description of how the institution is structured (administration, staff and resources) to ensure educational quality;

14. if applicable, a list of all clinical or externships sites with a copy of an affiliation agreement with each site;

15. The maximum pupil to teacher ratio for each course. Acceptable ratios, without special permission from the Commission, are as follows:

    (i) lecture: 40-1;

    (ii) allied health and nursing labs: 20-1;

    (iii) class A truck cab: 4:1; and

    (iv) class B truck cab: 2:1.

16. if applicable, distance learning specific information, such as:

    (i) a mock password so that Commission Staff can navigate through the online system used for instruction;

    (ii) an explanation as to how educational goals and overall program goals are achievable through distance learning; and

    (iii) an explanation as to how graduates of the program will exhibit skills and knowledge equivalent to similar residential programs; and

17. such other information or clarification deemed necessary by Commission Staff.

~~(d) Authorized institutions must submit to the Commission a supplementary application if additional programs are proposed during any authorization year and the program must be authorized prior to operation, which includes advertising or solicitation. Applications must be received by the quarterly deadline established by Commission staff to be included on the ensuing Committee and Commission agenda.~~

(~~e~~c) When an ~~Ongoing~~ **institution**~~s that make changes~~ revises ~~to an existing program(s)~~ an~~previously~~ **approved** program~~by the Commission must file a~~, then the institution must seek approval from Commission Staff by submitting a Program Revision Notification at least thirty (30) days prior to implementing the revision. If ~~New Program Application if~~the **program** ~~changes~~revision amounts to change of more than~~exceed~~ twenty-five percent (**25%**) **in** ~~one calendar year~~the last twelve (12) months~~,~~ **or if** ~~in the opinion of staff~~ Commission Staff determines **a significant** ~~change~~ revision ha~~s~~s **occurred**, then the institution must submit a New Program Application prior to implementing the revision. ~~Changes of less~~

~~than 25% should be reported by letter as a file item to the Commission detailing changes made. All changes must be reflected in the institutional catalog.~~

-(f~~c~~d) Institutions shall not arbitrarily add a course ~~or courses~~ to an existing program in which a student would incur additional time ~~and~~or expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to: ~~demonstrated~~

1. demonstrated educational necessity;

2. a reasonable program completion period ~~had~~ elapsed;

3. state approval agenc~~ies~~y requirements;~~-~~

4. U.S. Department of Education recognized ~~accrediting~~ accreditor~~agencies~~ requirements; or ~~for~~

5. ~~requirements of~~ professional licensure requirements~~certifications or licenses~~.

~~Under approval conditions~~In any event, the institution shall provide written notification to ~~the Commission~~Commission Staff and give adequate notice to all students affected prior to any change.

(~~14~~6) ~~New Location /~~ Change of ~~Address~~Location Application:

(a) Absent extraordinary circumstances, an authorized institution shall submit a Change of Location Application thirty (30) days prior to moving. An example of an extraordinary circumstance is the unexpected loss of a lease.

(b) The Change of Location Application shall include at a minimum:

(i) the address and general description of facilities such that a determination can be made that the institution has adequate space, equipment, and instructional material to provide education of good quality;

(ii) evidence demonstrating that the location is commercially zoned and that possession of the location is stable such that the institution will be able to use the location for a minimum of one (1) year from the date of application. Month-to-month leases are not acceptable;

(iii) affirmation that the institution is maintained and operated in compliance with all pertinent ordinances and laws including, but not limited to, rules and regulations adopted pursuant to ordinances and laws, relative to the safety and health of all persons upon the premises; and

(iv) such other information or clarification deemed necessary by Commission Staff.

~~An application from an authorized institution to reflect a new location shall be filed and include all documents designated by the Executive Director as being necessary with the appropriate fee. Documents shall include but not necessarily limited to: (1) evidence of satisfactory health inspection, (2) evidence of satisfactory fire inspection, (3) all physical material and building requirements given under Initial Authorization.~~

(c) Commission Staff shall approve the application after it determines that the application is complete and conducts a successful site visit. ~~Approval may be issued after the new facilities have been inspected and the application is complete.~~

(d) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location ~~as determined by the Executive Director~~, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.

(7) School Personnel Application:

(a) Authorized Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. Qualifications must be submitted to Commission Staff on a School Personnel Application no later than ten (10) business days after the hire date.

1. Unaccredited institutions must submit to Commission Staff School Personnel Applications for all instructors and administrative personnel as that term is defined in subparagraph (7)(b) of this rule.

2. Institutions accredited by an accrediting body recognized by the U.S. Department of Education must submit to Commission Staff School Personnel Applications for all administrative personnel as that term is defined in subparagraph (7)(b) of this rule. For each instructor, an accredited institution shall maintain on-site documentation that demonstrates the minimum qualifications and must submit such documentation and a School Personnel Application at any time upon request from Commission Staff.

(b) Administrative personnel are individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel.

(8) Agent Permit Application:

(a) Agents must submit an Agent Permit Application, as provided by Commission Staff, and must receive approval and an agent permit from Commission Staff prior to any solicitation. The application shall include at a minimum:

1. general contact information for the agent;

2. recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;

3. a surety bond as specified in Rule .09 of these rules; and

4. certification by the institution director that the applicant will be directed to act in accordance with the Act and these rules.

(b) Agent permits must be renewed every year. The expiration date of a permit is one (1) year from the date of issue or immediately upon termination of

employment whichever occurs first.

(c) Agents must have separate permits to represent separate institutions unless the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required.

(d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.

(9) Institution Name Change Application:

(a) An authorized institution shall submit an Institution Name Change Application thirty (30) days prior to changing the institution's name unless the name change is the result of a change of ownership. In the case of a change of ownership, the authorized institution shall submit a Change of Ownership Application.

(b) The Institution Name Change Application shall include at a minimum:

1. updated contact information;

2. a proposed new name of the institution that is compliant with these rules;

3. updated surety bond information;

4. an updated copy of the pre-enrollment checklist, enrollment agreement, and catalog; and

5. such other information or clarification deemed necessary by Commission Staff.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

~~1540-01-02-.08~~ 1540-01-02-.08 **REGULATIONS FOR SPECIFIC** ~~School Types~~INSTITUTIONS AND PROGRAMS.

~~(1) General:~~

~~(a) Institutions offering programs of legal interest to other state agencies must, if directed by the Commission, provide information necessary for the dual review of the program. (For example, any institution proposing a teacher education program for the purpose of teacher licensure must also be reviewed by the State Board of Education).~~

~~(b) Authorized institutions that promote, advertise or use prepared materials of any entity that offers vocational / professional certifications (that are not part of the school's authorized educational credential) or certification exams, (e.g. national certifying exam for Phlebotomy) must demonstrate to the Commission clear benefit to the students prior to usage. The Commission upon review may rule to:~~

~~1. allow promotion and usage because of benefits to the student;~~

~~2. allow promotion and usage but with clear disclosure to the students with language such as, 'this certification is voluntary and is not required for employment in the state of Tennessee' or 'this certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry;~~

~~3. deny usage. (see *Prohibitive Acts* 1540-01-02-.18).~~

~~(c) Unauthorized institutions that promote, advertise or use prepared materials of any entity that offers vocational/professional certifications may be required to become authorized for such activity.~~

~~(d) Institutions must adhere to all copyright laws and observe intellectual property rights in conducting the school.~~

~~1. Using video tapes or other forms of telecommunication as a large portion of the contact hours in a program or on a per class basis for the purpose of granting educational credit, must have implied consent by purchase or the written consent of that instructor and/or the institution that produced the educational material, prior to incorporating them into the curriculum.~~

~~(2) Non Degree Granting Institutions:~~

~~(a) Non-degree programs which are designed primarily for job entry or upgrading of skills must be described in clock (contact) hours.~~

~~(b) Non-degree programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.~~

~~1. *Institutions must provide a minimum program length that adequately prepares students for entry level employment.*~~

~~2. Program lengths that exceed standard or currently acceptable times or program periods established by regulations and/or statues must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.~~

(~~3~~1) Degree Granting Institutions:

~~(a) New institutions seeking authorization to offer degrees in the state of Tennessee or new program applications for a degree program must submit the application by the deadline date established by Commission staff, which shall be 45 to 60 days prior to the quarterly meeting of the Committee on Postsecondary Educational Institutions.~~

~~(b) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional liberal arts degrees or professional degree designations such as those given in the definitions under "college" and "university" unless previously approved by a recognized regional accrediting body.~~

~~1. An exception may be approved by the Executive Director upon recommendation of Commission staff.~~

(~~e~~a) Authorization to offer any degree in the state will require either institutional accreditation by a U.S. Department of Education recognized accreditor~~as defined in these regulations~~ or authority to grant degrees by affirmative vote of the Commission. ~~Accredited institutions shall be deemed during initial authorization to have met the minimum requirements to offer degrees.~~

(~~d~~b) ~~Non~~ Unaccredited institutions seeking authority to grant degrees ~~in the state~~ must meet, in addition to the requirements in the Act and ~~these regulations~~these rules for ~~temporary or regular~~initial authorization, at a minimum~~the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards~~:

1. the ~~operation~~institution shall incorporate instructional procedures, texts, and materials appropriate to the purpose, curriculum and standards of other ~~postsecondary~~ degree granting postsecondary educational institutions offering similar programs in the state;

2. for undergraduate and degree granting programs and except as noted further in subparagraph (c) of this rule, twenty-five percent (25%) of the total program must be in general education courses and should be indicated separately in the curriculum presented;

~~3. a syllabus for each course offered;~~

~~4~~3. library resources and holdings ~~that~~ shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;

~~5~~4. demonstration that the degree and the program has merit and value academically, professionally, or vocationally in Tennessee; and

~~6~~5. master and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical, and interpretive thinking, use of primary documents or resources, and independent research skills.

(~~e~~c) Undergraduate degree programs must include at least twenty-five percent (25%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are lesser or for a ~~non-~~unaccredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that twenty-five percent (25%) of the program for job skills courses.

~~*All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent of the general education staff with earned master's degrees or equivalent.*~~

(~~f~~d) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student-to-student and student-to-staff exchange of ideas, provide

appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.

~~(g) Degree program admission policies must be at least the following:~~

~~1. undergraduate degrees must require a high school diploma or equivalency, and~~

~~2. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.~~

~~(4) Long Distance Learning:~~

~~(a) Required authorization of long distance learning institutions shall be reviewed based upon Commission staff evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.~~

~~1. No ruling by the Commission regarding authorization or exemption of a long distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.~~

~~(b) All authorized long distance learning institutions must provide a printed catalog, enrollment disclosure statement and a contract as required in these regulations. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.~~

~~(c) Home study or long distance learning institutions must meet directly and indirectly all requirements of the Act and these regulations and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.~~

~~(d) Long distance learning courses or programs must consist of at least the following:~~

~~1. a preliminary lesson or set of instructions on how to study by the home study method, or adequate study instructions per assignment;~~

~~2. current and accurate text or lesson materials; and~~

~~3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented.~~

~~4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by a instructor qualified in that specific course or subject matter area.~~

~~5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered.~~

~~6. educational goals and overall program goals are achievable through long distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.~~

(~~5~~2) Unaccredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the course or program.

(3) Bartending institutions~~Schools~~:

(a) Pursuant to T.C.A. § 49-7-115, all schools involved in training in the areas of management, operation, procedures, or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.

~~(6) Truck Driving (CDL) Schools:~~

~~(a) Authorized truck driving schools may advertise in the 'help wanted' section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in 1540-01-02-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".~~

~~(b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from Commission staff. All claims related to carriers must be documented and on file at the school.~~(4) Programs leading to licensure, certification, registration or similar recognition:

(a) Successful completion of an examination given by a private or public third-party cannot be part of an institution's program or be a completion requirement. For example, a truck driving program cannot include successful completion of the Commercial Driver's License examination.

(b) Institutions offering programs in fields that require a student to take an examination in order to be licensed or similarly recognized before the student can be employed in the field shall provide as part of the Reauthorization Application student-level data as to:

1. whether the student sat for the examination; and

2. whether the student passed the examination.

(c) Institutions may request a waiver from Commission Staff of subparagraph (4)(b) of this rule. Commission Staff shall grant the waiver upon receipt of documentation from the institution demonstrating that the examination provider or related state agency will not provide testing data to the institution.

(5) For programs of interest to other state agencies, such as dental programs, Commission Staff will endeavor to streamline processes when a subject matter expert state agency has a law that is contrary or duplicitous of the Act or these rules.

~~(7) Modeling Schools:~~

~~(a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function and advertising the agency from the school.~~

~~(b) Talent seminars, interviews or 'talent searches' may not be used to enroll individuals in modeling schools or training.~~

~~(c) Schools that operate as a 'finishing school', exclusively for personal deportment or for enrichment may not advertise or conduct courses that implies or suggests vocational modeling or related goals.~~

(6~~8~~) Computer Training:

~~(a) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.~~

~~(b) Businesses offering short term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission courses using various software are offered concurrently toward a vocational goal. (e.g. word processing software offered toward secretarial goals).~~

(a~~c~~) Businesses offering specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation of that training in the state.

~~(9) Teacher Training (K-12) or Licensing or Recertification:~~

~~(a) The Tennessee State Board of Education or the Commission may request a dual review of any institution or business with physical presence in Tennessee offering courses related to but not limited to teacher (K-12) licensing, recertification or career ladder. For accredited institutions with teacher education programs using long distance learning (but using targeted direct mail advertising), the Commission may grant a waiver for authorization if State Board of Education or a local public school district has accepted, endorsed or approved for graduate credit transfer any portion of the program. Such a waiver shall not be granted for any institution outside of the provisions stated above and may be individually retracted if in the opinion of the Commission the advertising is misleading regarding outcomes or credits earned.~~

~~(10) Seminars / Workshops:~~

~~(a) Seminars or workshops of short duration that are motivational, enrichment, recreational, avocational or solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements.~~

~~(b) Upon review by Commission staff a seminar/workshop provider regardless of length that presented the instruction in such a way to suggest a vocational end~~

~~may be required to become authorized in the state, or clarify through public advertising that the seminar/workshop is in fact enrichment or recreational.~~

Authority: T.C.A. §§ 49-7-2003, 49-7-2005, and 49-7-2008.

1540-01-02-.09 BONDS.

(1) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company qualified and authorized to do business in Tennessee, a continuous surety bond in the amount of:

(a) ten thousand dollars ($10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and

(b) twenty thousand dollars ($20,000) for all other institutions, including out-of-state private institutions.

(2) Out-of-state institutions must, on forms provided by the Commission, secure a surety bond for agents in the amount of five thousand dollars ($5,000) per agent from a surety company qualified and authorized to do business in Tennessee with the institution as principal.

(3) Institutions must provide a bond for each authorized location.

(4) Subject to Commission Staff approval, an irrevocable letter of credit secured by a certificate of deposit or a cash deposit with a bank may be accepted in lieu of the bond. Such deposits are subject to the same terms and conditions provided for in the surety bond form.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2013.

1540-01-02-.~~09~~ 10 AUDITS. ~~ANNUAL RENEWAL FORAUTHORIZATION.~~

(1) Commission Staff may conduct audits to ensure compliance with the Act and these rules. Audits may be performed at the institution's authorized location or by requesting that the institution forward copies of student records to Commission Staff. In the case of the latter, the provided records will be retained by Commission Staff as working papers but will be destroyed when the audit is closed.

(2) Commission Staff may audit an authorized institution at any time without notice to the institution. However, unless the circumstances mandate that no notice can or should be given, Commission Staff should provide at least seventy-two (72) hours' notice. Notice shall be given by email to the institutional director.

(3) Failure to comply with any audit request may be an audit finding and result in adverse action against the institution.

(4) Commission Staff will provide the institution with an audit report that lists any findings and the frequency. The report shall require the institution to propose corrective action for all findings or to show cause why the Executive Director or Commission should not take adverse action.

(5) Tuition increases that in the opinion of the Commission are excessive, unreasonable or exceed initial disclosure to students may result in an in-depth audit of the institution's financial stability.

~~(1) All unaccredited authorized institutions and institutions under Temporary or Conditional Authorization must submit an annual report or renewal application on a form provided by Commission staff. The annual authorization year will be from July 1 through June 30 and annual application or reports submitted is due each October 15 and must be accompanied by an annual fee as prescribed by these rules.~~

~~(2) Accredited institutions under Regular Authorization will be granted upon affirmative vote of the Commission an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation / reaffirmation cycle and require each October 15 (in lieu of the Commission's annual renewal package) the most recent annual reporting documents submitted to the accrediting agency along with any minimum forms required by the Commission.~~

~~(3) Annual reports or renewal applications postmarked after October 15 or other due date will be assessed a late renewal fee as described in Rule 1540-01-02-.25 FEES.~~

~~(4) For unaccredited institutions and institutions under Temporary or Conditional Authorization, the annual report or renewal application must be accompanied by the following:~~

~~(a) any changes or additions to information previously submitted as part of the basis for authorization;~~

~~(b) copy of current catalog with major changes cited;~~

~~(c) the latest financial statement for the most recent institutional fiscal year as given under Financial Standards, 1540-01-02-.14 and shall include:~~

~~1. a balance sheet (statement of financial position);~~

~~2. statement of the results of institutional operation including gross amount of tuition and fees earned and total refunds during the fiscal year;~~

~~(d) a renewal fee (check or money order) made payable to the State of Tennessee for such fees as stated under these regulations.~~

~~(e) an enrollment report for the first enrollment period on or after July 1 of previous year through and including the last enrollment on or before June 30 of the current year;~~

~~(f) a list of all institutional personnel including staff, instructors and agents;~~

~~(g) summary data for the most recent institutional fiscal year on students participating in state or federal aid programs;~~

~~(h) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendations and study of institutional and/or enrollees or former enrollees.~~

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, and 49-7-2014.

~~1540-01-02-.10 REQUIRED MINIMUM STANDARDS.~~

~~(1) The institutional purpose and objectives must be stated in measurable potential outcomes in a catalog, bulletin, or brochure of the institution.~~

~~(2) *In relation to the size and scope of the institutions, it shall furnish adequate student* services to fulfill the mission of the school and provide counseling and / or resources necessary to support programs and claims of the institution. Such services must have staff available to students with the knowledge and skills to effect counseling, guidance and coordination in areas such as; academic standing and satisfactory progress; admissions; employment opportunities or placement; *intern/externships*; library; financial aid.~~

~~(3) Administrative capability must be demonstrated in the daily operational standards at the institution. *Administrative capability is the ongoing effective coordination of federal, state and* accreditation (where applicable) requirements in a positive and educationally enriching environment to the benefit of students. Indicators of the break down of administrative capability may include but not be limited to: reoccurring violations in the same area; numerous student complaints during the year; failure to correct compliance issues; frequent or sudden turnover in faculty or staff; multiple findings in several different areas during a institutional site visit.~~

~~(4) Institutions must annually report program completion rates and placement rates in a format approved by the *Commission which may include accreditation standards or an average of comparable* rates from Tennessee public institutions. If program completion rates are less than 66%, or if average program withdrawal rates are in excess of 33%, or if average placement rates are less than 75%, those rates shall be monitored, reported on, compared with those of similar institutions, and explained to the extent that it can be determined whether or not the low rate is an indicator of poor educational quality.~~

~~(5) Liberal arts schools or professional schools that typically do not report vocational placement data may be required to report to the Commission either by testimonial, survey or by some other means that program completers have benefited from the instruction.~~

~~(6) The maximum pupil teacher ratios acceptable, without special permission from the Commission, are:~~

~~(a) lecture: 40-1;~~

~~(b) *business laboratory: 50-1 (such as accounting, typing, shorthand);*~~

~~(c) technical and vocational theory: 40-1;~~

~~(d) technical lab: 40-1 (such as computer programming, data processing) and;~~

~~(e) vocational lab: 40-1 (such as auto mechanics, drafting, air conditioning).~~

~~*Authority:* T.C.A. §§ 49-7-2005 and 49-7-2006.~~

1540-01-02-.~~11~~ 11 ~~Institutional Catalog.~~ INSTITUTION CATALOG.

(1) Each institution must publish a catalog ~~or brochure (a draft copy may be provided for original application) which must~~ that includes at a minimum~~least the following information;~~:

(a) the name and address of the institution;

(b) identifying data, such as catalog number and publication date;

(c) table of contents;

(d) names of owners and officers, including any governing boards, and faculty with credentials for position;

(e) the institutional calendar, including holidays, enrollment periods and the beginning and ending dates of terms, courses, or programs;

(f) the institutional enrollment procedures and entrance requirements, including late enrollment, if permitted;

(g) the institutional attendance policy, including minimum attendance requirements, how attendance will be determined, ~~and~~ the circumstances under which a student will be interrupted for unsatisfactory attendance, and the conditions under which a student may be readmitted;

(h) the institutional policy covering satisfactory progress, including ~~with~~ an explanation of any grading system used, ~~and~~ a description of any probation policy, and a description of the institutional system for making progress reports to students;

(i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;

(j) a description of each program offered including objectives, costs, length, program components or course requirements, or in the case of correspondence instruction, the number of lessons;

(k) a description of the placement assistance available and, if none, so state;

(l) a description of the facilities and equipment used for educational programs ~~and the address of training site~~;

(m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;

(n) the refund and cancellation policy, including ~~which must describe~~ the procedure for determining the official date of termination, the time within which a refund will be provided, and how a refund must be requested;

(o) ~~in catalogs (except for out-of-state degree-granting institutions which choose to make no reference to the Commission) which describe educational programs conducted in Tennessee and with enrollment contracts used by programs outside of Tennessee,~~ a statement provided within the first four pages of the catalog ~~and on the signature page of enrollment contracts,~~ which ~~must read~~reads as follows: "

The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation ~~by~~ of minimum standards concerning quality of education, ethical business practices, ~~health and safety,~~ and fiscal responsibility";

(p) a description of the student grievance procedure, including ~~a listing of~~

1. the title, address, and telephone number of the institutional employee~~(s)~~ designated to receive student complaints; ~~.~~ ~~I~~

2. if applicable, the process for escalating or appealing a complaint;

3. if the institution ~~used a~~allows for nonbinding ~~-~~mediation or voluntary arbitration~~clause in its enrollment agreement~~, the catalog must describe the process in its entirety~~steps required of the student and/or the institution to initiate the mediation process~~; and

4. ~~. The~~ the address and telephone number of Commission Staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1520-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization."~~the licensure staff of the Commission must be in the catalog for grievances not settled at the institutional level;~~

(q) a disclosure regarding the ~~specific information pertaining to~~ ability to transfer~~transferability of~~ credit earned to another institution, with language sufficient to describe limitations on the transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:

> "(name of institution) is a special purpose institution. That purpose is (~~fill in~~ institution's mission statement). This purpose does not include preparing students for further college study. Students should be aware that transfer of credit is always the responsibility of the receiving institution. Whether or not credits transfer is solely up to the receiving institution. Any student interested in transferring credit hours should check with the receiving institution directly to determine to what extent, if any, credit hours can be transferred.";

(r) the cash discount policy, if offered to students; and

(s) the ATB testing policies, if any, along with the admissions policies.

(2) Institutions may provide electronic catalogs to students as long as the institution provides the student a hard-copy upon the student's request.

(3) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;

(~~3~~4) Catalogs should be written ~~in a way and~~ at a level that allows~~which enables~~ prospective enrollees to comprehend the information and make informed decisions~~, and~~.

~~(4) Lesser information requirements may be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable.~~

~~(5) Full time students should have a reasonable expectation to complete programs as printed~~

~~in the institutional catalog at the time of enrollment.~~

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006 and 49-7-2008.

1540-01-02-.1~~2~~2 ADMISSIONS STANDARDS.

(1) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written.

(2) An ~~I~~institutions should not ~~admit~~ enroll a student in a~~to~~ programs leading to licensure when the institution ~~students who the institution~~ knows or, by the exercise of reasonable care, should know the student is or~~, would be~~ will be ineligible to obtain licensure in the occupation for which ~~they are~~the student is being trained. For example, an institution should not admit a student if the institution knows the student has a ~~(ex., certain~~ prior legal convictions that will prevent the student from obtaining licensure~~render one ineligible to hold certain licenses)~~. If ~~-~~a student who is ineligible or likely to be ineligible for licensure desires to enroll in such a program, regardless of license eligibility, the institution may admit ~~such a~~ the student after the student submits a signed, written~~, in writing for retention by the institution and review by Commission staff, a~~ statement acknowledging the student is or is likely to be ineligible for licensure. The institution shall provide the student a copy of the statement and maintain the original in the student's file. ~~such ineligibility. This provision, 1540-01-02-.12(1) is not intended to speak contrary to institutions' options to enroll students as non-credit students, auditing students or continuing education students.~~

(3) Basis of admission shall be at a minimum:

(a~~2~~) Students enrolling in a certificate or diploma program must possess a high school diploma, a high school diploma equivalency, postsecondary credit in a degree program, or, subject to subparagraph (3)(d) of this rule, a passing score on an ATB test.

(b) Students enrolling in an associate or bachelor degree program must possess, at a minimum, a high school diploma, a high school diploma equivalency, or postsecondary credit in a degree program.

(c) Students enrolling in a post-baccalaureate program must possess, at a minimum, a baccalaureate degree from an institution judged to be appropriate by the Commission.

(d) A student may be admitted as an ATB student if the student has terminated secondary enrollment and is beyond the age of compulsory attendance. An~~Students without high school diploma or GED may be admitted as an Ability to Benefit student into non-degree programs that are customarily not accepted for college credit if the student has terminated secondary enrollment and is beyond the age of compulsory attendance, subject to the following conditions:~~

~~(a) Applicants without a high school diploma or GED shall be tested.~~

~~(b) An exception to these testing provisions, However, may be created for:~~

~~1. individual applicants to non-degree programs where the following four conditions~~

are met:

(i) The student does not receive federal or state financial aid.

(ii) The student's high school transcript is unavailable.

(iii) The program is short term and the costs are low.

(iv) institutions or programs at an institution composed exclusively of subject matter that does not lend itself to an objective test, upon request, if approved by the Commission.

(c) institution may use either Any test administered for purposes of determining admission shall be a standardized test formerly or currently recognized nationally or by the U.S. Department of Education or, if with minimally acceptable scores as referenced in the test material or by the U.S. Department of Education or only in cases where a standardizedsuch a test is not applicable to the particular subject matter of the programavailable, a non- standardized test developed by the institution.institutional officials In either case, the institution shall request approval from Commission Staff before using the test and shall state the and approved by the Commission staff with minimally acceptable scores approved by the Commission staff. The following applies to all ability-to-benefit tests:

1.(d) Tests shall be administered in a secure environment, for example, (e.g., monitors present).

2. Tests shall not be administered in a manner that is inconsistent with the recommendations of the manner (e.g., frequency) recommended by standardized test developers. Testing policies shall be stated along with the admissions policy published in the institutional catalog.

3.(e) An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.

(f) If the admission test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student and may be charged for the remedial program on an hourly pro-rata basis. The student is not obligated for the tuition and fees of the non-remedial regular program until the admission requirements are met.

The minimum admission requirement for postsecondary education remain a high school diploma, GED, or a passing score on the admission exam.

(g) Tests administered for purposes other than the determination of admissibility are not governed by 1540-01-02-.12(2).

(3) Institutions which admit enrollees on an ability-to-benefit basis, must submit all documents related to such admission policies to the Commission.

(4) Degree program admission policies must be at least the following:

(a) undergraduate degrees must require a high school diploma or equivalency, and

(b) graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.

(4) Proof of the basis of admission shall be maintained in the student file in accordance with

Rule .15 of these rules.

Authority: T.C.A. § 49-7-2008.

1540-01-02-.1~~3~~3 ENROLLMENT CHECKLISTS, ~~ENROLLMENT~~ AGREEMENTS, AND DISCLOSURES ~~AND DISCLOSURE STANDARDS~~.

~~(1) Accredited institutions that provide and administer a Title IV financial assistance program and grants will follow federal disclosure guidelines. Such institutions will not be required to duplicate any state disclosure item if that disclosure is part of federal or accreditation standards.~~

(~~2~~1) Pre-Enrollment Checklist: ~~Institutions p~~Prior to signing an enrollment agreement~~enrolling an individual~~, institutions shall require an institution representative and the prospective student to sign and date a pre-enrollment checklist~~form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list verifying that the student~~. The document must clearly indicate that it is the pre-enrollment checklist, and, if multiple pages, the pages of the pre-enrollment checklist shall be paginated using the format "___ of ___ pages." The checklist shall include, at a minimum affirmations that the student:~~:~~

(a) toured the institution (not applicable to institutions that deliver all instruction through distance learning);

(b) received an institution~~al~~ catalog and if provided electronically understands that the student may request a hard-copy of the catalog at any time;

(c) was given the time and opportunity to review the institutional policies in the catalog;

(d) knows the length of the program for full~~-~~-time and part~~-~~-time students in academic terms and actual calendar time;

(e) has been informed of the total tuition and other fees ~~cost~~ of the program;

(f) has been informed of the estimated cost of books and any required equipment purchases such as a ~~stenography machine,~~ computer, specialized tools, or art supplies ~~etc.~~;

(g) has been given a copy of the institution~~al~~ ~~cancellation and~~ refund policy;

(h) ~~understands what 'transferability of credits' means~~has executed a Transfer of Credit Disclosure Statement in compliance with T.C.A. § 49-7-144 and understands the specific limitations ~~(if any)~~ should the institution have articulation agreements;~~-~~

(i) ~~knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form a statement in the following format~~has been given the address and telephone number of Commission Staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that is a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1520-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization."~~:~~; and~~-~~

~~1. A statement: "I realize that any grievances not resolved on the institutional level may be forwarded to the Tennessee Higher Education Commission, Nashville, TN 37243-0830, (615) 741-5293."~~

~~(3)~~ (j) has received the most recent withdrawal, completion, and placement data as calculated by the Commission by including in the checklist:

1. the following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to http://state.tn.us/thec/ and clicking on the Authorized Institution Data button.";

2. a chart listing all approved program names and the related percentage rates for withdrawal, completion, and in-field placement, identifying the July/June reporting period, and stating that "detailed statistical data for all approved programs may be viewed by going to http://state.tn.us/thec/ and clicking on the Authorized Institution Data button"; or

3. a copy of the institution's most recent Annual Performance Report created by Commission Staff and posted on the Commission's website.

~~Also included, shall be documentation that the student received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in the following format:~~

~~(a) A statement: "For the program entitled _____, I have been informed that the current withdrawal rate is __%, or in the past 12 months ____ students enrolled in this program and ____ completed this program."~~

~~(b) A statement: "For the program entitled _____, I have been informed that for the students who graduated, the job placement rate is __%, or in the past 12 months ____ were placed in their field of study out of ____ students who graduated from this program."~~

(k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).

~~(4) Liberal arts schools or professional schools that typically do not report vocational placement data may request a waiver of 1540-01-02-.13(3) above.~~

(~~5~~2) Enrollment Agreement: ~~An~~ Institutions enrolling an individual in a course or program shall require an institution representative and the prospective student to sign and date an **enrollment** ~~contract~~ agreement prior to the student attending one (1) session of class, turning in one (1) assignment, or receiving one (1) distance learning lesson, whichever occurs first. The document must clearly indicate that it is the enrollment agreement, and, if multiple pages, the pages of the enrollment agreement shall be paginated using the format "__ of __ pages."

(a) The enrollment agreement shall include, at a minimum:

~~shall include but not be limited to:~~

1.~~(a)~~ the full and correct name and address of the ~~location~~authorized location of the institution;

2.~~(b)~~ the name, address, and social security number or unique student identification number of the student;

3.~~(c)~~ the date training is to begin and program length;

~~(d)~~4. if students have the option to attend part-time, full-time or part-time status of the student;

~~(e)~~5. the projected date of ~~graduation/~~completion ~~as a full-time or part-time student~~;

~~(f)~~6. the program ~~title~~name as approved by the Commission;

~~(g)~~7. the total cost of the program, including itemized ~~separate~~ costs for tuition and ~~, fees~~the approximate costs for other fees~~, books and any required equipment purchases~~;

~~(h)~~8. cancellation and refund policy;

~~(i)~~9. ~~verification~~ verification that ~~that the student has received an exact signed copy of the agreement~~by signing the agreement the student understands the student's right to receive an exact signed copy of the agreement.

10. verification that by signing the agreement the institution understands its obligation to immediately provide the student an exact signed copy of the agreement~~.~~;

~~(6)~~11. a~~Institutions shall contractually~~ guarantee of ~~total cost of~~ tuition cost for twelve hundred (1200) ~~contact~~contact hours or ~~one calendar year~~twelve (12) months from the time of enrollment; programs less than twelve hundred (1200) contact hours must have a set total tuition; and

12. The following statement: "The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation of minimum standards concerning quality of education, ethical business practices, and fiscal responsibility." ~~for full and part-time student.~~

(b) Institutions that enroll students in individual courses may modify the pre-enrollment checklist or enrollment agreement as appropriate, but should strive to make as few modifications as necessary.

(3) Transfer of Credit Disclosure Statement: Prior to signing an enrollment agreement and the pre-enrollment checklist, institutions shall require the student to complete a Transferability of Credit Disclosure Statement.

(a) The written statement must be:

1. a stand-alone document containing no other disclosures;

2. contain a space for the prospective student to initial and date; and

3. printed in type not less that sixteen (16) point font; and

4. contain the exact language in T.C.A. § 49-7-144(b)(2), exempt that institutions offering contact hours only may substitute the word contact for credit.

(b) Institutions shall post the disclosure on its website, but the language does not have to be in at least sixteen (16) point font.

~~(7) Programs less than 1200 clock (contact) hours must have a an enrollment contract with a set total tuition.~~

~~(8) Programs longer than 1200 clock (contact) hours that increase tuition cost after the initial 1200 hours or one year period, must provide counseling related to the tuition increase.~~

~~(9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceeds initial disclosure to the student may result in an in depth audit of the institution at the school's expense to assure the Commission of financial stability.~~

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2008, ~~and~~ 49-7-2019 and 49-7-144.

1540-01-02-.14~~4~~ FINANCIAL STANDARDS.

~~(1) Institutions administering Title IV financial assistance programs will maintain all required guidelines and standards.~~

(~~2~~1) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.

(3) The institution shall maintain financial and business practices in-line with common business procedures utilizing standard accounting practices.

(4) The institution shall maintain and be prepared to demonstrate at any time financial resources adequate to ~~meet~~ fund and maintain the following:

(a) facility maintenance and overhead;

(b) staff and faculty payroll;

(c) books, supplies ~~and /~~ or equipment utilized by students; and

(d) general operating costs. ~~including printing and advertising;~~

~~(5) Institutions shall be able to demonstrate annual financial planning through a budget. New degree granting program schools must establish financial planning that reflects at least a three year plan which includes anticipated income and expenses.~~

(~~6~~5) As part of reauthorization, ~~All a~~auuthorized institutions must file ~~each year the most recent audited~~ financial statements for the most recently completed fiscal year, ~~certified by an independent certified public accountant~~ as follows:

(a) Institutions with annual gross tuition revenue at the authorized location of one million dollars ($1,000,000) or more shall submit audited financial statements prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant.

(b) Institutions with annual gross tuition revenue at the authorized location of less than one million dollars ($1,000,000) but more than one hundred thousand dollars ($100,000) shall submit a reviewed balance sheet and income statement prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant.

(c) Institutions with annual gross tuition revenue at the authorized location of one hundred thousand dollars ($100,000) or less shall submit a balance sheet and income statement using forms prepared by Commission Staff as long as those forms are completed by an independent certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers.

(da) For multi-campus institutions, or for iAs an alternative to subparagraphs (5)(a) through (c) of this rule, institutions owned by one the same parent company may submit, an audited consolidated corporate financial statement shall be routinely required. The audited consolidated statement shall be prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant. The staffCommission Staff, the Committee, or the Commission, however, may request additional campus or institution-specific information where needed to better understand the financial stability of a single authorized location or to protect the public interest. The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act;

(6) The following is applicable to all financial statements:

(a) Tthe balance sheet must reflect the owner's (proprietorship, partnership, corporation, or other) assets and liabilities.

(b) The institution shall report total revenue on the income statement; however, total tuition revenue must be delineated. In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized;

(c) Rrelated parties must be disclosed;, includingincluding, but not limited to, related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.

(d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis. Current financial statements on each site separately authorized under the Act must be filed annually.

(ee) Within five three (3) years from initial temporaryinitially receiving authorization, neither the ratio of current fundtotal revenues to current fund total expenditures nor the ratio of current assets to current liabilities, both site specific and corporateof either the authorized location or the parent company, where applicable, shall be less than 1:1, without econvincing explanation.

(f) An Institution shall elect during reauthorization whether it will rely on the financial statements of the authorized location or the parent company and must use the financial statements of the elected entity for at least three (3) consecutive years.

(f) Institutions that have annual gross tuition revenue of $100,000 or less may

~~request a waiver of the audit contemplated by this section and provide the most recent financial information on forms provided by the Commission.~~

~~(7) The institution must submit an operating statement and balance sheet to the Commission within four months of the end of the institutional fiscal year. In addition, if a regular or certified audit is available, it should be submitted within four months of the end of the institutional fiscal year as well.~~

(~~8~~7) When there are questions about the institution's financial stability~~At any time~~, the Commission may require the institution to file appropriate financial statements, which may include audited statements prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant, for the authorized location or the parent company~~a certified audit of the institution when there are questions about the institution's financial stability~~.

(8) All institutions must maintain a business account with a financial institution that is federally insured in said institution's name.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 49-7-2015.

1540-01-02-.15~~5~~ INSTITUTION~~AL~~ AND STUDENT RECORDS.

~~(1) Records of enrollees, completers, and placements must be sufficient to provide annual auditable reports to the Commission from the master student registration list.~~

(~~2~~1) Institutional directors must maintain on-site a current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, financial reports, and agent permit documentation.

(2) Institutions shall retain for three (3) years a~~A~~ record of ~~written~~ student complaints that follow the institution grievance process~~must be maintained~~, including a copy of the complaint, any investigatory documents~~subsequent documents~~, and a statement of the matter's disposition.

(~~3~~3) Student ~~F~~financial records ~~of the institution~~ must be maintained and open for inspection and copying by ~~DPSA~~Commission Staff in accordance with applicable confidentiality laws.

(~~4~~4) For each student, the institution must maintain an up-to-date reconciled account statement as a separate document. The statement must:

(a) clearly reflect the balance due the institution or student;

(b) all charges and payments;

(c) the reason for the debit or credit, for example, student cash payment, loan payment, tuition waiver, technology fee, or tuition charged; and

(d) all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."

~~Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the enrollee.~~

~~(5) Each institution must maintain a master student registration list consisting of at least the following information for any person who signs an enrollment agreement financially obligating that person or makes a down payment to attend, or both:~~

~~(a) registration date;~~

~~(b) name of student;~~

~~(c) address of student;~~

~~(d) telephone number;~~

~~(e) social security number;~~

~~(f) name of course or program; and~~

~~(g) current student status or date of dropout or completion, date of employment, employment status (i.e., employed, unemployed, disabled, or deceased), where employed, including the name, address, and telephone number of the employer.~~

(~~6~~5) **Institutions must maintain** a file for each student enrolled in a program or course for three (3) years after the student's withdrawal from or completion of the program or course of enrollment. The file shall contain at a minimum:~~the following documentation in each enrolled student file or folder and shall include but not be limited to:~~

(a) the executed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and Rule .13(3) of these rules~~an admissions form that provides basic information such as student name, social security number, address, telephone number, program or area of application, projected entrance date, etc., and information relevant for determination that the student meets the minimum entrance requirements of the institution, (see 1540-01-02-.12). This information may be incorporated into the enrollment contract~~;

(b) documentation evidencing the student's **basis for admission** as provided for in paragraph (6) of this rule ~~(e.g., name and address of high school); if a high school diploma or the equivalent is required, for high school graduates or those with high school equivalency, the institution shall have on file an official copy of the high school transcript, or the equivalency certificate with scores which meet the state's minimum for passing; if an ability to benefit basis, the institution shall have on file official records of such; or if on an exception basis, documentation of such~~;

(c) the executed pre-**enrollment** checklist~~disclosure statement or checklist as given in these regulations (unless incorporated in the enrollment agreement)~~;

(d) the executed~~a complete~~ **enrollment agreement** ~~as given in these regulations~~;

(e) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress; and

(f) written records of the previous training and education of the applicant student which clearly indicates the appropriate credit which has been given by the institution for previous training and education.

(6) Sufficient basis of admission documentation for purposes of the student file is as follows:

(a) If the basis of admission is successful completion of an ATB test, then the student file shall contain a copy of the scored test or a graded score sheet.

(b) If the basis of admission is a high school diploma or equivalency, then the student file shall contain:

1. an official transcript from the high school or other government body, such as a county school board;

2. an official high school equivalency transcript or GED score sheet from the appropriate issuing entity; or

3. an official military document indicating that the student completed high school such as an Enlisted Record Brief.

(c) If the basis of admission is postsecondary credit in a degree program, then the student file shall contain an official transcript from a postsecondary educational institution indicating that credit in a degree program was awarded to the student.

(d) If the basis of admission is a bachelor's degree or higher credential, the student file shall contain an official copy of the transcript from the postsecondary educational institution indicating that the student received the credential.

(e) If a transcript is from an institution outside the United States, documentation from a transcript translation service indicating that the education obtained is the equivalent of the applicable United States credential and, if necessary, a translated transcript.

(e7) Official documentation is a statement of the student's academic record received directly from the issuing institution or agency such as a transcript or score sheet. Paper transcripts printed on security sensitive paper that contains the issuing institution's seal or signature of an official from the institution is acceptable admission documentation. Electronic transcripts or scores sheets not printed on security sensitive paper must include indicia that the transcript or score sheet was received directly from the issuing institution or agency such as accompanying email correspondence or the envelope.

(8) Institutions shall maintain for the life of the institution ~~an up-to-date educational~~ a **transcript** or a certificate **for each** student previously or currently enrolled in a program offered by the institution. Institutions~~-~~ may only use certificates with well-defined short term programs, such as bartending and truck driving, where there is no separation of courses by subject content. Institutions offering programs where a subject matter expert agency requires that the institution maintain a transcript must do so.

(a) Transcripts shall be in a ~~enrollee in a~~ **form that permits easy and accurate review by the student, transfer** ~~school~~institutions**, potential employers,** and other~~authorized~~ **state or federal agencies. The transcript shall** ~~be a permanent record of the student's progress and academic performance, which shall~~ **include** at a minimum the~~, but not be limited to~~:

1. ~~full and~~ complete ~~name~~ name and address of the authorized location of the institution;

2. full name of student;

3. last four digits of the student's social security number;

4. program ~~or department of enrollment~~name as approved by the Commission;

5. status of student, ~~(e.g.~~ for example, active~~;~~, withdrawa~~l~~n~~;~~, probation~~;~~, leave of absence~~;~~, or graduate ~~etc.)~~;

6. ~~an~~ official date recorded for all student withdrawals and graduations;

7. beginning date or academic term with the year for each course attempted~~, with an grade posted at the completion of the term or discrete contact hours for that course~~;

8. as applicable to the type of ~~school~~institution, credit ~~hours earned~~ or ~~contact~~ contact hours ~~completed~~attempted and earned;

9. ~~actual~~ name of each course and, if ~~(subject) with~~any, the ~~code~~ course numbers as ~~given~~ listed in the institutional catalog along with the corresponding grade received;

10. indication of credits given by transfer from another institution or credit by exam;

11. cumulative Grade Point Average (GPA);

12. date the transcript was last updated and/or printed; and

13. signature of an institution official.

(b) Certificates shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The certificate shall include at a minimum the:

1. complete name and address of the institution;

2. full name of student;

3. program or department of enrollment;

4. a certificate award date; and

5. the signature of an institution official.

~~(f) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress.~~

(~~7~~9) In lieu of hard copy~~ies of~~ ~~educational transcripts~~transcripts and certificates, an~~the~~ institution may maintain ~~the above information~~transcripts and certificates by electronic storage provided that the institution has a process for maintaining an up-to-date backup of the information in a separate system~~there is at least one complete updated 'backup' copy in a separate system~~ or at a different ~~location~~location. Commission Staff must have complete~~. Commission staff and other authorized groups have complete~~ and easy access to review student transcripts and certificates during site visits and audits such that the institution can print any requested records ~~and the institution can print out any or all transcripts~~ upon request.

~~(8) For institutions with well defined short term programs such as bartending and truck driving, with no separation of courses by subject content, an exact copy of the certificate of completion may be placed in the student file in lieu of an academic transcript.~~

~~(9) Institutions must maintain a written record of the previous training and education of the applicant student which clearly indicates the appropriate credit which has been given by the institution for previous training and education.~~

Authority: T.C.A. §§ 49-7-2006, 49-7-2016.

1540-01-02-.1~~6~~6 PERSONNEL AND INSTRUCTOR QUALIFICATIONS.

~~(1) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students.~~ (1) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training, such as official transcripts, for each personnel must be maintained on-site at the authorized location. Institutions must submit a copy of this evidence at any time upon receiving a request from Commission Staff.

(~~2~~2) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.

~~(3) Administrative personnel generally encompasses individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.~~

(~~4~~3) Administrative personnel at an authorized institution~~s~~ must be graduates of an accredited college or university or have sufficient background and training in the administrator's~~his/her~~ area of responsibility. If the institution employs a director of education, that director shall possess a post-baccalaureate degree or the highest educational credential offered by the institution, whichever is higher.

(~~5~~4) Institutional Directors:

(a) Each institution must designate one person as the institutional director. The institutional director is responsible for ensuring that the conduct of the institution and its agents is in compliance with the Act and these rules. The institutional director shall serve as the official contact for all correspondence and business conducted between the institution and the Commission, the Committee, or

Commission Staff.~~Each institution must designate one person as the institutional director, who is responsible for the institution's program, the organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to authorization and all other administrative matters related to authorization.~~

(~~6~~b) Institutional owners or the controlling board must ensure that each authorized location~~site~~ has an institutional director ~~on~~at the ~~at location~~authorized location for at least fifty percent (50%) of the operational time each week the school has students present unless other provisions have been approved by ~~the Commission staff~~Commission Staff.

(~~7~~c) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and ~~these regulations~~these rules including, but not limited to, advertising, records, contracts, required benchmarks, annual ~~deadline~~due dates, and fee payments.

(~~8~~d) The institutional director at an authorized institutions must:

1. be a graduate of an accredited college or university with at least one (1) year experience in administration or ~~,~~ institutional management;~~,~~ or

2. the total years of administration~~/~~ or institutional management experience in postsecondary ~~/higher~~ education shall equal at least five (5) years.

~~(9) Directors of authorized institutions must maintain on site a separate current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, financial reports, agent permit documentation, and fire and safety reports.~~

~~(10) If the institution employs a director of education, that director shall meet the same requirements as an instructor as specified in these rules and shall also have either one year supervisory experience or a relevant post-bachelor's degree.~~

(~~11~~5) Instructors:

(a) Instructional staff for all institutions must be selected at a minimum on the basis of ~~credentials demonstrably higher, on the basis of experience and training, than the level to be taught~~these rules.

(b) Instructors in a trades related or specific skill areas must have documented proficiency and practical applied experience in that trade or skill.

(c) An instructor must hold the appropriate ~~certificate, license, or rating~~license if the subject is a ~~trade~~ vocation requiring ~~certificate, license, or rating~~licensure.

(d) An instructor must be qualified by education and experience/background ~~demonstrably higher than the level to be taught~~ and must meet at a minimum the following qualifications ~~as minimum requirements~~:

1. ~~Minimum for d~~Doctorate level courses:

(i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:

(I) a doctorate degree with a major or concentration in the subject area to be taught; or

(II) a doctorate not in the subject area but with a minimum of one (1) year of practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours of doctoral level courses in the subject.

2. ~~Minimum for m~~asters level courses:

(i) Hold a masters or higher degree from a college or university judged to be appropriate by the Commission and either:

(I) a masters or higher degree with a major or concentration in the subject area to be taught; or

(II) a masters or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in graduate level courses in the subject.

3. ~~Minimum for a b~~Baccalaureate level courses:

(i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:

(I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or

(II) a baccalaureate or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester~~-/~~-quarter hour requirements.

4. ~~Minimum for an a~~Associate level courses:

(i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or

(ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:

(I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or

(II) an associate degree not in the subject area but with a

minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester-/-quarter hour requirements.

5. ~~Minimum for d~~Diploma and certificate level courses or programs:

(i) Meet the minimum requirements for doctorate, masters or baccalaureate or associate level; or

(ii) Hold a high school diploma or GED and a certificate of completion from a postsecondary institution judged to be appropriate by the Commission in a relevant subject area and a minimum of three (3) years of practical experience within the last seven (7) years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.

6. General education courses: All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent (25%) of the general education staff with earned master's degrees or equivalent.

~~(12) Evidence of qualifiable education, experience, or training (including official transcripts) for each instructor must be maintained on-site at the location.~~

(~~13~~6) The Executive Director may approve a variance from these specific qualifications in paragraph (5) of this rule with sufficient justification and an assurance that the program quality will not be lessened. In such a situation, the institutional director must submit written justification and documentation with the ~~personnel form~~School Personnel Application submission. In addition the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to ~~the Commission staff~~Commission Staff upon request.

(~~14~~7) Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.

(~~15~~8) Agents ~~and Recruiters~~:

~~(a) Institutional agents as defined by the Act and these regulations must submit an application, on forms provided by the Commission have authorization and an agent permit and secure the appropriate bond prior to any solicitation. The applicant must be accompanied by the following:~~

~~1. new applicants must forward recommendations by two reputable persons certifying that the applicant is of good character and reputation;~~

~~2. a check payable to the State Treasurer of Tennessee as required under~~

~~these regulations;~~

~~3. a surety bond of $5,000 per agent of an out-of-state institution or as specified in 1540-01-02-.07 of these rules; and~~

~~4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.~~

~~(b) Agent permits must be renewed every year. The expiration date of a permit is one year from the date of issue or termination of employment whichever occurs first.~~

~~(c) Agents must have separate permits to represent separate institutions unless they are commonly held. Mutual agreement by institutions is required.~~

~~(d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.~~

~~(e) Institutional directors, not marketing offices, are responsible for actions of agents.~~

(~~f~~a) ~~The agent shall be under the control of the institution, and the~~An institution is responsible for any representations or misrepresentations, expressed~~ed~~ or implied, made by the agent.

(~~g~~b) Any student solicited or enrolled by a non-~~licensed~~ permitted agent is entitled to a refund of all moneys paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent shall be ~~may be~~ null and void and unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because he or she was solicited by a non-~~licensed~~ permitted agent.

(~~h~~c) An agent is prohibited from inappropriate activities in procuring enrollees ~~including~~including, but not limited to, ~~but not limited to~~ the following:

1. administering the admission test;

2. advising students about financial aid other than informing the student of the general availability of financial assistance;

3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;

4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have; or

5. soliciting enrollments in a program which has not been approved by the Commission.

(~~i~~d) An agent must display the current permit to all prospective students and other interested parties.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006, 49-7-2009 and 49-7-2011.

1540-01-02-.1~~7~~7 ~~CANCELLATION AND R~~CANCELLATION AND REFUND POLICY~~EFUND POLICY~~.

(1) All authorized institutions must comply with the ~~laws and regulations~~laws of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws ~~and regulations~~ are revised.

~~(2) For purposes of this section, the period of enrollment is defined not to exceed one year.~~

~~(3)~~(2) Each authorized institution ~~institution authorized by the Commission to operate or to solicit students in Tennessee~~ shall have a fair and equitable refund policy which governs ~~credits or~~ the repayments ~~of unearned tuition, fees, and other~~ of institutional charges assessed a student when:

(a) ~~T~~the student does not ~~register or fails to~~ begin classes for the period of enrollment for which he or she was charged; or

(b) ~~T~~the student withdrawals, drops out, is expelled from the institution, or otherwise fails to complete the ~~program on or after his or her first day of class of the~~ period of enrollment for which he or she was charged.

~~(4)~~(3) An authorized institution may use the following refund policies:

(a) the default refund policy contained in paragraph (4) of this rule;

(b) an institution policy, as long as the refund due a student pursuant to that policy is equal to or greater than the refund due according to the default refund policy; or

(c) a refund policy mandated as a condition for students of the intuition to participate in a governmental student assistance program, such as Veterans Benefits. ~~The institution's refund policy shall be deemed by the Commission to be fair and equitable if:~~

(4) The default refund policy is as follows:

~~(a) All or a portion of the tuition, fees, and other institutional charges assessed the student were paid or to be paid by student assistance programs sponsored by one or more governmental or private agencies or organization, including employer provided financial assistance, and the institution, as a condition of establishing eligibility for its students to participate in such programs, is required to adhere to a refund policy prescribed by the sponsor of the student assistance; or~~

~~(b) For students not affected by subparagraph (4a), the institution's refund policy produces a refund which equals or exceeds the amount which would be calculated by application of the following procedures:~~

~~1.~~(a) If a student withdraws from the institution on or before the first day of classes, or fails to begin classes, the refund shall equal the sum of all ~~amounts~~ refundable fees paid ~~or~~and, if the student has institutional loans, forgiveness of the amounts owed by the student ~~to be paid by or on behalf of the student~~ for the period of enrollment for which the student was charged, less an administrative fee of one hundred dollars ($100.00);

(b) A student who withdraws at any time is entitled to a full refund of any fee, regardless of whether the fee is included in tuition, paid to the institution for tangible goods or services not delivered to or fully provided to the student;

~~2.~~(c) In addition to subparagraph (4)(b) of this rule, ~~I~~if after classes have commenced and before expiration of ten percent (10%) of the period of enrollment for which the student ~~he or she~~ was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal seventy-five percent (75%) of all refundable fees~~amounts~~ paid ~~or~~and, if the student has institutional loans, forgiveness of the loan amount in excess of the twenty-five percent (25%) the student owes the institution ~~to be paid by or on behalf of the student for the period~~, less administrative fee of one hundred dollars ($100.00);

~~3.~~(d) In addition to subparagraph (4)(b) of this rule, ~~I~~if after expiration of the of ten percent (10%) of the period of enrollment for which the student ~~he or she~~ was charged, and before expiration of twenty-five percent (25%) of the period, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal twenty-five percent (25%) of all refundable fees~~amounts~~ paid~~-~~ and, if the student has institutional loans, forgiveness of the loan amount in excess of the twenty-five percent (75%) the student owes the institution~~or to be paid by or on behalf of the student for the period~~, less administrative fee of one hundred dollars ($100.00); or

~~4.~~(e) In addition to subparagraph (4)(b) of this rule, ~~I~~if after expiration of twenty-five percent (25%) ~~(25%)~~ of the period of enrollment for which the student ~~he or she~~ was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the student may be deemed obligated for one hundred percent (100%) of the tuition and other~~,~~ fees ~~and other charges assessed~~charged by the institution~~; or~~

~~(c) For students not affected by subparagraph (4a), the institution may adopt and utilize the federal statutory pro-rata refund method for a student whose last day of attendance occurs prior to sixty percent (60%) of the period of enrollment, or such later point in time as the institution may select and be published in the institutional catalog. After completion of 60% of the period of enrollment the student may be deemed obligated for one hundred (100%) of the tuition, fees and other charges assessed by the institution; or~~

~~(d) For students not affected by subparagraph (4a), the institution may propose a refund policy for approval by the Executive Director, if the policy can be demonstrated as a whole more favorable than subparagraph (b); or~~

(e~~f~~) For a student who cannot complete one or more classes because the institution discontinued such a class ~~(es)~~ during a period of enrollment for which the student was charged, the institution shall refunds the sum of all refundable fees~~amounts~~ paid and, if the student has institutional loans, forgive the amounts owed by the student~~or to be paid by or on behalf of the student for such class(es)~~.

(5) When computing refunds pursuant to the ~~policies contained in subparagraph 2 (b)(c)(d)~~default refund policy, the last day of attendance for a student shall be one of the following:

(a) t~~T~~he date on the expulsion notice if a student is expelled from the institution; ~~or~~

(b) t~~T~~he date the institution receives a written notice ~~(including a signed drop form)~~ of withdrawal from a student; ~~or~~

(c) w~~W~~hen no written notice of withdrawal is given, the institution shall use the last day of attendance as the date of withdrawal; or

(d) the date the student ~~F~~fails to return from an approved ~~Leave of Absence (LOA)~~leave of absence.

(6) Pursuant to Rule .15(4) of these rules, the reconciled account statement must indicate the period of enrollment for which the student is being charged for each tuition charge. If the institution does not maintain the requisite account statement or the reconciled account statement does not clearly indicate the period of enrollment for which the student is being charged, the institution shall be liable for all refundable fees paid by or on behalf of the student.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, and 49-7-2013.

~~1540-01-02-.18 PROHIBTED ACTS.~~

~~(1) Grant or offer to grant or infer through advertising, promotions or other representations that educational credentials or credits may be obtained through any postsecondary institution, business, person or educational service unless so authorized in the state.~~

~~(2) No school seeking, holding or required to hold authorization under the Act may call itself a university or use university in its name, unless prior to authorization in Tennessee such an institution has been so approved by a regional accrediting body recognized by the U. S. Secretary of Education and the U. S. Department of Education.~~

~~(3) No entity may publicize, promote or imply an accreditation that is not recognized by the U. S. Department of Education.~~

~~(4) No school seeking, holding or required to hold authorization under the Act or these regulations may publicize, promote or imply an academic, vocational, professional or educational certification from any entity without the approval of the Commission.~~

~~(a) Certifications held out to students that imply a special status, licensing or credential beyond the authorized award by the institution whether offered within the school or by an independent entity, where such certifications are not recognized or required by: the state and its laws or for employment purposes within the industry / profession, will require the approval of the Commission.~~

~~(5) For consumer disclosure and truth in advertising to all Tennessee citizens, an educational service, business or person must clearly identify the nature of the educational service offered and may not use broad language or phrases to imply that the service is a school, can award credits, degrees or other educational credentials.~~

~~Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.~~

1540-01-02-.18 STATISTICAL DATA COLLECTIONS.

(1) All authorized institutions shall provide student-level statistical data on a Commission

Staff data form that will allow Commission Staff to calculate the following statistical information by institution and program:

(a) the enrollment count;

(b) demographic statistics;

(c) withdrawal rates;

(d) completion rates;

(e) number of credentials awarded;

(f) categories of credentials awarded;

(g) placement rates;

(h) in-field placement rates; and

(i) average time to completion.

(2) THEC shall publish the results of its calculations on its website except that withdrawal, completion, placement, and in-field placement rates shall not be reported for programs with ten (10) or fewer students.

(3) Data shall include all students enrolled at the institution between the twelve (12) months beginning July 1 and ending June 30 of the year prior to the report.

(4) Data form:

(a) Commission Staff will provide institutions either a blank data form or a spreadsheet that is prepopulated with continuing student data.

(b) At a minimum, the data form shall include:

1. student's first name, middle initial, and last name;

2. student's social security number or unique student identification number;

3. demographic information, such as race, gender, and date of birth;

4. program name;

5. Commission Staff assigned program code;

6. date started;

7. date completed or date withdrawn; and

8. placed or placed in-field along with employer contact information.

(5) All authorized Institutions shall maintain in the student's file evidence of placement sufficient for Commission Staff to verify placement. Depending on the field, sufficient evidence includes a written record of an employee of the institution, correspondence from the student, or evidence from a social media site or post indicating that the student is

working independently.

(6) If annual average institutional or individual program withdrawal rates exceed twenty-five percent (25%) or if annual average institutional or individual program in-field placement rates are less than seventy percent (70%), institutions shall explain the circumstances contributing to these rates, demonstrate how these rates are not an indicator of poor educational quality, and describe what actions the institution will take to lower the withdrawal rates and/or increase the in-field placement rates. Additionally, Commission Staff may compare an institution's rates to the state average for that type of institution and/or program. Institution types are unaccredited, accredited non-degree granting, and accredited degree granting; program type is based on CIP codes and length. When an institution-level or program-level rate fails to meet the state average for two (2) consecutive years Commission Staff may recommend to the Commission that adverse action be taken against the institution.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 2016 Public Chapter 868.

1540-01-02-.1~~9~~9 FAIR CONSUMER PRACTICES AND ~~STUDENT~~ COMPLAINTS.

(1) All institutions ~~authorized by the Commission~~ and their representatives shall ~~be required to operate~~act in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the ~~school~~ institution are accurate, such that students can make ~~appropriate~~ informed decisions concerning their investment of time ~~and~~ or money.

(2) Fair consumer practices means honesty, fairness, and disclosure to students in ~~the~~ areas ~~of:~~including, but not limited to, recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, ~~and~~ job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary ~~schools~~ institutions, and ~~also includes misrepresentation concerning~~ competitors ~~schools~~. Fair consumer practices require an institution to apply its policies as written.

(3) Students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.

(4) Institutions may not use mandatory arbitration provisions.

~~(a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and school brochures and must always be provided by institutional recruiters and agents.~~

~~(b) Accredited institutions may apply accreditation standards of fair consumer practices.~~

(5~~3~~) Findings by ~~Commission staff~~Commission Staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure, or discrepancies between verbal and written information, intimidation, or coercion may require corrective public announcements in addition to adverse action as set forth in Rule .22 of these rules ~~or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or institutional authorization.~~

(64) An ~~i~~institutions ~~authorized under these rules~~ must report to ~~the Commission~~Commission Staff in writing within thirty (30) ~~working~~ days any unresolved written complaints filed in a Tennessee court about ~~their operation~~the institution of which the institution is~~they are~~ knowledgeable ~~(including media accounts of complaints)~~. ~~Such complaints shall be resolved or determined to be irresolvable by the institution within 30 working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue in operation is sought.~~

(7) Institutions may provide a discount for cash payments provided:

(a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount; and

(b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.

(8) An institution may award a scholarship, tuition waiver, or other similar award provided:

(a) the eligibility requirements for the offering, including terms, conditions, application procedures, due dates, basis for selection, and amount to be awarded, are clearly defined in writing;

(b) the institution has a form and procedure to verify eligibility; and

(c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.

(9) The investigation and further review of written complaints will occur in accordance with the following provisions:

(a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail has provided for in Rule .27 of these rules.

(b) Commission Staff shall investigate all written complaints.

(c) Any named institution or agent will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.

(d) Any named institution or agent shall provide all information requested by Commission Staff as part of the investigation.

(e) As part of the investigation process, Commission Staff may work with the complainant and the named institution or agent to effectuate a settlement.

(f) Following completion of the investigation, Commission Staff shall provide to all parties written determinations and proposed recommendations and provide a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule.02(2)(b) of these rules. Such date shall not be earlier than ten (10) business days after the date of the determinations and proposed recommendations.

(g) Any request for review shall be in writing, signed, list each instance where Commission Staff erred, and provide a detailed explanation of each alleged error

with references to specific statutes or rules. A request may be denied if it is not received in a timely manner as set forth is subparagraph (8)(f) of this rule.

(10) Notwithstanding the provisions of paragraph (8) of this rule, Commission Staff may take appropriate action to investigate any complaint in order to protect the public interest.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-~~2013~~2011.

1540-01-02-.2~~020~~ REPRESENTATIONS, ADVERTISING, AND SOLICITATIONS.

(1) Institutions ~~authorized by the Tennessee Higher Education Commission~~ may ~~use the~~reference having authorization in advertising, promotional material, and on letterhead stationary using the following language: "(name of ~~school~~institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must be used, have~~with~~ the same size font, and ~~font~~ type of print.

(2) Entities or individuals that own an authorized institution as well as a related business, for example, truck driver training and trucking company, must maintain clear separation in function and advertising of the business and the institution.

(3) The ~~Tennessee Higher Education~~ Commission logo may not be used by an institution~~in any school advertising, brochures, telecommunications or institutional material without written approval~~.

~~(3)~~ (4) Institutions authorized by the Commission that have ~~presence~~a website on, advertise through, or offer instruction via the internet~~, world wide web or other electronic telecommunication means~~ must state on the institution's home page~~first 'page'(as registered with standard web/internet search engines) viewed by the consumer,~~ or Tennessee specific webpage: "[name of ~~school~~institution] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission." The entire statement must be used, have the same size font, and type of print.

~~(a) In the case of an internet site, within the required statement given above,~~The reference to the "Tennessee Higher Education Commission" must be ~~an electronic link~~a hyperlink to www.tn.gov/thec. ~~to the agency's web site at <www.state.tn.us/thec> or a picture/button link using a standardized approved Commission logo for school web sites.~~

(4~~5~~) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and ~~that of an appropriate~~is an accreditor ~~nationally~~ recognized ~~accrediting agency listed~~ by the ~~United States~~U.S. Department of Education.

(~~5~~6) No statement shall be made that the institution or its courses of instruction have been approved by a state or the federal government ~~approved~~ unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.

(~~6~~7) All advertisements ~~placed by the institution or its representatives~~ seeking prospective students must include and clearly indicate the full and correct name of the institution, ~~its address, and~~ the authorized location city, and, if out-of-state, the authorized location state ~~where the institution is located~~.

~~(7) Institutions that advertise in formats that will be in the public domain for long periods (such as the telephone book directory), where such advertising, if in noncompliance, cannot be rewritten or retracted may be fined in accordance with the Act for each day, week or month the advertisement is in active circulation. Such fines shall not exceed $10,000.~~

~~(8) Printed bulletins or other promotional information must emphasize training available rather than amount and kinds of aid available.~~

(~~9~~8) Any ~~P~~promotion of the institution must primarily be based on the institution's ~~educa~~educational~~tion~~ programs, not student aid promotion, ~~,~~ or the number of jobs available, must not guarantee employment, and must comply with fair consumer practices as described in Rule .19 of these rules ~~or educational credentials.~~

(~~10~~9) Other than entry level salary data available on a Tennessee or federal government website, ~~N~~no dollar amount ~~or amounts~~ will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by ~~Commission staff~~Commission Staff.

~~(11) Institutions authorized to offer specialized courses or subjects not available to other institutions shall not advertise such courses in such manner to diminish the value and scope of courses offered by other institutions.~~

(1~~2~~0) Institutions ~~or representatives~~ shall not use images of any kind~~a photograph, cut engraving, or illustration in bulletins, sales literature, or otherwise,~~ in such a manner as to convey a false impression as to size, importance, or location of the institution, its equipment, or its ~~and~~ facilities ~~associated with that institution~~.

~~(13) Institutions or representatives shall not use endorsements, commendations, or recommendations by students in favor of an institution except with the consent of the writer and without any offer of financial compensation, and such material shall be kept on file and made a permanent record for the institution, and such endorsements shall bear the actual name or professional name of the student.~~

(14~~1~~) Institutions or representatives shall not make deceptive statements concerning other ~~institutional activities~~institutions when ~~in~~ attempting to enroll students.

~~(15) Every display-type newspaper advertisement, or other advertisement placed by the institution or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.~~

~~(16) Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification. (See special school section 1540-01-02-.08(19) for truck driving)~~

~~(17) No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the institution has or knows of jobs or employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.~~

~~(18) No statement or representation shall be made that students will be guaranteed employment while enrolled in the institution or that employment will be guaranteed for students after graduation, nor shall any institution or representative thereof falsely represent opportunities for employment upon completion of any course of study.~~

(1~~9~~2) Other than referencing the most recent rates calculated by Commission Staff, ~~N~~no ~~school~~institution shall use job placement percentages or statistics ~~in advertisements or recruitment materials~~ except by written permission of ~~the Commission~~Commission Staff.

~~(20) Should a placement service be advertised, adequate records shall be maintained by those institutions advertising such placement service which will reflect employment data. However, no institution shall advertise as an employment agency under the same or a confusingly similar name or at the same location of the school. No representative shall solicit students for an institution through an employment agency.~~

~~(21) The Commission staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to the Executive Director of the Commission cannot be furnished, a retraction of such advertising claims published in the same manner as the claims themselves, must be published by the institution and continuation of such advertising shall constitute cause for suspension or revocation of its certificate of authorization.~~

(~~22~~13) If ~~student~~ tuition loans are available at the institution, the school may advertise them only with the language "student tuition loans available" in type no larger than that used for the name of the school. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.

(~~23~~14) Promotional materials or agent solicitation practices must not state or infer that programs are available on a free tuition basis unless the tuition and other fee amount reported to Commission Staff is zero (0).

(~~24~~15) No statement shall be made by an institution ~~or its representatives~~ that the programs ~~and/~~ or courses ~~or tests~~ are transferable to another institution without a current ~~documentation by an authorized official of the receiving institution~~articulation agreement or transfer of credit agreement.

~~(25) Claims by institutions in advertisements must be substantiated in Commission files prior to such claim.~~

(~~26~~16) Claims must not be vague. For example, "award winning" institution should include the full name of the award in ~~advertisement~~advertisement; ~~and~~ specify year of any such attainment, and the source of the award.

(17) No institution may publicize, promote or imply an accreditation that is not recognized by the U.S. Department of Education.

(18) If an institution represents that it has an educational certification from any entity, other than those given by other Tennessee agencies, the institution must produce at the request of Commission staff proof of such certification.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

1540-01-02-.2~~1~~1 AUTHORIZATION STATUS.

(1) Temporary Authorization:

(a) Commission Staff will recommend temporary authorization to the Committee after determining that the institution has demonstrated through the Initial Authorization Application and a site visit that it is compliant with the Act and these rules.~~A t~~

(b) An institution will receive temporary authorization ~~may be issued following:~~

~~1. staff review of the completed application for authorization based on these rules;~~

~~2. site visitation of the proposed institutional facilities as deemed necessary and feasible by the Commission staff;~~

~~3. recommendation from the Committee on Postsecondary Education Institutions; and;~~

~~4.~~ after favorable Commission action.

(~~b~~c) ~~Institutions satisfactorily, as deemed by the Commission, completing the pre-operation requirements will be notified by letter of temporary authorization.~~ Temporary authorization must be maintained for at least twenty-four (24) months prior to eligibility for regular authorization. ~~on the basis of public Commission action.~~

~~(c) Institutions accredited through an accrediting agency recognized by the United States Department of Education which have satisfactorily completed the specified time as an institution with temporary authorization will be considered for an authorization certificate for a period of six years. The Commission may select a shorter period, and in no case, is such school exempt from the annual reporting requirements given in these rules. (See Annual Renewal for Authorization).~~

~~(d) The temporary authorization allows ninety days for initiation of actual operation and enrollment of students and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety days after receipt of temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.~~

(2) Regular Authorization:

~~(a) Institutions that complete the mandatory period of temporary authorization may cancel all bonds required at initial authorization.~~

~~(b) Institutions accredited through an accrediting agency recognized by the United States Department of Education completing temporary authorization will be considered for an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation / reaffirmation cycle.~~

~~1. Such accredited institutions eligible for regular authorization will be~~

~~allowed to submit for annual reauthorization each October 15, the most recent annual reporting documents submitted to the accrediting agency along with the minimum forms required by the Commission.~~

((~~c~~)a) ~~Schools with no accreditation (or schools with an affiliation under an accrediting~~Commission Staff shall recommend for regular authorization any institution authorized for more than twenty-four (24) months that demonstrates all minimum standards for authorization through the Reauthorization Application~~agency not recognized by the United States Department of Education) must be reauthorized annually on forms supplied by the Commission staff.~~

~~(d) Nothing in this section shall be construed to absolve institutions of annual fee requirements, response to complaints, site visits or any Commission request for additional information or materials.~~

(3) Conditional Authorization:

(a) ~~A c~~Conditional authorization is ~~to~~authorization to operate ~~is the issuance of authorization to operate~~, but with ~~additional~~ conditions, such as~~e.g.,~~ reporting requirements, ~~on the meeting of certain~~ performance standard requirements, securing new or additional bonds, ~~authorization to operate for~~ a limited period of time to operate such as during change of ownership, or for the purpose of teaching out existing students. Institutions with conditional authorization may also be required to suspend or cease any part of institutional activity, such as enrolling students, advertising, or conducting specific classes or programs. Such suspension or cessation shall remain in effect until activities precipitating the condition are corrected and Commission Staff has completed all related reviews and investigations. ~~Such c~~Conditional authorization ~~-~~may be issued when deemed necessary to protect the public interest.

~~(b) As an alternative to revocation of authorization (c.f. TCA §49-7-2010 as amended), by making conditional its authorization to operate, the Executive Director may suspend or cause to cease any part of institutional activity such as enrolling additional students, advertising, or conducting specific classes or programs. Such cessation shall remain in effect until conditions precipitating the suspension of the activity are corrected with preventive measures in place and Commission staff have completed all related reviews and investigations.~~

~~(c) At the discretion of the Executive Director, the institution may be afforded the opportunity to "show cause" why a conditional authorization should not be imposed.~~

(~~d~~b) An institution may ~~voluntarily r~~request conditional authorization, ~~including~~including, but not limited to, suspension of the operation, rather than expose the institution to adverse action~~ or loss of authorization~~, for situations such as unexpected loss of lease, ~~and training site,~~ extended ~~travel~~ inactivity, or reorganization~~sabbatical. Voluntary suspension and the time period involved must be approved by Commission staff.~~

(~~e~~c) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.

(4) Revocation of Authorization:

(a) Revocation of authorization is the immediate and complete withdrawal of the

institution's authorization to enroll, advertise, or operate a postsecondary educational ~~school~~ institution in the state.

(b) Grounds for immediate revocation of authorization to operate shall include but not be limited to:

1. loss of right to use the authorized ~~instructional site~~location without immediate notification to the Commission;

2. a principal party, owner, or administrator involved with the institution who has ever been ~~the institution who has ever been~~ associated with a postsecondary educational institution ~~with a postsecondary educational institution~~ that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime;

3. a pattern of deceptive practices ~~which include: hiding of any institutional records or documents; manipulation, alteration or falsification of materials required under the Act and these regulations which impugns administrative capability, fair consumer practices or operational standards~~;

4. failure to correct any situation that resulted in ~~a show cause or~~ conditional authorization within a reasonable time period to be determined by the Executive Director;

5. disregard for any specific directive issued by the Commission, ~~or~~ the Executive Director, or Commission Staff;

6. failure to pay assessed~~required fees, penalties or~~ fines; and

7. closing an institution without proper notification to the Commission.

~~8. knowledgeable or demonstrated pattern of deceptive solicitation.~~

(c) Revocation of authorization shall not relieve ~~a school~~an institution of complete compliance with the requirements in ~~these regulations~~these rules applicable to an institution~~school~~ closing ~~or ceasing operation~~, ~~including~~including, but not limited to, ~~but not limited to~~ refunds to students, arranging instructional teach-outs, and securing the disposition of student records.

Authority: T.C.A. §§ 49-7-2004, 49-7-2005, 49-7-2008 and 49-7-2010.

1540-01-02-.~~22~~22 CAUSES FOR ADVERSE ACTION.

(1) The Commission or Executive Director in the interest of the public welfare, consumer protection and statutory responsibility~~,~~ may assess fines ~~under this Part~~ of five hundred dollars ($500) per day per violation or~~,~~ revoke or make conditional~~, deny or change~~ the authorization of an institution or approval of an agent permit~~status of any permit or certificate of authorization~~ under the process as given in subparagraph ~~1540-01-02~~.02(2)(e) of these rules for reasons including, but not limited to ~~for any one or combination of the following causes~~:

(a) disregard of provisions ~~in~~ of the Act and/or ~~these regulations~~these rules;

(b) willful violation of any commitment made in an application for ~~a certificate of~~ authorization or reauthorization;

(c) presenting to the general public or students or prospective students information that violates Fair Consumer Practices ~~(1540-01-02-.19)~~ as outlined in ~~these regulations~~these rules;

(d) advertising, recruiting, or operating a group of classes or a program that has not been ~~authorized~~ approved by the Commission;

(e) failure to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable at the authorized location of the institution;

(f) failure to provide and maintain adequate faculty and/or staff;

(g) failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered ~~or to retain a sufficient and qualified instructional and administrative staff~~;

(h) ~~conducting instruction~~operating a postsecondary educational institution at a ~~site~~location that~~which~~ has not been authorized by the Commission;

(i) failure to correct findings resulting from a site visit or audit ~~an on-site inspection or review of institutional materials~~;

(j) ~~demonstrable~~ a pattern of coercion, threats, or intimidation by institutional personnel to students or other school personnel;

(k) failure to advise the Commission about significant factors, such as:

1. financial difficulties ~~sufficient to~~ affecting program quality, including, but not limited to, when applicable, receipt of Title IV funds;

2. significant staff changes in a short period of time;

3. change of ownership;

4. outcomes of audits by other government agencies;

5. any factor or clearly developing factor that could alter the basis for authorization;

6. loss or lowering of accreditation status; and

7. legal action against the Tennessee authorized school; and

(l) activities described in Rule .21 of these rules.

(2) Repeated and/or consistent violations of the Act or ~~these regulations~~these rules, particularly in the same areas such as advertising, fair consumer practices or operational standards may be grounds for conditional or revocation of authorization in addition to fines.

(3) Institutions that advertise in formats that will be in the public domain for long periods and where such advertising cannot be rewritten or retracted may be fined in accordance with the Act and these rules for each day, week, or month the advertisement is in active circulation.

(4) Commission Staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to Commission Staff cannot be furnished, Commission Staff may recommend to the Executive Director that the institution publish a retraction of such advertising claims in the same manner as the claims themselves. Continuation of such advertising shall constitute cause for further adverse action.

(5) Any action by the Commission under this rule shall be in conformance with T.C.A. § 49-7- 2010(c). All Commission actions are subject to due process provisions of the ~~Tennessee~~ Uniform Administrative Procedures Act ~~(T.C.A. §§ 4-5-101 – §§ 4-5-311)~~.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2010.

1540-01-02-.2~~3~~3 INSTITUTIONAL CLOSURE.

(1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify ~~the Commission staff~~Commission Staff within seventy-two (72) ~~72~~ hours of that decision.

(2) Commission Staff will provide the institution a list of items that must be provided to Commission Staff to close the institution in good-standing and a due date by which to provide the items. ~~and shall submit to Commission staff within 10 days (or other deadline established by Commission staff) a plan to fulfill all obligations given below. Such plan shall~~ The list may include ~~but not be limited to~~:

(a) a~~A~~nticipated date to terminate teaching activity;

(b) e~~E~~nding date of present term;

(c) a~~A~~ listing by name of all students in all programs. Such list shall include student's social security number, unique student identification number, ~~ocial security number,~~ address, ~~and~~ phone number, program of enrollment ~~enrolled in~~, and estimated ~~graduation~~completion dates;

(d) t~~T~~he status of all current refunds due or the amount of ~~rent refunds due (the amount of~~ unearned tuition paid by each student and for which the school is obligated~~)~~;

(e) ~~A~~a verified agreement with one or more local institutions able to provide sound education to all students in all programs;

(f) d~~D~~isposition and servicing of all student records as required by T.C.A. §49-7-2016;

(g) a~~A~~ request for conditional authorization to operate where required;

(h) updated statistical data;~~Completion of obligations as designated by Commission~~

~~staff by established deadlines.~~

(i) official transcripts and certificates; and~~Submission of any information or materials related to the closure requested by staff.~~

(j) d~~D~~emonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.

(2~~3~~) ~~The~~ An institution ~~which proposes to~~that ceases operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.

(~~3~~4) Should the institution fail to make arrangements satisfactory to the ~~e~~Executive ~~d~~Director for the completion of the programs in which the currently enrolled students are enrolled and/or for the reimbursement of unearned tuition and fees, the institution shall be subject to fines~~ as stipulated in T.C.A. 49-7-2017~~.

(4~~5~~) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this rule~~section (1540-01-02-.23)~~ may be deemed retroactively by the Executive Director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individual~~(s)~~ directly involved, including, but not limited to, the director, owner~~(s)~~, and/or the board chair.

(~~5~~6) Student Completion of Education ("Teachouts"):

(a) The ~~e~~Executive ~~d~~Director may approve other authorized or exempt institutions ~~which are authorized under T.C.A. 49-7-2001 et seq. or exempt institutions~~ to teachout students who were currently enrolled in an institution which ceases operation. An approved teachout institution shall:

1. offer the course of study or similar course of study as those offered at the closed institution;

2. ~~exist or be provided~~ be in the same geographic area as that in which the closed institution existed or provide necessary transportation expenses;

3. provide the student the opportunity to complete ~~his/her~~the program at no ~~additional~~ cost in excess of that~~than~~ for which the student originally contracted at the closed institution;

4. accept any and all credits earned at the closed institution; and

5. not reduce total course hours required for the student to ~~graduate~~complete.

(b) If the closed or closing institution fails to provide an acceptable plan to the executive director, ~~the Commission staff~~ Commission Staff may work toward effecting teachout arrangements or transfer agreements with other authorized institutions.

(c) Teachout plans may involve other institutions or be carried out by the terminating institution as circumstances may dictate.

~~(d) The teachout plan requirement is intended to supplement, not supplant, the provisions concerning the disposition of records when an institution closes, as indicated in T.C.A. 49-7-2016.~~

~~(6) Disposition of Records:~~

~~(a) Any institution ceasing operation must secure student educational transcripts by an arrangement with an authorized institution or make them available to the Commission.~~

~~(b) When financial aid and academic transcripts from closed institutions are prepared for delivery to the Tennessee Student Assistance Corporation and the Tennessee Higher Education Commission, such academic and financial records, each, shall be sorted and separated by year, in alphabetical order, and physically contained in boxes 15 inches long, 12 inches wide, 10 inches high with tops and with handles, consistent with State of Tennessee Archives regulations.~~

~~(c) Financial aid transcripts must be organized, marked and boxed separately from academic transcripts.~~

Authority: T.C.A. §§ 49-7-2002, 49-7-2005 and 49-7-2016.

1540-01-02-.24~~4~~ ~~–~~Filing Methods and Requirements.

(1) Unless otherwise provided, all filings must be received via hand delivery, mail, electronic mail, or facsimile. Current addresses and fax numbers will be posted on the THEC webpage.

(2) As to any filing requiring the payment of a fee, the fee must be submitted along with the filing or else the filing will be considered incomplete pursuant to Rule .07(1)(b).

(3) Filings shall be received at DPSA on the due date. Items postmarked on the due date but not received at DPSA will be deemed late-filed and, if applicable, may be deferred pursuant to Rule 07(1)(a).

~~TUITION GUARANTEE FUND (TGF).~~

~~(1) Tuition guaranty fund' or 'TGF' or 'fund' means the tuition guaranty fund created by TCA 49-7-2018.~~

~~(2) No institution organized as an in-state private postsecondary vocational education institution covered under the Act is exempt from the Tuition Guaranty Fund as described in TCA 49-7-2018.~~

Authority: T.C.A. §§ 49-7-2005~~ and 49-7-2018~~.

1540-01-02-.25~~5~~ ~~–~~FEES.

(1) All fees collected pursuant to the provisions of this part shall be deposited in the state treasury as a special agency account to administer the provisions of this part.

~~(2) The Commission is authorized to adjust fees annually hereafter based on the intent to collect revenues sufficient to cover the cost of this regulatory function (e.g. travel,~~

~~employee costs, legal costs, expert fees).~~

(~~2~~3) Annual reauthorization fees shall be paid with the Reauthorization Application as follows:

(a) Annual Reauthorization Fee:

1. a fee of five hundred dollars ($500) if enrollment is zero (0) to three hundred (300) students;

2. a fee of one thousand five hundred dollars ($1,500) if enrollment is three hundred and one (301) to six hundred (600) students; and

3. a fee of three thousand five hundred dollars ($3,500) if enrollment is six hundred and one (601) or more students.

(b) Reauthorization Extension Fee $500

(c) Late Reauthorization Fee $500

(3) The following fees apply to the filing of ~~The fees to be collected by the Commission hereunder shall accompany an~~ applications ~~for authorization to operate an institution or an application for an agent's permit, or other application required by these rules in accordance with the following~~and other services ~~schedule~~:

~~(a) Late Renewal Fee (in addition to base renewal fee) ..... $1,000~~
~~(b) Renewal Extension Fee (in addition to base renewal fee) ..... $500~~
(~~e~~a) Initial ~~New School~~ Authorization Application ..... ~~$3,00~~

(b) New Programs Application $500

~~..... Each Proposed Program ..... $500~~
~~(d) Associate Degree Granting Institutions (in addition to base initial ..... $1000~~
~~..... application and program fee)~~
~~(e) Bachelor Degree Granting Institutions (in addition to base initial ..... $2,000~~
~~..... application and program fee)~~
~~(f) Masters Degree Granting Institutions (in addition to base initial ..... $3,000~~
~~..... application and program fee)~~
~~(g) Doctoral Degree Granting Institutions (in addition to base initial ..... $4,000~~
~~..... application and program fee)~~
(c~~h~~) Authority for Unaccredited Institutions to Grant Degrees ~~– Unaccredited Institutions (in addition~~
~~..... $1000~~
(paid in addition to ~~base initial application, program and degree level~~the New Program Application fee ~~fees)~~)

~~(i) New Programs – Authorized Institutions ..... $500~~
(d~~j~~) ~~Degree~~ Credential Level Elevation for ~~–~~ Authorized Institutions ..... ~~$21,0~~
(paid in addition to the New Program Application fee)

(e~~k~~) Agent Permit Application ~~Fee In-State –~~ Initial ~~Application~~ ..... ~~$$50(~~

(f~~l~~) Agent Permit Application ~~Agent Fee In-State –~~ Renewal ~~Application~~ ..... ~~$250~~

~~(m) Agent Fee Out-of-State – Initial Application ..... $600~~

~~(n) Agent Fee Out-of-State - Renewal Application ..... $300~~

(~~o~~g) Institution ~~al~~ Name Change Application $500

(~~h~~p) Change of ~~Address~~Location Application $500

(~~q~~i) ~~Non-compliance~~ Fines (assesses at a maximum of per day, per violation) $500

(j) Exemption Determination Application $100

(k) Closed Institution Transcript Request $10

(l) Convenience Charge for Electronic Payments ..... amount charged by vendor

~~(4) Reauthorization fees for in-state institutions are based upon an institution's annual gross tuition revenue collected during the previous fiscal year (July 1 to June 30). Reauthorization fees for out-of-state institutions are based on an institution's annual gross tuition revenue collected from Tennessee students during the previous fiscal year (July 1 to June 30). In each instance the reauthorization fee shall equal point seventy-five percent (.75%) of the annual gross tuition collected with a minimum fee of five hundred dollars ($500) and maximum fee of twenty-five thousand dollars ($25,000).~~

Authority: T.C.A. §§ 49-7-2005, 49-7-2014 and 49-7-2017.

1540-01-02-.26 REFUND OF REGULATORY FEES.

(1) At the request of an institution a refund will be made as follows:

(a) If an institution withdraws a pending application within three (3) working days from receipt or prior to the start of Commission Staff's review, then all fees assessed shall be refunded.

(b) If an institution withdraws a pending application more than three (3) working days from receipt and once Commission Staff review begins, the Commission may retain fifty percent (50%) of the assessed fees.

(c) Once Commission Staff's review of a pending application is complete or a site visit has been conducted, the Commission may retain one hundred percent (100%) of the assessed fees.

(d) Institutions that fail to complete the application process described in Rule 1540-01-02-.07(1)(b) shall forfeit all fees paid.

(e) Any other fee collected is nonrefundable once Commission Staff has performed the associated review or work related to that fee.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2014.

RULES OF THE TENNESSEE HIGHER EDUCATION COMMISSION
CHAPTER 1540-01-10
REGULATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS WITH OPTIONAL EXPEDITED AUTHORIZATION (OEA)

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1540-01-10-.01 INCORPORATION OF RULES.

(1) Rules 1540-01-02-.01, .02, .04, .18 and .26 shall be incorporated into this Rule Chapter as if fully written herein.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.02 DEFINITIONS

(1) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs. Private educational associations of regional and national scope that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.

(2) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.

(3) "Articulation and transfer of credit agreement" means an arrangement between two (2) higher education institutions that is approved and signed by authorized institutional representatives and constructed by faculty in the discipline that (1) equates for transfer of a defined set or block of academic credits that will meet requirements of a specified program at a degree-awarding institution or (2) provides that a specific credential from one institution will meet the admission education requirement for a program leading to a higher credential at a second institution.

(4) "Authorization to operate" means approval of the Commission to operate or to contract to operate a postsecondary educational institution in this state as described in T.C.A. § 49-7-2007(1) – (3) or (5). Authorization to operate is for a specified time at a specified location. Institutions shall not use an authorization to operate to connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."

(5) "Commission" means the Tennessee Higher Education Commission.

(6) "Committee" means the Committee on Postsecondary Educational Institutions.

(7) "Degree-granting postsecondary educational institution" includes institutions offering education or training above the high school level and where the institution awards degrees, such as associate, bachelors, masters, specialist, or doctoral degrees.

(8) "Division of Postsecondary State Authorization" or "DPSA" means the division within the Tennessee Higher Education Commission tasked with overseeing the implementation and enforcement of the Act and these rules.

(9) "Federal student financial aid programs" means any of the various loans or grants offered to students, parents, or institutions through Title IV of the Higher Education Opportunity Act, as amended.

(10) "License" or "Licensure" includes similar terms, such as registration and certification, and means a designation from a subject matter expert state agency, board, or commission indicating that the recipient has met certain requirements for obtaining the designation, for example, a licensed massage therapist or educator.

(11) "Location" means an address that is zoned for commercial purposes for use as a postsecondary educational institution.

(12) "Optional expedited authorization" or "OEA" means the optional expedited authorization available pursuant to 2016 Public Chapter 868 and these rules to certain accredited degree-granting institutions.

(13) "Other fees" means fees, other than tuition, paid to the institution or third parties for products or services, including, but not limited to, fees paid for tangible goods, laboratory fees, technology fees, student activity fees, graduation fees, or fees paid for housing, meals, or transportation.

(14) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.

(15) "These rules" means all rules contained in Rule Chapter 1540-01-10.

(16) "Tuition" means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.03 ELIGIBILITY AND APPLICATION REQUIREMENTS.

(1) In order to receive OEA, a postsecondary educational institution must meet the following eligibility requirements:

(a) Meet the definition of degree-granting postsecondary educational institution;

(b) Be accredited by a regional or national institutional accrediting agency recognized by the U.S. Department of Education; and

(c) Provide the following information and documentation as part of a signed and notarized OEA Application created by Commission Staff:

1. evidence of good-standing and valid institutional accreditation from a regional or national institutional accrediting agency recognized by the U.S. Department of Education;

2. documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of student complaints. In order to be a comprehensive process, the process must contain:

   (i) a detailed explanation as to how a student escalates a grievance to the highest level at the authorized institution location;

   (ii) an opportunity for all persons involved in the complaint to be heard at any final step at the institutional location level, including, but not limited to, an appeal;

   (iii) an explanation as to how the institution will notify students that complaints not resolved at the institutional location level may be filed with the Commission; and

   (iv) an explanation as to how students will be notified of the institution's comprehensive process;

3. documentation demonstrating the institution is operating lawfully in the state. Institutions registered by the Tennessee Secretary of State shall submit a Certificate of Existence issued no more than two (2) months prior to the date of the application. Institutions that are not registered with the Secretary of State shall submit a local business license;

4. documentation demonstrating that the institution is currently maintaining financial standards and institutional stability deemed acceptable for eligibility in Title IV federal student financial aid programs. Documentation shall include at a minimum:

   (i) the most recent independent audit completed, in part, for purposes of calculating the institution's federal financial composite score as described in 34 C.F.R. § 668.172; and

   (ii) any correspondence issued in the past twenty-four (24) months from the Federal Student Aid Office of the U.S. Department of Education concerning eligibility for financial aid, including, but not limited to, financial ratios, a letter of credit alternative, or a provisional certification alternative as well as any related correspondence from the institution;

5. a comprehensive list or verification of all programs offered at the institution along with, when applicable, documentation evidencing receipt of all requisite program approvals from subject matter expert state licensing agencies, boards, or commissions. Evidence shall be provided for any program designed to train a student for employment in a field where a license is required in order to be employed in that field. The evidence shall clearly demonstrate that the state agency, board, or

commission has determined that the program meets the educational requirements necessary to receive a license or sit for a required exam. The comprehensive list or verification shall include, at a minimum, the following information:

(i) program name;

(ii) DPSA assigned program code;

(iii) credential awarded;

(iv) credit hours or contact hours to be awarded;

(v) length of time expected to complete the program;

(vi) cost of program tuition;

(vii) cost of other fees;

(viii) program status;

(ix) a Classification of Instructional Programs (CIP) code;

(x) whether programmatic accreditation is required for the program and the name of the accreditor that has reviewed and accredited the program; and

(xi) the website address to the gainful employment data for the program. The address should provide a reasonable person easy access to this information;

6. a report of any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students with any corrective action and remedies taken by the institution;

7. a description of the ownership of the institution and when applicable, a corporate flowchart showing the institution's position in relationship to all affiliated corporate entities;

8. copies of all executed articulation and transfer of credit agreements with other institutions operating in Tennessee;

9. the most recently calculated three-year (3) official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education. Institutions with official cohort default rates for the three most recent years equal to or greater than thirty percent (30%) or a current official cohort default rate greater than forty percent (40%) are not eligible for OEA; and

10. statistical data as described in Rule 1540-01-02-.18.

(2) After receipt of an institution's application, Commission Staff shall conduct a detailed review and verification of the application. OEA applications will be processed as follows:

(a) Upon satisfactory examination of all submitted documentation, Commission Staff will recommend the application for recommendation of approval by the Committee to the Commission. Thereafter, the Committee's recommendation will be submitted to the Commission and upon approval by the Commission, Commission Staff shall issue notification of the OEA status noting that it is valid for one (1) year.

(b) If the Commission upon review and consideration of the application determines the applicant is not eligible and fails to meet the OEA criteria established in this section, the Commission shall notify the applicant of its decision to deny the application and set forth the reasons for the denial in writing. Such denial can be reviewed as further described in Rule .05 of these rules.

(c) In order to continue OEA for an additional year, an institution must complete an application as described in Rule .03(1)(c) of these rules and file it with Commission Staff by the due date immediately preceding the expiration date of the institution's current OEA. In the event that an application is timely filed but is not considered by the Commission prior to the current OEA expiration date, Commission Staff may continue an institution's OEA for not more than six (6) months.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.04 REQUIRED NOTIFICATIONS TO COMMISSION STAFF.

(1) OEA institutions shall notify Commission Staff, within five (5) business days, of the following:

(a) action by an accrediting agency in regard to the institution's accreditation status, such as revocation, suspension, probation, warning, or similar action;

(b) notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, related to the delivery of educational programming or student consumer practices, including, but not limited to, class action lawsuits;

(c) utilization by the institution of a letter of credit or a cash management agreement with the U.S. Department of Education; or

(d) public announcement of investigation by any governmental agency. The institution shall notify Commission Staff whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices.

(2) Institutions shall submit a New Program Notification Form on the Committee meeting due dates for any programs implemented since the last due date. Once processed, Commission Staff will issue the institution a program code for use when submitting statistical data.

(3) At the request of Commission Staff, the Executive Director, the Committee, or the Commission, OEA institutions shall provide any information deemed necessary to monitor the institution's eligibility for OEA.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.05 DENIAL OF OEA STATUS.

(1) A decision of the Commission to deny OEA status shall be provided to the institution in writing through the Executive Director, provide the basis for denial, and be effective as of the date of the decision.

(2) Any person aggrieved by a decision of the Commission respecting denial of OEA status shall have the right to a hearing and review of the decision by the Commission as provided in 2016 Public Chapter 868 and these rules. An aggrieved party for purposes of this rule is any postsecondary educational institution denied OEA status.

(3) If an aggrieved party desires a hearing and review, the party shall file a written notice within ten (10) business days after the date of the Commission's written notice of denial. If written notice is not provided by an aggrieved party, then the action shall be deemed final.

(4) Upon receiving notice from an aggrieved party, the Commission shall fix the time and place for a hearing and shall notify the aggrieved party of the time and place of the hearing. The Commission may vote to have an administrative law judge from the Administrative Procedures Division of the Tennessee Secretary of State's Office conduct a contested case proceeding and issue an initial order pursuant to the Uniform Administrative Procedures Act.

(5) At the hearing, the aggrieved party may employ counsel, shall have the right to hear the evidence upon which the action is based, and present evidence in opposition or in extenuation. If an administrative judge is not appointed, then any member of the Commission may preside except when a clear conflict of interest may be demonstrated.

(6) Any decision by the Commission or an initial order by an administrative law judge shall include a statement of findings and conclusions upon all material issues of fact, law or discretion presented at the hearing and the appropriate rule, order, sanction, relief, or denial thereof.

(7) Any final decision of the Commission shall be subject to the right of judicial review provided in T.C.A. § 49-7-2012.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.06 REVOCATION OF OEA STATUS.

(1) OEA may be revoked for just cause. Revocation can occur as a result of:

(a) a vote of the of Commission on its own motion or at the recommendation of the Committee or Commission Staff; or

(b) a determination of the Executive Director pursuant to Rule 1540-01-02-.02(e).

(2) Just cause includes activities where the institution acted contrary to the public interest, exhibits questionable financial strength, or is not operating educational programs with acceptable outcomes and includes, but is not limited to:

(a) Loss or failure to meet any of the listed criteria for eligibility in Rule .03(1) of these rule;

(b) Failure to fulfill the requirements in Rule .03 of these rules;

(c) A finding resulting from a signed student complaint that:

1. the institution did not follow its policies as presented to the student; or

2. the institution hid a fact or made a verbal or written inaccurate representation to the student that affected the student's ability to make an appropriate decision concerning the student's investment of time and money.

(d) Having an institution-level or program-level withdrawal, completion, placement, or in-field placement rate that is less than the state average rate for other OEA institutions or a program type for more than two (2) consecutive years;

(e) Providing false or misleading statistical data;

(f) Failure to comply with the requirements of the tuition guaranty fund under § 49-7-2018 and the related rules;

(g) A three-year federal financial aid cohort default rate as calculated by the U.S. Department of Education of thirty percent (30%) or higher for three (3) consecutive years or over forty percent (40%) for any single year; or

(h) Allowing OEA to expire without timely filing an OEA Application or Initial Authorization Application.

(3) Upon revocation of any institution's OEA, the following shall occur:

(a) The institution shall immediately be subject to all provisions of the Act and Rule Chapter 1540-01-02.

(b) The institution shall apply for Commission authorization under T.C.A. § 49-7-2008 and Rule Chapter 1540-01-02 by the next due date which is more than ten (10) business days from the date of revocation.

(c) The Executive Director may grant the institution conditional authorization to continue its operation as a non-OEA institution. Such conditional authorization shall not be for more than six (6) months. Failure to fulfill all conditions of authorization within six (6) months can lead to revocation of authorization.

(d) Any institution whose OEA is revoked by the Commission shall be ineligible to reapply for OEA for no less than twenty-four (24) months from the date of revocation.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.07 COMPLAINTS.

(1) Commission Staff shall investigate any signed student complaint involving an OEA institution after verifying that the student has escalated the complaint to the institutional director and the institutional director has had an opportunity to investigate and resolve the complaint yet the complainant contends it remains unresolved.

(2) Commission Staff's investigation shall determine:

(a) whether the institution followed its policies as represented to the student; and

(b) whether the institution failed to disclose a fact or made a verbal or written inaccurate representation to the student that affected the student's ability to make an appropriate decision concerning the student's investment of time and money.

(3) When determining whether a finding is appropriate, Commission Staff shall take into consideration any reasonable offers the institution made to resolve the student's complaint at the institutional level.

(4) The investigation will proceed as follow:

(a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail has provided for in Rule .08 of these rules.

(b) Any named institution will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.

(c) Any named institution shall provide all information requested by Commission Staff as part of the investigation.

(d) As part of the investigation process, Commission Staff may work with the complainant and the named institution to effectuate a settlement.

(e) If there are no findings, the complaint will be closed and the written determination shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations. If no request for review is received, the complaint will be closed.

(f) If there are findings and proposed recommendations, the following process will be used:

1. Commission Staff shall provide in the written determinations and proposed recommendations a date by which either party may respond to the findings or recommendations. Such date shall not be earlier than ten (10) business days after the date of the written determinations.

2. Following review of the responses, if any, Commission Staff may:

(i) determine that the complaint is closed by providing written notice to the parties. The written notice shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations; or

(ii) recommend that the Executive Director take some action that is within the scope of the proposed recommendations. Any decision of the Executive Director to take action will be provided to the parties by letter and shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b).

Such date shall not be earlier than ten (10) business days after the date of the written determinations.

(g) Any request for review shall be in writing, signed, list each instance where Commission Staff erred, and provide a detailed explanation of each alleged error with references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth is subparagraph (f).

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.08 FILING METHODS AND REQUIREMENTS.

(1) Application due dates and deferrals:

(a) For each quarterly meeting of the Committee, Commission Staff shall establish a due date that is no more than ninety (90) days before the date of the meeting. Unless stated by Commission Staff, the established due date shall apply to Optional Expedited Authorization Applications. Applications shall be received at DPSA on or before the due date. Applications received after that date will be deemed late and may be deferred to the next due date.

(b) An application submitted without the appropriate fee will be considered incomplete and will not be reviewed until all applicable fees are received. In any event, Commission Staff may defer the application to the next due date.

(c) Further, an incomplete application is an application that is missing any information or contains noncompliant information. Commission Staff may defer consideration of the application to the next due date.

(d) If an application is deferred, the institution shall have until the next established due date to complete the application.

(e) An application can be deferred either by the institution or Commission Staff a total of two (2) times. After the second deferral, the application will be deemed withdrawn if the institution does not submit a completed application by the next due date.

(2) Unless otherwise provided, all filings must be received via hand delivery, mail, electronic mail, or facsimile. Current addresses and fax numbers will be posted on the THEC webpage.

(3) Filings shall be received on the due date. Items postmarked on the due date but not received at DPSA will be deemed late.

Authority: 2016 Public Acts Ch. 868.

1540-01-10-.09 FEES.

(1) An institution shall pay a fee of nine thousand dollars ($9,000) to the Commission with the Optional Expedited Authorization Application.

Authority: 2016 Public Acts Ch. 868.

* 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)
Mr. Evan Cope, Chair	X				
Mr. Keith Wilson, Vice Chair	X				
Mr. David Kustoff, Vice Chair				X	
Mr. A C Wharton, Jr., Secretary			X		
Mr. Tre Hargett				X	
Mr. Justin P. Wilson				X	
Mr. David H. Lillard, Jr.	X				
Ms. Mintha Roach	X				
Ms. Pam Koban	X				
Ms. Pam Martin	X				
Mr. Bill Lee	X				
Dr. Nancy Dishner	X				
Ms. Siri Kadire	X				

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

Date: August 1, 2016

Signature: [signature]

Name of Officer: Mike Krause

Title of Officer: Executive Director
Tennessee Higher Education Commission

CORSINA DICKSON-WILEY
STATE OF TENNESSEE NOTARY PUBLIC
Comm. Exp. 08-23-2016
DAVIDSON COUNTY

Subscribed and sworn to before me on: 08-1-2016

Notary Public Signature: [signature]

My commission expires on: 08-23-16

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
Attorney General and Reporter

August 12, 2016
Date

Department of State Use Only

Filed with the Department of State on: 8/15/16

10/3/16

Effective for: 180 *days

Effective through: 4/1/17

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

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY: Board of Medical Examiners

SUBJECT: Telemedicine Licensure

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-1-155 and 63-6-209

EFFECTIVE DATES: October 31, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rule replaces the current telemedicine rule. Under the current rule, applicants may apply for a telemedicine license if they are licensed in good standing in another state and are board-certified or board-eligible by a recognized specialty board. Issuance of a telemedicine license only allows the physician to practice in that specialty area and to practice telemedicine as defined. Such licensees do not undergo the full application for licensure and do not necessarily meet all of the requirements for full licensure (i.e. they may not have attended a medical school that otherwise would allow them licensure in Tennessee and may not have the appropriate exam scores that would allow them such licensure). In addition, such telemedicine licensees are currently required to provide the board the name, address and telephone number of a Tennessee-licensed physician who will act as the licensee's agent for purposes of service of process.

The proposed rule amendments would allow physicians who have previously been granted telemedicine licensure to transfer to a full license status or, if they do not qualify, to maintain the existence of the license and provide the same restrictions currently in place (most importantly, a restriction to practicing only in the area of board certification).

Paragraph (1) of the rule amendments contains definitions.

Paragraph (2), regarding the effect of licensure, tracks the current rule.

Paragraph (3) contains jurisdictional policies regarding licensure. The issuance of the license subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline.

Paragraph (4) allows for exemptions in the following circumstances: physicians offering consultation with Tennessee physicians regarding specific clinical or scientific aspects of the field of medicine, U.S. military physicians, uncompensated professional dialogue regarding aspects of medical practice, and a recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.

Paragraph (5) states that physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

Paragraph (6) lists circumstances, other than those provided in Rule 0880-02-.14(7), where a physician may practice telemedicine without a facilitator.

Paragraph (7) allows a physician fully-licensed by the Board to engage in medical interpretation of imaging studies or tissue samples and to render an opinion based on the electronically submitted data without examining the patient or having the complete medical record of the patient.

Paragraph (8) states that no one under 18 years of age can be treated unless there is a facilitator present.

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.

Telemedicine Rulemaking Hearings
May 19, 2014 and March 16, 2015

Public Hearing Comments

There were both oral and written comments received by the Board regarding the rule amendments. The Board responded to each comment by written correspondence and made the necessary amendments to the rule.

Several written and oral comments were received regarding the initial proposed rules of the Board contained in the original Notice of Rulemaking Hearing. Following the original rulemaking hearing in May 2014, the Board considered the comments and made significant changes. A new Notice of Rulemaking Hearing reflecting the revised proposed rules was filed and another rulemaking hearing conducted in March 2015.

For example, several public comments were received addressing concerns over the face-to-face examination "initially and then annually thereafter in all circumstances" requirement. This requirement was deleted from the revised rule contained herein.

Additionally, several public comments were received addressing concerns over the requirement for a facilitator (except when the patient is a minor). Again, the requirement of a facilitator was deleted in the revised proposed rules contained herein (with the exception that a facilitator is required when the patient is a minor). The definition of a facilitator was also amended to include a parent or legal guardian.

The Board also received many comments and concerns pertaining to the requirement for board-certification for medical interpretation. The Board deleted this requirement from the rule.

There were also many comments received regarding the controlled substance language in the rules, which prohibited most controlled substance prescribing via telemedicine. In response and based on Public Chapter 261, which prohibits health related boards from establishing a more restrictive standard of professional practice than that permitted or authorized by statute, the Board deleted this provision regarding prescription of controlled substances.

The Board received many concerns regarding the definition of telemedicine. In response, the Board amended the definition for telemedicine.

The Board received a concern regarding provisions containing requirements for consultations and referrals. In response, the Board deleted this language in the rule.

The Board received a comment regarding patient record-keeping and security of those records. The Board responded that the proposed rules as revised contain multiple provisions relating to record-keeping, as do other rules of the Board already in place. It also stated that other state and federal laws regarding record-keeping and record security will apply to this practice as with any other traditional practice.

The Board also received comments pertaining to accessibility of patient records. In response, the Board amended the provision regarding accessibility of the patient record.

A few commenters also requested the Board to amend the telemedicine language to include, or authorize, other medical professions, specifically nurse practitioners, to engage in telemedicine. The Board responded to each

commenter and stated that, other than with regard to the physician supervisory role, the Board does not have authority to create rules for Tennessee nurse practitioners. As such, the Board was unable to comply with these requests.

A few commenters expressed concern regarding rare occasions when highly-specialized physicians from out-of-state may be consulted, but may not wish to take the time or go to the expense of getting licensed in Tennessee. As such, the Board created an exemption to the rule language to include that physicians licensed in other states or countries who specialize in the diagnosis and treatment of rare or orphan diseases, and who provide consultation to research hospitals, be able to provide these services according to the rule.

One commenter merely sought clarification as to whether the rule intended for telemedicine license holders would be permitted to renew such licenses indefinitely, as long as they did so timely. The Board responded and confirmed that the proposed rules do allow for existing telemedicine licenses to be renewed indefinitely, consistent with the requirements of the maintenance of that license.

In addition to the above comments, the Board also received general comments in favor of the practice of telemedicine, but these comments did not raise any particular concerns or issues with the proposed rules and required no response.

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 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, or local government rules.

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

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

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

The proposed rules are not written with special consideration for flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

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

The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still complying with the statute and allowing the Board to achieve its mission of protecting Tennesseans.

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

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

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

The proposed rules create neither design nor operational nor performance standards.

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

The proposed rules do not create unnecessary entry barriers or other effects that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

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

   These amendments should have a positive impact on small businesses, by increasing access to health care.

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 amendments do not implement any changes in reporting, recordkeeping or other administrative costs.

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

   These amendments should have a positive effect on small businesses and consumers, by increasing access to health 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 business:**

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

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

   Federal: None.

   State: These rules are similar to those of other state medical 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.**

   There are no exemptions for small businesses contained in these amendments.

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

Additional Information Required by Joint Government Operations Committee

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

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

These proposed rule amendments would delete the current telemedicine rule in its entirety and replace with the proposed language. Under the current rule, applicants may apply for a telemedicine license if they are licensed in good standing in another state and are board-certified or board-eligible by a recognized specialty board. Issuance of a telemedicine license only allows the physician to practice in that specialty area and to practice telemedicine as defined. Such licensees do not undergo the full application for licensure and do not necessarily meet all of the requirements for full licensure (i.e. they may not have attended a medical school that otherwise would allow them licensure in Tennessee and may not have the appropriate exam scores that would allow them such licensure). In addition, such telemedicine licensees are required by this rule to provide the board the name, address and telephone number of a Tennessee-licensed physician who will act as the licensee's agent for purposes of service of process.

The proposed rule amendments would allow physicians who have previously been granted telemedicine licensure to transfer to a full license status or, if they do not qualify, to maintain the existence of the license and provide the same restrictions currently in place (most importantly, a restriction to practicing only in the area of board certification).

Paragraph (1) of the rule amendments merely contains definitions.

Paragraph (2), regarding the effect of licensure, tracks the current rule.

Paragraph (3) contains jurisdictional policies regarding licensure. The issuance of the license subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline.

Paragraph (4) allows for exemptions in the following circumstances: physicians offering consultation with Tennessee physicians regarding specific clinical or scientific aspects of the field of medicine, US military physicians, uncompensated professional dialogue regarding aspects of medical practice, and a recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.

Paragraph (5) states that physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

Paragraph (6) lists circumstances, other than those provided in Rule 0880-02-.14(7), where a physician may practice telemedicine without a facilitator.

Paragraph (7) allows a physician fully-licensed by the Board to engage in medical interpretation of imaging studies or tissue samples and to render an opinion based on the electronically submitted data without examining the patient or having the complete medical record of the patient.

Paragraph (8) states that no one under the age of eighteen (18) years of age can be treated unless there is a facilitator present.

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

None.

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

The rule amendments affect all current holders of telemedicine licensure as well as all current and future holders of a Tennessee medical license.

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

None.

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

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

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

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Andrea.Huddleston@tn.gov and Tennessee Board of Medical Examiners, Division of Health Related Boards, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243, (615) 741-8402, mzanolli@mac.com.

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

None.

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Sequence Number: 08-03-16
Rule ID(s): 6271
File Date: 8/2/16
Effective Date: 10/31/16

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 Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Andrea.Huddleston@tn.gov

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

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

Chapter Number	**Chapter Title**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.16	Telemedicine Licensure

RULES
OF
TENNESSEE BOARD OF MEDICAL EXAMINERS

CHAPTER 0880-02
GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF MEDICINE

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0880-02-.01 DEFINITIONS. As used in this Chapter of Rules the following terms and acronyms shall have the following meanings ascribed to them:

(1) Board - The Tennessee Board of Medical Examiners.

(2) Board's Administrative Office - The office of the administrator assigned to the Tennessee Board of Medical Examiners and housed within the Division.

(3) Board Designee - Any person who has received written delegation of authority from the Board to perform Board functions subject to review and ratification by the full Board where provided by these rules.

(4) Derogatory Information - As this term is used in T.C.A. § 63-6-210, shall mean wherever it appears in these rules any communication or information received during the licensure, renewal or reinstatement process which indicates either legal, ethical, competency, mental or physical problems which reflect in any manner not inconsistent with the Americans With Disabilities Act on the individuals fitness or competency to safely practice or continuing to safely practice medicine in Tennessee without restriction. Such communications or information include but are not limited to, conviction of a crime, malpractice lawsuits, loss or restriction of hospital privileges, licensure discipline in another state or country, previous licensure action either formal or informal in this state, ongoing investigation or prosecution of a disciplinary action in this or any other state or country and any physical/medical condition which is not otherwise ameliorated by compliance with physician orders, treatment program requirements or voluntary restrictions of the individual in compliance with the Americans With Disabilities Act.

(5) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Board receives administrative support.

(6) E.C.F.M.G. - The Educational Committee for Foreign Medical Graduates or its successor organization.

(Rule 0880-02-.01, continued)

(7) FCVS - The Federation Credentials Verification Service which is a service offered by the Federation of State Medical Boards that provides primary source identification and verification of physician core credentials as required in licensure applications by the states.

(8) FLEX - The Federation Licensing Examination I -II.

(9) Formulary - A list of legend and non-legend drugs arranged by therapeutic categories, included in the protocols, that are approved to be prescribed and/or issued by a physician assistant, which may include controlled substances listed in Schedules II, III, IV and V of the Tennessee Code Annotated, Title 39, Chapter 17, Part 4.

(10) Licensee - Any person who has been lawfully issued a license to practice medicine in Tennessee by the Board.

(11) N.B.M.E. - The National Board of Medical Examiners examination.

(12) Physician Assistant - A person who is licensed to practice as a physician assistant in Tennessee pursuant to T.C.A. § 63-19-105

(13) Protocols - Written guidelines for medical management developed jointly by the supervising physician and the physician assistant.

(14) Supervising Physician - A licensed and actively practicing physician who has been identified as accepting responsibility for supervising a physician assistant.

(15) U.S.M.L.E. - The United States Medical Licensing Examination.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-6-207, and Public Chapter 33, Public Acts of 1999.* ***Administrative History:*** *Original rule filed October 13, 1983; effective November 14, 1983. Subsequently repealed and replaced twice, the last replacement was effective April 12, 1991. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed February 23, 1995; effective May 9, 1995. Amendment filed September 22, 1997; effective December 6, 1997. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed September 3, 2014; effective December 2, 2014.*

0880-02-.02 FEES.

(1) The fees authorized by the Tennessee Medical Practice Act (T.C.A. §§63-6-101 through 63-6-104 and T.C.A. §§63-6-201 through 63-6-227) and other applicable statutes to be established by the Board are established as follows:

(a) Application Fee - a non refundable fee to be paid by all licensure applicants regardless of the type of license applied for. It must be paid each time an application for licensure is filed. $400.00

(b) Examination Fee - This fee is to be paid each time the USMLE Step 3 examination is taken.....$100.00

(c) Inactive Pro Bono Licensure Renewal Fee.....$ 00.00

(d) Special Training License Fee.....$ 25.00

(Rule 0880-02-.15, continued)

(g) Destruction of Medical Records -

1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.

3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(5) Violations - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-6-214 (b) (1), and/or (2).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-6-101, 63-6-204, and 63-6-214.* ***Administrative History:*** *Original rule filed April 29, 2003; effective July 13, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendments filed April 10, 2014; effective July 9, 2014.*

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~~**0880-02-.16 TELEMEDICINE LICENSURE.** No person shall engage in the practice of medicine across state lines in this State, hold himself out as qualified to do the same, or use any title, word, or abbreviation to indicate to or induce others to believe that he is licensed to practice medicine across state lines in this State unless he is actually so licensed in accordance with the provisions of this rule.~~

~~(1) Definitions - As used in this rule, the practice of medicine across state lines (telemedicine) means:~~

~~(a) The rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent; or~~

~~(b) The rendering of treatment to a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent.~~

~~(2) Issuance of License - An applicant who has an unrestricted license in good standing in another state and maintains an unencumbered certification in a recognized specialty area; or is eligible for such certification and indicates a residence and a practice outside the State of Tennessee but proposes to practice medicine across state lines on patients within the physical boundaries of the State of Tennessee, shall in the discretion of the Board be issued a telemedicine license.~~

~~(a) To obtain a license, an applicant shall compile the following and when completed, submit them to the Board Administrative Office:~~

~~1. A Board approved application form; and~~

~~2. All documentation required by rule 0880-02-.05 paragraphs (2), (4), (5), (6), (7) and (10).~~

(Rule 0880-02-.16, continued)

~~(b) The practice of any person issued a telemedicine license shall be restricted to the specialty area of medicine in which that person is certified or in which the person is eligible for certification.~~

~~(c) All telemedicine licenses must be renewed, inactivated or retired according to the same procedure as active unrestricted licenses governed by rules 0880-02-.09 and 0880-02-.10.~~

~~(d) All telemedicine licenses are subject to discipline for the same causes and pursuant to the same procedures as active unrestricted licenses.~~

~~(e) In the event of previous disciplinary or other action against the applicant, the Board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.~~

~~(3) Effect of License - The issuance by the Board of a special purpose license to practice medicine across state lines subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline.~~

~~(a) The licensee agrees by acceptance of such license to~~

~~1. Produce patient medical records and/or materials as requested by the Board and/or to appear before the Board upon receipt of notice commanding appearance issued by the Board. Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, shall constitute grounds to suspend or revoke the licensee's telemedicine license at the Board's discretion.~~

~~2. Designate on the licensure application the name, address and telephone number of a physician residing in Tennessee upon whom service of process for any disciplinary action filed against the licensee can be legally effected in the event that personal service upon the licensee has been shown to be unsuccessful. Service of process on that named individual, for acts or omissions that occurred during or as a result of the treatments provided or ordered by the licensee for patients physically located in Tennessee, is legally equivalent to personal service on the licensee.~~

~~(4) Patient Medical Records - Any licensee licensed under the provision of this rule shall comply with all applicable laws, rules, and regulations of this state governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this State are maintained.~~

~~(5) Any person who violates the provisions of these rules is subject to criminal prosecution for the unlicensed practice of medicine pursuant to T.C.A. §63-6-203, and/or injunctive or other action authorized in this State to prohibit or penalize continued practice without a license. Nothing in this rule shall be interpreted to limit or restrict the Board's authority to discipline any physician licensed to practice in this State who violates the Medical Practice Act while engaging in the practice of medicine within this or any other State.~~

~~(6) Exempted from the provisions of these rules are the following:~~

~~(a) A physician who practices medicine across state lines in an emergency; or~~

(Rule 0880-02-.16, continued)

~~(b) A physician who engages in the practice of medicine across state lines that occurs less than once a month or involves fewer than ten patients on an annual basis, or comprises less than one percent (1%) of the physician's diagnostic or therapeutic practice; or~~

~~(c) Physicians who engage in the practice of medicine across state lines without compensation or expectation of compensation unless the practice exceeds the limits established by paragraph (6)(b); or~~

~~(d) The informal practice of medicine in the form of uncompensated consultations regardless of their frequency; or~~

~~(e) Licensed/registered physicians or surgeons of other states when called in consultation by a Tennessee licensed/registered physician as provided by T.C.A. §63-6-204 (a) (3).~~

~~(7) Not exempted from these rules is the practice of medicine across state lines conducted within the parameters of a contractual relationship regardless of whether or not the practice is within the limits established by paragraph (6)(b) and regardless of whether or not it is for compensation or the promise of compensation.~~

~~(8) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).~~

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0880-02-.16 Telemedicine Licensure and the Practice of Telemedicine. No person shall engage in the practice of medicine, either in person or remotely using information transmitted electronically or through other means, on a patient within the state of Tennessee unless duly licensed by the Board in accordance with the provisions of the current statutes and rules. Unless specifically set out in this rule, this rule is not intended to and does not supersede any pre-existing federal or state statutes or rules and is not meant to alter or amend the applicable standard of care in any particular field of medicine or to amend any requirement for the establishment of a physician-patient relationship.

(1) Definitions –

(a) Facilitator – The facilitator is an individual often affiliated with a local system of care or a parent or legal guardian of the patient. The facilitator must be physically present with the patient and is responsible for verifying the identity and location of the patient and for the origination, collection and transmission of data in the form of images or clinical data to the physician performing the evaluation remotely.

(b) Medical interpretation – The performance of a medical interpretation by a physician is the rendering of a diagnosis regarding a particular patient by examination of radiologic imaging studies, tissue specimens, bodily fluid specimens (including, but not limited to urine, blood and cerebrospinal fluid) or medical records requested by another physician or licensed health care provider.

(c) Patient encounter – The rendering of a documented medical opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the physician is physically present in the same room, in a remote location within the state or across state lines.

(Rule 0880-02-.16, continued)

(d) Physician-patient relationship – A physician-patient relationship exists when a physician serves a patient's medical needs whether or not there has been an encounter in person between the physician and patient.

(e) Research hospital – A hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols.

(f) Store-and-forward technology – The use of asynchronous electronic communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients and includes the transferring of medical data from one site to another through the use of a device that records or stores images that are sent or forwarded via electronic communication to another site for consultation.

(g) Telemedicine – Telemedicine is the practice of medicine using electronic communication, information technology or other means, between a licensee in one location and a patient in another location. Telemedicine is not an audio only telephone conversation, email/instant messaging conversation or fax. It typically involves the application of secure video conferencing or store-and-forward to provide or support healthcare delivery by replicating the interaction of a traditional encounter between a provider and a patient.

(2) Telemedicine Licenses Issued Under Previous Rule – As of the effective date of this rule, the Board will no longer issue what was previously termed a "telemedicine license." Individuals previously granted a telemedicine license under the former version of this rule may apply to have the license converted to a full license. Such individuals must complete the application for a full license and provide all necessary documentation, though no new application fee will be required as long as application is made within two years of the effective date of this rule. Individuals who do not convert to a full license (or do not qualify for full licensure) will retain the telemedicine license subject to the following conditions:

(a) The license must be timely renewed on a biennial basis, as required pursuant to Rule 0880-02-.09. Notwithstanding Rule 0880-02-.09, however, licenses not timely renewed will not be subject to re-instatement and affected individuals wishing to engage in the practice of medicine on patients located in Tennessee will be required to make application for a full license, including payment of the application fee.

(b) Telemedicine license holders must maintain current ABMS specialty board-certification. Licensees who do not maintain ABMS specialty board-certification will not be entitled to renewal of the license.

(c) Licensees retaining a telemedicine license are limited to the provision of medical interpretation services in the area of their specialty board-certification. Such license holders do not possess prescriptive authority in Tennessee.

(d) All telemedicine licenses are subject to discipline for the same causes and pursuant to the same procedures as active, unrestricted licenses.

(3) Effect of License - The issuance by the Board of a license to practice medicine subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline. The licensee

(Rule 0880-02-.16, continued)

agrees by acceptance of such license to produce patient medical records and materials as requested by the Board and to appear before the Board upon receipt of notice from the Board commanding such appearance. Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, shall constitute grounds to suspend or revoke the license at the Board's discretion.

(4) Exempted from the provisions of these rules are the following:

(a) Licensed physicians of other states when called in consultation regarding specific clinical or scientific aspects of the field of medicine by a Tennessee licensed/registered physician as provided by T.C.A. § 63-6-204(a)(3);

(b) US Military physicians operating within the Federal jurisdiction and regulations related to their duties as provided by T.C.A. § 63-6-204(a)(3);

(c) The informal practice of medicine between physicians in the form of uncompensated professional dialogue regarding aspects of the field of medicine; and

(d) A recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.

(5) Physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

(6) Notwithstanding the requirements of Rule 0880-02-.14(7), a physician licensed in Tennessee may engage in the practice of telemedicine under the following circumstances:

(a) Except as provided under paragraphs seven (7) and eight (8) of this rule, the patient encounter to establish or maintain the physician-patient relationship via telemedicine between the physician in a remote location and the patient in Tennessee may occur with or without the use of a facilitator so long as such encounter is consistent with parts 1 and 2 of this Rule:

1. If no facilitator is present:

(i) The patient must utilize adequately sophisticated technology to enable the remote provider to verify the patient's identity and location with an appropriate level of confidence; and

(ii) The patient must transmit all relevant health information at the level of store-and-forward technology or secure video conferencing; and

(iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and in accordance with T.C.A. § 63-1-109.

2. If a facilitator is present:

(Rule 0880-02-.16, continued)

(i) The facilitator must personally verify the identity of the patient; however, all relevant health information must be transmitted to the remote provider using at least the level of store-and-forward technology. The facilitator and the patient may interact with the provider at the remote location via secure video conferencing or store-and-forward technology; and

(ii) The facilitator must identify themselves, their role, and their title to the patient and the remote physician; and

(iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and all additional information required pursuant to T.C.A. § 63-1-109.

(b) For patient encounters conducted via telemedicine, the physician should have appropriate patient record(s) or be able to obtain such information during the telemedicine encounter.

(c) The physician engaging in telemedicine is responsible for ensuring that the medical record contains all pertinent data and information gleaned from the encounter. Any physician conducting a patient encounter via telemedicine must so document in the patient record and must state the technology used. All records for Tennessee patients are subject to inspection pursuant to T.C.A. § 63-1-117.

(d) If the information transmitted through electronic or other means as part of a patient's encounter is not of sufficient quality or does not contain adequate information for the physician to form an opinion, the physician must declare they cannot form an opinion to make an adequate diagnosis and must request direct referral for inspection and actual physical examination, request additional data, or recommend the patient be evaluated by the patient's primary physician or other local health care provider.

(7) A physician licensed by the Board may, if requested to do so by another physician licensed by the Board, engage in medical interpretation as defined in these rules and render an opinion based on data which is transmitted electronically. In such cases, the physician providing the medical interpretation need not examine the patient and need not have the complete medical record accessible, unless the interpreting physician believes that additional information is necessary. Any opinion rendered by such interpreting physician must be reduced to writing which includes the name and electronic signature of the interpreting physician.

(8) No patient seeking care via telemedicine who is under the age of eighteen (18) years of age can be treated unless there is a facilitator present, except as otherwise authorized by law.

~~***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-214.*~~ Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-214 and Public Chapter 261 of the 109th Tennessee General Assembly.

Administrative History: *Original Rule filed January 26, 1998; effective April 11, 1998. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed November 23, 2005; effective February 6, 2006. Amendment filed March 14, 2006; effective May 28, 2006.*

0880-02-.17 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

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* 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)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.			X		
Dennis Higdon, MD	X				
Michael John Baron, M.D.	X				
Neal Beckford, M.D.	X				
Keith Lovelady, M.D.	X				
Clinton A. Musil, Jr., MD	X				
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
W. Reeves Johnson, Jr. MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Medical Examiners (board/commission/ other authority) on 05/19/2014 and 03/16/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *02/11/14 and 01/20/15 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/19/14 and 03/16/15 (mm/dd/yy)*

Date: 8-17-15

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Chief Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 8-17-15

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Tennessee Board of Medical Examiners
Rules 0880-02-.16
General Rules and Regulations Governing the Practice of Medicine
Telemedicine

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

7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/2/16

Effective on: 10/31/16

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards Record-Keeping and Reporting
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-3-201
EFFECTIVE DATES:	November 24, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Department, the proposed rule adopts and references the latest occupational record-keeping and reporting standards and exceptions in the applicable parts of the Code of Federal Regulations as required by the state's federally approved plan for the development and enforcement of occupational and health safety standards. The rule includes a requirement for electronic filing of certain records with OSHA.

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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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 does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rules 0800-01-03-.04 and 0800-01-03-.05 are amended in order to adopt and reference the latest occupational record-keeping and reporting standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

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

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

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

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapter 0800-01-03. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

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

There have been no Attorney General opinions or judicial rulings relevant to these rules.

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

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

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

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

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

Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health 220 French Landing Drive Nashville, TN 37243-1002 (615) 741-7036 email: larry.hunt@tn.gov

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

Department of State
Division of Publications
312 Rosa L. Parks 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: 08-28-16
Rule ID(s): 6291
File Date: 8/26/16
Effective Date: 11/24/16

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:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	**Rule Title**
0800-01-03-.04	Other TOSHA Injury and Illness Recordkeeping Requirements

Chapter Number	**Chapter Title**
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	**Rule Title**
0800-01-03-.05	Reporting Fatality, Injury and Illness Information

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-03

Rule 0800-01-03-.04 Amended

Paragraph (6) of Rule 0800-01-03-.04 Other TOSHA Injury and Illness Recordkeeping Requirements is amended as follows:

Existing Rule:

(6) Employee involvement.

(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

1. You must inform each employee of how he or she is to report an injury or illness to you.

~~2. You must provide limited access to your injury and illness records for your employees and their representatives.~~

(b) Implementation.

1. What must I do to make sure that employees report work-related injuries and illnesses to me?

~~(i) You must set up a way for employees to report work-related injuries and illnesses promptly; and~~

~~(ii) You must tell each employee how to report work-related injuries and illnesses to you.~~

2. Do I have to give my employees and their representatives access to the TOSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the TOSHA injury and illness records, with some limitations, as discussed below.

(i) Who is an authorized employee representative? An authorized employee representative is an authorized collective bargaining agent of employees.

(ii) Who is a "personal representative" of an employee or former employee? A personal representative is:

(I) Any person that the employee or former employee designates as such, in writing; or

(II) The legal representative of a deceased or legally incapacitated employee or former employee.

(iii) If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it? When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300

Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(iv) May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative? No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in ~~Rules 0800-1-3-.03(27)(b)6. through Rule 0800-1-3-.03(27)(b)9.~~

(v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?

(I) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(II) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(vi) May I charge for the copies? No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

Proposed Amended Rule:

(6) Employee involvement.

(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

1. You must inform each employee of how he or she is to report a work-related injury or illness to you.

2. You must provide employees with the information described in paragraph (b)(1)(iii) of this rule.

3. You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)2 of this rule.

(b) Implementation.

1. What must I do to make sure that employees report work-related injuries and illnesses to me?

(i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(I) Employees have the right to report work-related injuries and illnesses; and

(II) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

2. Do I have to give my employees and their representatives access to the TOSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the TOSHA injury and illness records, with some limitations, as discussed below.

(i) Who is an authorized employee representative? An authorized employee representative is an authorized collective bargaining agent of employees.

(ii) Who is a "personal representative" of an employee or former employee? A personal representative is:

(I) Any person that the employee or former employee designates as such, in writing; or

(II) The legal representative of a deceased or legally incapacitated employee or former employee.

(iii) If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it? When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(iv) May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative? No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in Rules 0800-01-03-.03(27)(b)6 through Rule 0800-01-03-.03(27)(b)9.

(v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?

(I) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(II) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(vi) May I charge for the copies? No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

Chapter 0800-01-03

Rule 0800-01-03-.04 Amended

Paragraph (6) of Rule 0800-01-03-.04 Other TOSHA Injury and Illness Recordkeeping Requirements is amended as follows:

Existing Rule:

(7) ~~Prohibition against discrimination. Section 50-3-409 of the Act prohibits you from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint or proceeding, asks for access to the injury and illness records, or otherwise exercises any rights afforded by the Act.~~

Proposed Amended Rule:

(7) In addition to 0800-01-03-.04(6), T.C.A. §50-3-409 also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to 0800-01-03 records, or otherwise exercises any rights afforded by the TOSH Act.

Chapter 0800-01-03

Rule 0800-01-03-.05 Amended

Paragraph (3) of Rule 0800-01-03-.05 Reporting Fatality, Injury and Illness Information is amended as follows:

Existing Rule:

~~(3) Annual OSHA injury and illness survey of ten or more employers.~~

~~(a) Basic requirement. If you receive OSHA's annual survey form, you must fill it out and send it to OSHA or OSHA's designee, as stated on the survey form. You must report the following information for the year described on the form:~~

~~1. the number of workers you employed;~~

~~2. the number of hours worked by your employees; and~~

~~3. the requested information from the records that you keep under this rule.~~

~~(b) Implementation.~~

~~1. Does every employer have to send data to OSHA? No, each year, OSHA sends injury and illness survey forms to employers in certain industries. In any year, some employers will receive an OSHA survey form and others will not. You do not have to send injury and illness data to OSHA unless you receive a survey form.~~

~~2. How quickly do I need to respond to an OSHA survey form? You must send the survey reports to OSHA, or OSHA's designee, by mail or other means described in the survey form, within 30 calendar days, or by the date stated in the survey form, whichever is later.~~

~~3. Do I have to respond to an OSHA survey form if I am normally exempt from keeping TOSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under Rule 0800-1-3-.02(1) to Rule 0800-1-3-.02(3), OSHA may inform you in writing that it will be collecting injury and illness information from you in the following year. If you receive such a letter, you must keep the injury and illness records required by Rule 0800-1-3-.03(2) to Rule 0800-1-3-.03(9) and make a survey report for the year covered by the survey.~~

~~4. Does this section affect TOSHA's authority to inspect my workplace? No, nothing in this section affects TOSHA's statutory authority to investigate conditions related to occupational safety and health.~~

Proposed Amended Rule:

(3) Electronic submission of injury and illness records to OSHA.

(a) Basic requirements.

1. Annual electronic submission of 0800-01-03 records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this part

requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the forms.

2. Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form.

3. Electronic submission of 0800-01-03 records upon notification. Upon notification, you must electronically submit the requested information from your 0800-01-03 records to OSHA or OSHA's designee.

(b) Implementation.

1. Does every employer have to routinely submit information from the injury and illness records to OSHA? No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

2. If I have to submit information under paragraph (a)1 of this rule, do I have to submit all of the information from the recordkeeping form? No, you are required to submit all of the information from the form except the following:

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other

health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

3. Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (3)(a) of this rule? Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

4. How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (3)(a)3 of this rule? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (3)(a)3. OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

5. How often do I have to submit the information from the injury and illness records? If you are required to submit information under paragraph (3)(a)1 or 2 of this rule, then you must submit the information once a year, by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (3)(a)3 of this rule, then you must submit the information as often as specified in the notification.

6. How do I submit the information? You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (3)(a)3 of this rule, OSHA will include the Web site's location in the notification for the data collection.

7. Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records? If you are partially exempt from keeping injury and illness records under 0800-01-03-.02(2) and/or 0800-01-03-.02(3), then you do not have to routinely submit 0800-01-03 information under paragraphs (3)(a)1 and 2 of this rule. You will have to submit information under paragraph (3)(a)3 of this rule if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

8. Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.

9. May an enterprise or corporate office electronically submit 0800-01-03 records for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (3)(a)1 or 2 of this rule, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

1. In 2017 and 2018, establishments required to submit under paragraph (3)(a)1 or 2 of this rule must submit the required information according to the table in this paragraph (3)(c)1:

Submission Year	Establishments submitting under paragraph (3)(a)1 of this rule must submit the required information from this form/these forms	Establishments submitting under paragraph (3)(a)2 of this rule must submit the required information from this form:	Submission deadline
2017	300A	300A	July 1, 2017
2018	300A, 300, 301	300A	July 1, 2018

2. Beginning in 2019, establishments that are required to submit under paragraph (3)(a)1 or 2 of this rule will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

Appendix A to 0800-01-03-.05—Designated Industries for 0800-01-03-.05(3)(a)2 Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

NAICS	Industry
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31-33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.

4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

Chapter 0800-01-03

Rule 0800-01-03-.05 Amended

Paragraph (4) of Rule 0800-01-03-.05 Reporting Fatality, Injury and Illness Information is deleted in its entirety:

Existing Rule:

~~(4) Requests from the Bureau of Labor Statistics for data.~~

~~(a) Basic requirement. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it following the instructions contained on the survey form.~~

~~(b) Implementation.~~

~~1. Does every employer have to send data to the BLS? No, each year, the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the Nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. You do not have to send injury and illness data to the BLS unless you receive a survey form.~~

~~2. If I get a survey form from the BLS, what do I have to do? If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it, following the instructions contained on the survey form.~~

~~3. Do I have to respond to a BLS survey form if I am normally exempt from keeping TOSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under Rule 0800-1-3-.02(1) to Rule 0800-1-3-.02(3), the BLS may inform you in writing that it will be collecting injury and illness information from you in the coming year. If you receive such a letter, you must keep the injury and illness records required by Rule 0800-1-3-.03(2) to Rule 0800-1-3-.03(9) and make a survey report for the year covered by the survey.~~

* 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 6/23/16 (*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: 6/23/16

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

JAMIE PRESSON
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN

Subscribed and sworn to before me on: June 23, 2016

Notary Public Signature: Jamie Presson

My commission expires on: March 10, 2019

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

8/17/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/26/16

Effective on: 11/24/16

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Commerce and Insurance
SUBJECT:	Credit Services Businesses; Fees
STATUTORY AUTHORITY:	Tenn. Code Ann., Sections 47-18-1011, 56-1-302(a)(5), and 56-1-308
EFFECTIVE DATES:	November 6, 2016 to June 30, 2017. Tenn. Code Ann., Section 4-5-229, which generally requires that new fees take effect on the July 1 following 90 days after the date that the rule was filed with the Secretary of State's office, may affect the effective date of the filing fee that is set in the proposed rule.
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule sets a bond requirement and filing fee and specifies the amount of civil penalties. Tenn. Code Ann., Section 47-18-1011 requires the Commissioner to determine the amount of the bond that each credit services business must post. If the Commissioner does not promulgate a rule setting the required level of bonding, then the bond is $100,000. The proposed rule sets the amount of the bond at not less than $100,000. Tenn. Code Ann., Section 47-18-1011 also authorizes the Commissioner to prescribe a fee for the filing of a bond in an amount that provides for the cost of administering the receipt of bonds for credit services businesses. The proposed rule sets the amount of the filing fee at $50.00. Tenn. Code Ann., Section 56-1-308 generally authorizes civil penalties of up to $1,000 per violation by any person required to be licensed, permitted, or authorized by any agency attached to the division of regulatory boards. Tenn. Code Ann., Section 56-1-308 further requires each agency to establish by rule a schedule designating the

minimum and maximum civil penalties that may be assessed under the Section. The proposed rule codifies the statute by setting the range of the civil penalties at $0 to $1,000 per violation.

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)

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:

   This rule would affect any small business that qualifies as a Credit Service Business. There are currently 19 registered Credit-Services Businesses in Tennessee.

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

   These new rules do not create any reporting, recordkeeping and other administrative costs required for compliance in excess of what is already in place by statute.

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

   These rules will have no effect on small businesses or consumers.

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

   The proposed new rules are minimally burdensome/intrusive to small businesses and there are no known alternative means which are less burdensome.

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

   There are no federal counterparts to the issues addressed by these rules. Maryland, New York, and Virginia have statutory schemes similar to the Tennessee Credit Services Businesses Act, but none of those states are known to have enacted rules as 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:

   An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

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)

(Insert statement here)

There is no expected impact on local government by the promulgation of these rules.

Additional Information Required by Joint Government Operations Committee

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

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

These new rules set out the requirements for the registration and potential discipline for failure to appropriately register the bonds necessary to operate as a credit services business in Tennessee.

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

There is no known federal law, regulation or state law mandating promulgation of these rules.

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

All current and future credit services businesses operating in Tennessee will be affected by these rules. Their position is unknown. The Commissioner urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

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

There is no probable state increase or decrease in local government revenues and expenditures resulting from the promulgation of these amendments.

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

Benjamin P. Glover
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Nikole Avers
Executive Director – Credit Services Businesses
Division of Regulatory Boards
Department of Commerce and Insurance

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

Benjamin P. Glover
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Nikole Avers
Executive Director – Credit Services Businesses

Division of Regulatory Boards
Department of Commerce and Insurance

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

Benjamin P. Glover
500 James Robertson Parkway
Nashville, TN. 37243
615-770-0085
Benjamin.glover@tn.gov

Nikole Avers
500 James Robertson Parkway
Nashville, TN 37243
615-741-9129
nikole.avers@tn.gov

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

These new rules are being promulgated due to a legislative change from T.C.A. § 47-18-1011(e) which moved this program and several others from the Division of Consumer Affairs and underneath the Division of Regulatory Boards. The purpose of these rules is to allow the Division of Regulatory Boards to be able to enforce the laws governing the programs and also pursue violators of the law and rules in order to protect Tennessee consumers.

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Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-05-16
Rule ID(s): 6272
File Date: 8/8/16
Effective Date: 11/6/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Credit Services Businesses
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Benjamin P. Glover
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-770-0085
Email:	benjamin.glover@tn.gov

Revision Type (check all that apply):

___ Amendment
X 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**
0780-05-17	CREDIT SERVICES BUSINESSES
Rule Number	**Rule Title**
0780-05-17-.01	Purpose
0780-05-17-.02	Bond Requirements and Filing Fee
0780-05-17-.03	Civil Penalties

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Credit Services Businesses

New Rules

0780-05-17

RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
TENNESSEE CREDIT SERVICES BUSINESSES BOND REGISTRATION PROGRAM

CHAPTER 0780-05-17
CREDIT SERVICES BUSINESSESS

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0780-05-17-.01 Purpose
0780-05-17-.02 Bond Requirements and Filing Fee
0780-05-17-.03 Civil Penalties

0780-05-17-.01 Purpose

The purpose of this chapter is to provide for administration and implementation of the credit services businesses bond posting program from the Tennessee Credit Services Businesses Act, Tenn. Code Ann., Title 47, Chapter 18, Part 10 (as amended by Public Acts of 2015, Chapter 339), herein referred to as the "Act".

Authority: T.C.A. §§ 56-1-302(5) and 47-18-1011.

0780-05-17-.02 Bond Requirements and Filing Fee

(1) The bond required pursuant to § 47-18-1011 shall be issued by a corporate surety authorized to do business in Tennessee and shall be in an amount of not less than $100,000.00.
(2) The bond shall be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state.
(3) A credit services business shall post a separate bond for each location conducting business in this state and the bond shall state, on its face, the name and address of the credit services business location to which it applies.
(4) Prior to the expiration of a bond, a new bond shall be filed with the Department. Each renewed bond shall be filed pursuant to the procedure as set out in Paragraph (5). Further, if a credit services business is required to file a new bond on behalf of a location for any reason, including a change of surety or change of ownership, such new bond shall be filed pursuant to the procedure as set out in Paragraph (5).
(5) Each bond shall be accompanied by a filing fee of fifty dollars ($50.00) and a registration form prescribed by the Commissioner containing:
    (a) Name, address, and telephone number of the credit services business;
    (b) Name, address, and telephone number of a primary contact person;
    (c) If the business is a corporation, limited liability company, or other entity, proof that the entity is duly registered in the State of Tennessee;
    (d) If the business is a sole-proprietorship or general partnership, the Social Security number of each proprietor or general partner; and
    (e) Any such other information as the Commissioner may require.

Authority: T.C.A. § 47-18-1011.

0780-05-17-.03 Civil Penalties

(1) The Commissioner may, in addition to or in lieu of any other disciplinary action, assess civil penalties for each separate violation of statutes, rules or orders enforceable by the Commissioner in accordance with the following schedule:

Violation	Penalty
T.C.A. § 47-18-1003	$0 - $1,000
T.C.A. § 47-18-1004	$0 - $1,000
T.C.A. § 47-18-1005	$0 - $1,000
T.C.A. § 47-18-1006	$0 - $1,000
T.C.A. § 47-18-1007	$0 - $1,000
T.C.A. § 47-18-1010	$0 - $1,000
T.C.A. § 47-18-1011	$0 - $1,000
Tenn. Comp. R. & Regs. § 0780-05-17	$0 - $1,000

(2) Each day of a continuing violation may constitute a separate violation.

(3) In assessing civil penalties, the following factors may be considered:

(a) Whether the amount imposed will be a substantial economic deterrent to the violator;

(b) The circumstances leading to the violation;

(c) The severity of the violation and the risk of harm to the public;

(d) The economic benefits gained by the violator as a result of noncompliance; and

(e) The interest of the public.

Authority: T.C.A. § 56-1-308.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

DENISE M. LEWIS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN. Commission Expires

Date: 6/30/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce & Insurance

Subscribed and sworn to before me on: 6/30/16

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Rules of the Tennessee Credit Services Businesses Registration Program
Chapter 0780-05-17 Credit Services Businesses
Rule 0780-05-17-.01 Purpose
Rule 0780-05-17-.02 Bond Requirements and Filing Fee
Rule 0780-05-17-.03 Civil Penalties

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

Herbert H. Slatery III
Attorney General and Reporter

7/27/2016
Date

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Filed with the Department of State on: 8/8/16

Effective on: 11/6/16

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	Beauty Pageants
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 47-18-204
EFFECTIVE DATES:	November 10, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule establishes registration and other requirements for beauty pageant operators. The rule sets the application fee for beauty pageant registration at $50.00, which is the amount that would be required by Tenn. Code Ann., Section 47-18-202 for initial registration and renewals if a fee is not set by rule. Also, the rule sets the surety bond requirement for beauty pageant operators at no less than $10,000, which is the amount that would be required by Tenn. Code Ann., Section 47-18-202 if a surety bond amount is not set by rule.

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)

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:

   This rule would affect any small business providing beauty pageant services. There are currently 108 registered beauty pageant operators in Tennessee.

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

   These new rules do not create any reporting, recordkeeping and other administrative costs required for compliance in excess of what is already in place by statute.

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

   These rules will have no effect on small businesses or consumers.

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

   The proposed new rules are minimally burdensome/intrusive to small businesses.

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

   There are no federal counterparts to the issues addressed by these rules. Arkansas has a similar counterpart to the issues addressed by these rules: http://www.dfa.arkansas.gov/offices/exciseTax/MiscTax/Pages/beautyPageants.aspx.

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

   An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications. An exemption is already in place for entities holding beauty pageants that are affiliated with local government, civic clubs, fairs, religious organizations, etc.

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)

(Insert statement here)

There is no expected impact on local government by the promulgation of these rules.

Additional Information Required by Joint Government Operations Committee

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

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

These new rules set out the requirements for the registration and potential discipline for failure to appropriately register beauty pageants and beauty pageant operators.

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

There is no known federal law, regulation or state law mandating promulgation of these rules. T.C.A. § 47-18-204(b) states that the Commissioner may adopt rules to administer the registration of Beauty Pageants.

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

All current and future beauty pageants operators will be affected by these rules. Their position is unknown. The Commissioner urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

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

There is no probable state increase or decrease in local government revenues and expenditures resulting from the promulgation of these amendments.

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

Benjamin P. Glover Assistant General Counsel Division of Regulatory Boards Department of Commerce and Insurance Nikole Avers Executive Director – Beauty Pageants Division of Regulatory Boards Department of Commerce and Insurance

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

Benjamin P. Glover Assistant General Counsel Division of Regulatory Boards Department of Commerce and Insurance Nikole Avers

Executive Director – Beauty Pageants
Division of Regulatory Boards
Department of Commerce and Insurance

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

Benjamin P. Glover
500 James Robertson Parkway
Nashville, TN. 37243
615-770-0085
Benjamin.glover@tn.gov

Nikole Avers
500 James Robertson Parkway
Nashville, TN 37243
615-741-9129
nikole.avers@tn.gov

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

These new rules are being promulgated due to a legislative change from T.C.A. § 47-18-208 which moved this program and several others from the Division of Consumer Affairs and underneath the Division of Regulatory Boards. The purpose of these rules is to allow the Division of Regulatory Boards to be able to enforce the laws governing the programs and also pursue violators of the law and rules in order to protect Tennessee consumers.

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For Department of State Use Only

Sequence Number: 08-11-16
Rule ID(s): 6275
File Date: 8/12/16
Effective Date: 11/10/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Beauty Pageants
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Benjamin P. Glover
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-770-0085
Email:	benjamin.glover@tn.gov

Revision Type (check all that apply):

___ Amendment
X 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**
0780-05-15	Beauty Pageants
Rule Number	**Rule Title**
0780-05-15-.01	Purpose
0780-05-15-.02	Definitions
0780-05-15-.03	Registration and Application
0780-05-15-.04	Expiration
0780-05-15-.05	Change of Ownership
0780-05-15-.06	Change of Information
0780-05-15-.07	Violations
0780-05-15-.08	Civil Penalties

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Beauty Pageants

New Rules

0780-05-15

Rules
Of
Department Of Commerce And Insurance
Division Of Regulatory Boards
Tennessee Beauty Pageant Registration Program

Chapter 0780-05-015
Beauty Pageants

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0780-05-15-.03	Registration and Application	0780-05-15-.07	Violations
0780-05-15-.04	Expiration	0780-05-15-.08	Civil Penalties

0780-05-15-.01 Purpose

The purpose of this chapter is to provide for administration and implementation of the beauty pageant registration program, Tenn. Code. Ann., Title 47, Chapter 18, Part 2 (as amended by Public Acts of 2015, Chapter 339), herein referred to as the "Act".

Authority: T.C.A.§§ 47-18-204 AND 47-18-208.

0780-05-15-.02 Definitions

(1) As used in these rules, unless the context otherwise requires, words shall have the same meaning as provided in Tenn. Code Ann. § 47-18-201. In addition:

(a) "Controlling Member" means:

1. Any sole proprietor owning a beauty pageant operator;

2. Any general partner owning any part of a beauty pageant operator; or

3. Any person having a share of ten percent (10%) or more of any corporation, Limited Liability Company or other entity applying for registration.

(b) "Department" means the department of commerce and insurance.

(c) "Responsible Individual" means the individual or officer of the organization having full responsibility for the conducting of any pageant.

Authority: T.C.A. §§ 47-18-204.

0780-05-15-.03 Registration And Application

(1) All companies or persons who seek to be registered as a beauty pageant operator must complete an application on forms prescribed by the Commissioner containing:

(a) Name, address, and telephone number of the operator;

(b) Name, address, and telephone number of the Responsible Individual;

(c) Names of pageants customarily promoted by the operator;

(d) Name, address, and telephone number of the financial institution in which the entrants' fee is held;

(e) The operator's exemption certificate number from the tax imposed by title 67, chapter 6, or the operator's sales tax registration number;

(f) If the company applying is a corporation, Limited Liability Company or other entity, proof that the company is duly registered with the Tennessee Secretary of State;

(g) A list of each Controlling Member of the company seeking registration and the Controlling Member's percentage of ownership of the beauty pageant operator;

(h) A bond, payable to the state of Tennessee, purchased from a surety company authorized to do business in this state for the use of the Department and any person who may have a cause of action against the obligor of the bond for any losses caused by a failure to conduct a beauty pageant in an amount not less than ten thousand dollars ($10,000.00);

(i) A nonrefundable fifty dollar ($50.00) fee for each application.

(2) All applicants claiming an exemption from the application fee and bond requirement shall submit proof along with the application to the satisfaction of the Commissioner.

Authority: T.C.A. §§ 47-18-202 and 47-18-204.

0780-05-15-.04 Expiration

Each registration shall expire on December 31 of each year.

Authority: T.C.A. § 47-18-202.

0780-05-15-.05 Change of Ownership

A registration is nontransferable. The change of an ownership interest of any sole proprietor, general partner, corporation, Limited Liability Company or other entity as originally registered shall constitute a change of ownership and a new application for initial registration shall be filed.

Authority: T.C.A. § 47-18-204.

0780-05-15-.06 Change of Information

An operator shall notify the Commissioner with ten (10) business days of the change in pageant location or registration information.

Authority: T.C.A. § 47-18-204.

0780-05-15-.07 Violations

(1) The Commissioner may deny, suspend, revoke or refuse to issue a registration for:

(a) A violation of Tenn. Code Ann. Title 47, chapter 18, part 2 or any rules promulgated thereunder;

(b) Failure to refund all entrants' fees pursuant to Tenn. Code Ann. § 47-18-203 within thirty (30) calendar days;

(c) Failure to maintain a bond as required by Tenn. Code Ann. § 47-18-202 at all times while registered as a beauty pageant operator;

(d) Conducting any beauty pageant without being properly bonded or registered; or

(e) The making of a false statement on the registration application form.

(2) A violation of Tenn. Code Ann. Title 47, Chapter 18, Part 2, or any rules promulgated thereunder, constitutes a violation of the Tennessee Consumer Protection Act of 1977 and shall constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

(3) Whenever it appears to the Commissioner that an operator is acting in violation of Tenn. Code Ann. Title 47, Chapter 18, Part 2, and the Commissioner determines that the health, safety, or welfare is endangered, the Commissioner may issue an order to that operator to cease and desist in the violations without prior notice.

Authority: T.C.A. §§ 47-18-204, 47-18-209, and 47-18-210.

0780-05-15-.08 Civil Penalties

(1) The Commissioner may, in addition to or in lieu of any other disciplinary action, assess civil penalties for each separate violation of statutes, rules or orders enforceable by the Commissioner in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann. § 47-18-202	$500 - $5,000
Tenn. Code Ann. § 47-18-203	$500 - $5,000
Tenn. Code Ann. § 47-18-204	$500 - $5,000
Tenn. Code Ann. § 47-18-209	$500 - $5,000
Tenn. Comp. R. & Regs. 0780-05-15	$500 - $5,000

(2) Each day of a continuing violation may constitute a separate violation.

(3) In assessing civil penalties, the following factors may be considered:

(a) Whether the amount imposed will be a substantial economic deterrent to the violator;

(b) The circumstances leading to the violation;

(c) The severity of the violation and the risk of harm to the public;

(d) The economic benefits gained by the violator as a result of noncompliance; and

(e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 47-18-204, and 47-18-206.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 6/21/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 6/21/16

Notary Public Signature: Vienette M Lewis

My commission expires on: 1/15/20

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

Herbert H. Slatery III
Attorney General and Reporter

8/4/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/12/16

Effective on: 11/10/16

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Private Probation Services Council
SUBJECT:	Quarterly Provider Fee; Rules of Professional Conduct
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 16-3-909
EFFECTIVE DATES:	November 10, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule lowers the quarterly provider fee that registrants must pay to the Council from $1.00 per probationer to $0.75. The rule expands upon the existing conflict of interest requirements by adding the following: 1. No registrant or employee may accept a gift, gratuity, or favor from a probationer, probationer's family, or any person with the intent of influencing a probationer's supervision; 2. No registrant or employee may charge any fees not in the registrant's fee schedule unless ordered by a court or otherwise required by law; 3. No owner or employee of the registrant may engage in a romantic or sexual relationship or have any sexual contact with a probationer; and 4. No owner or employee may use his or her supervisory position to encourage or otherwise force a probationer to engage in sexual activity. The rule adds a code of professional conduct, which specifies that all registrants and employees must treat all probationers and members of the court in a professional manner. The rule provides examples of unprofessional treatment. The rule also specifies that registrants must properly supervise all probationers as required in the probation agreement with the court.

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.

Craig Turner, General Manager for Correctional Services Incorporated dba Tennessee Correctional Services provided a written comment requesting that the Council amend its proposed amendment of Rule 1177-2-.03(g) to prohibit any licensee from accepting payments for court costs or fines from persons placed on supervised probation or diversion by a court in the State of Tennessee.

Response: The council members do not believe this proposed rule change is an issue to be addressed at this time, but suggest that it may be taken up later. Members commented that a private probation company may be required to monitor court cost being paid as a term of the probationary order. However, this may be an issue that should be addressed by the Tennessee legislature in the future.

Regulatory Flexibility Addendum

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

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

This rule would impact all licensees of the Council regarding the fee reduction and also standards of practice.

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

These new rules require a licensee to maintain a schedule of fees and establish a policy for indigent offenders along with proof of insurance. Such requirements reflect only a minimal part of the licensee's current business operation and do not create any additional reporting requirements. Accordingly, these requirements are not expected to create any additional training or hiring of persons with professional skills.

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

The probable impact on small businesses is minor because the proposed rules do not create any additional requirements to the licensees' current operations. Likewise the general public will be marginally impacted, as this area of regulation only affects persons on probation. For probationers, however, the likely impact will be significant, especially in terms of transparency of fees and policy regarding indigent persons.

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:

Overall, the proposed rules reduce the burden on the licensees by decreasing the quarterly provider fee from $1.00 to $0.75. Although compliance with the record keeping requirements and the Code of Conduct is minimally burdensome, the burden is offset by the reduction in fees.

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

There is no known state or federal counterpart to such rules regarding private probation services.

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

Exemption of small businesses would prevent most licensees from enjoying the reduced quarterly provider fee of $0.75. Exemption from the record keeping requirements would subject probationers to potential deceptive practices and hinder further investigations of violations of standards of conduct by the Council.

Impact on Local Governments

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

These rules are not estimated to have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules lower the quarterly provider fee that registrants must pay to the Council from one dollar ($1.00) per probationer to seventy-five cents ($0.75). These rules also add a code of professional conduct and clarify that registrants are required to keep and post certain items they are already required to have, such as insurance, policies, and the fee schedule. There is also a new rule that registrants must properly supervise all probationers as required in the probation agreement with the court. The new professional conduct rules include the following:

No registrant or employee may accept a gift, gratuity, or favor from a probationer, probationer's family, or any person with the intent of influencing a probationer's supervision.

No registrant or employee may charge any fees not in the registrant's fee schedule unless ordered by a court or otherwise required by law.

No owner or employee of the registrant may engage in a romantic or sexual relationship or have any sexual contact with a probationer. No owner or employee may use his or her supervisory position to encourage or otherwise force a probationer to engage in sexual activity.

All registrants and employees must treat all probationers and members of the court in a professional manner. Unprofessional treatment includes, but is not limited to:

Engaging in abusive, aggressive, hostile, or disrespectful conduct.

Engaging in fraudulent or misleading behavior.

Giving any false impression of arrest authority.

Engaging in harassment or discrimination.

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

Pursuant to Tenn. Code Ann. § 16-3-909(a)(2), the council is required to "promulgate uniform professional standards and uniform contract standards for private entities." There are no known federal law or regulations mandating promulgations of such rules.

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

This rule affects currently 38 licensed private probation companies and a total of 200 private probation officers that are employed by those companies. The members of the Council urged adoption of these rules.

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

There is no know attorney general and reporter opinion or judicial ruling that directly relates to these rules. There is a case pending in U.S. District Court for the Middle District of Tennessee styled Cindy Rodriguez, et al. v. Providence Community Corrections, Inc., et al. (Docket 3:15-cv-01048) wherein allegations of violations of registrant Providence Community Corrections, Inc. that would be addressed with these rules for similar type cases in the future.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There is not an estimated probable increase or decrease in state or local government revenues and expenditures resulting from the promulgation of these rules.

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

Anthony Glandorf, Chief Counsel Allison Ratton, Assistant General Counsel

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

Anthony Glandorf, Chief Counsel Allison Ratton, Assistant General Counsel

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

Anthony Glandorf 500 James Robertson Parkway Nashville, TN 37243 615-741-3072 Allison Ratton 500 James Robertson Parkway Nashville, TN 37243 615-741-3072

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

None.

Department of State
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-10-16
Rule ID(s): 6273-6274
File Date: 8/12/16
Effective Date: 11/10/16

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:	Private Probation Services Council
Division:	Department of Commerce and Insurance
Contact Person:	Allison Ratton, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3072
Email:	Allison.ratton@tn.gov

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

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

Chapter Number	**Chapter Title**
1177-01	Application, Registration, and Fee Requirements
Rule Number	**Rule Title**
1177-01-.08	Quarterly Provider Fee

Chapter Number	**Chapter Title**
1177-02	Rules of Professional Conduct
Rule Number	**Rule Title**
1177-02-.01	Duties and Documentation
1177-02-.04	Conflict of Interest – Code of Professional Conduct
1177-02-.06	Refusal to Renew, Denial, Suspension, and Revocation of Approval
1177-.02-.07	Civil Penalties

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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

REDLINE 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:	Private Probation Services Council
Division:	Department of Commerce and Insurance
Contact Person:	Allison Ratton, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3072
Email:	Allison.ratton@tn.gov

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

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

Chapter Number	**Chapter Title**
1177-01	Application, Registration, and Fee Requirements
Rule Number	**Rule Title**
1177-01-.08	Quarterly Provider Fee

Chapter Number	**Chapter Title**
1177-02	Rules of Professional Conduct
Rule Number	**Rule Title**
1177-02-.01	Duties and Documentation
1177-02-.04	Conflict of Interest – Code of Professional Conduct
1177-02-.06	Refusal to Renew, Denial, Suspension, and Revocation of Approval
1177-.02-.07	Civil Penalties

Chapter 1177-01
Application, Registration, and Fee Requirements

Amendments

Rule 1177-01-.08(1) Quarterly Provider Fee is amended by deleting the phrase "one dollar ($1.00)" in Paragraph (1) and substituting instead the phrase "seventy-five cents ($0.75)" so that, as amended, the Paragraph shall read:

(1) Each private entity shall pay a quarterly provider fee to the Council in the amount of ~~one dollar ($1.00)~~ seventy-five cents ($0.75) per quarter for every person reported on the case load of the entity in the quarterly report required under T.C.A. § 40-35-302(g)(1)(A)(i) and rule 0780-01-11-.05.

Authority: *T.C.A. §§ 16-3-909 and 16-3-910.*

Chapter 1177-2
Rules of Professional Conduct

Amendments

The Table of Contents is amended by changing the title of rule 1177-2-.04 and adding a comma in 1177-2-.06 so that the amended Table of Contents shall read as follows:

1177-02-.01	Duties and Documentation	1177-02-.05	Continued Clear Criminal Record
1177-02-.02	Liability Insurance and Performance Bond	1177-02-.06	Refusal to Renew, Denial, Suspension, and Revocation of Approval
1177-02-.03	Uniform Contract Standards		
1177-02-.04	Conflict of Interest – Code of Professional Conduct	1177-02-.07	Civil Penalties

Rule 1177-02-.01 Duties and Documentation is amended by adding subparagraphs (1)(d) and (1)(e) so that, as amended, the rule shall read as follows:

(1) Any private entity providing probation supervisory services shall:

(a) Supervise all misdemeanor defendants sentenced by a proper order of probation to be supervised by the private entity and to assist the defendants so sentenced in completing all court ordered conditions of probation;

(b) Maintain documentation on all misdemeanor defendants sentenced to be supervised by the private entity. All books, records and documentation maintained by the private entity relating to work performed or money received for supervision of misdemeanor defendants so sentenced shall be maintained for a period of three (3) full years from the date of final payment or audit. Such records shall be subject to audit, both fiscal and performance, at any reasonable time and upon reasonable notice by the Council, or by the courts or the duly appointed representatives of the courts in which the private entity operates. The records shall be maintained in accordance with generally accepted accounting principles; ~~and~~

(c) Perform any additional duties that the judges of the courts for which the private entity provides misdemeanor probation supervisory services may by local rule or court order require;

(d) Maintain and have available for the Council, court, or probationer to view the following:

1. Schedule of fees, including a policy for indigent offenders; and

2. Proof of insurance and performance bond required under 1177-2-.02; and

(e) Assume responsibility for the actions of all employees, agents, and owners acting within the scope of their employment with the private entity.

Authority: *T.C.A. §§ 16-3-909 and 40-35-302(g).*

Rule 1177-02-.04 Conflict of Interest – Code of Professional Conduct is amended by deleting the Rule and substituting the following:

(1) No private entity that provides probation services, or employee, owner, or agent of the entity, may give or offer to give anything of value to a governmental employee or the employee's immediate family.

(2) No private entity that provides probation services, or employee, owner, or agent of ~~such~~ the entity, may loan money to or have any other personal business dealings with probationers under the entity's supervision.

(3) No private entity that provides probation services may permit any person to supervise a probationer who is a member of such supervisor's immediate family. For purposes of this rule, "immediate family" shall mean mother, father, sibling, adult children, or maternal and paternal grandparents.

(4) No private entity that provides probations services, or employee owner or agent of the entity, may exchange a gift, gratuity, or favor with a probationer, a probationer's family, or any person who offers the gift, gratuity, or favor with the intent of influencing the supervision of a probationer.

~~(4)~~(5) The provisions of this rule shall not be construed to amend or abridge any contract or operating agreement between any court or county government and any agency or individual presently supplying such services to such court or county government pursuant to T.C.A. § 40-35-101 et. seq.

(6) No private entity that provides probation services, or employee, owner, or agent of the entity, may charge any fees not in the private entity's fee schedule unless ordered by a court or otherwise required by law.

(7) No employee, owner, or agent of a private entity that provides probation services may engage in a romantic or sexual relationship or have any sexual contact with a probationer. No employee, owner, or agent of the private entity may use his or her supervisory position or influence to encourage, threaten, or force a probationer to engage in sexual activity.

(8) All employees, owners, or agents of the private entity that provides probation services must treat all members of the court and the probationers under its supervision in a manner consistent with the Code of Professional Conduct set forth herein. Examples of unprofessional treatment include, but are not limited to:

(a) Engaging in abusive, aggressive, hostile, or disrespectful conduct towards probationers or members of the court;

(b) Engaging in fraudulent or misleading behavior;

(c) Giving any false impression of arrest authority through the use of one's title or position with the private entity;

(d) Collecting any money from probationers in excess of the private entity's fee schedule unless ordered by a court or otherwise required by law; and

(e) Engaging in harassment or discrimination based on race, national origin, gender, age, sexual orientation, or ability to pay.

Authority: *T.C.A. §§ 16-3-902, 16-3-909, and 40-35-302(g).*

Rule 1177-02-.06 Refusal to Renew, Denial, Suspension, and Revocation of Approval is amended by deleting the Rule and substituting the following:

(1) The Council may, in a lawful proceeding under the Uniform Administrative Procedures Act codified as T.C.A., Title 4, Chapter 5, deny, suspend, ~~or~~ revoke, or refuse to renew the registration and approval of any entity that provides misdemeanor probation services in this state for any of the following:

(a) Knowingly or recklessly making any verbal or written false or misleading statement of material fact, or omitting a material fact in connection with a registration application or in connection with an inspection or investigation of the entity;

(b) Failure or refusal to provide Council representatives with meaningful access to the private entity's premises, staff, offender records and documents reasonably necessary to making a compliance determination;

(c) Changing ownership of a private probation entity in order to avoid or avert the denial, revocation or suspension of registration;

(d) Altering or falsifying any private probation entity records;

(e) Failure or refusal by a private probation entity to remit required reports as outlined in these rules;

(f) Failure or refusal to comply with any of these rules or with any law relating to the operation of a private probation entity;

(g) Failure or refusal to comply with any order or directive issued by the Council pursuant to its authority as provided by law and rules;

(h) Failure or refusal to pay any fees required under these rules;

(i) Failure or refusal to follow its posted fee schedule;

(j) Failure to follow the Council's rules on conflict of interest or code of conduct; or

(k) Failure to properly supervise a probationer as set forth in the probation agreement. Examples of a failure to properly supervise include, but are not limited to:

1. Not meeting with the probationer as required in the probation agreement;

2. Not conducting drug tests as required in the probation agreement, if applicable; or

3. Not monitoring the probationer's attendance of required, if any, counseling classes.

Authority: *T.C.A. §§ 16-3-902, 16-3-909, 16-3-910 and 40-35-302(g)*

Rule 1177-02-.07 Civil Penalties is amended by adding language in paragraph (2) subparagraph (b) so that, as amended, the paragraph shall read as follows:

(2) Civil penalties will be categorized as follows:

(a) Category I. ($700-$1,000) Violations involving fraud, providing false information or documents, and failure to account or produce official court documents and reports. Violations involving unregistered practice.

(b) Category II. ($300-$699) Violations involving noncompliance with private entity registration requirements such as failure to submit required periodic reports and documents; violations involving Codes of Professional Conduct set forth in 1177-02-.04.

(c) Category III. ($100-$299) Violations involving private probation entity operations such as failure to maintain required records and documentation.

Authority: *T.C.A. §§ 16-3-909, 16-3-910, and 56-1-308.*

* 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)
Judge Chris Craft	X				
Judge Klyne Lauderback	X				
Judge John Hudson	X				
Judge Hugh Harvey	X				
Stancil Ford	X				
Lynda Byford	X				
Veronica Thornton	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Private Probation Service Council on 03/11/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *01/16/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/11/2016*

Date: 7/13/16

Signature: Allison Ratton

Name of Officer: Allison Ratton

Title of Officer: Assistant General Counsel

MARGARET WILLIAMS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires 11-06-2017

Subscribed and sworn to before me on: 7/13/16

Notary Public Signature: Margaret Williams

My commission expires on: 11/6/17

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

8/4/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/12/16

Effective on: 11/10/16

Tre Hargett
Secretary of State

RECEIVED
2016 AUG 12 PM 2:00
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Board of Court Reporting
SUBJECT:	General Rules
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 20-9-607
EFFECTIVE DATES:	November 23, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule does the following:

1. Removes references to the Administrative Office of the Courts;

2. Reduces the license reinstatement fee from $500 to $350;

3. Authorizes the Board to review whether an applicant who has failed the licensure examination has established good cause for issuance of a temporary license;

4. Deletes provisions related to licensure by grandfathering. Persons seeking licensure by grandfathering were required to submit an application by July 1, 2011, pursuant to Tenn. Code Ann., Section 20-9-613(c);

5. Clarifies the late renewal requirements;

6. Establishes a system of expedited licensure for military spouses and veterans;

7. Revises various standards of professional conduct;

8. Streamlines the mechanism for investigations and complaints involving licensees;

9. Specifies factors that the Board will consider when determining the amount of a civil penalty; and

10. Removes various rules related to procedures for contested circumstances, all of which will be subject to the procedures provided in the Uniform Administrative Procedures Act.

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.
Comment: Jimmie Jane McConnell, written comment: Do the proposed rule and regulation changes only apply to changes and all other areas remain?
Response: The rules posted originally, were the proposed changes only. Upon publication of the redlined version of the rules, the public is able to see that unless the rules have a redlined change, the language remains the same. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was the military applicant rule included?
Response: The military applicant rule was added to comply with federal law and Tenn. Code Ann. §4-3-1304(d). There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: At the June 2015 meeting, amendments to the Standards of Professional Conduct, Tenn. Comp. R. & Regs. 0455-01-04-.01, were adopted and do not appear to be added to the current version of the rules. Ms. McConnell included proposed sections (p) through (v).
Response: The rules presented were not added at the June 2015 meeting for the Board of Court Reporting. There is no reference in the minutes from the aforementioned meeting. The Board of Court Reporting voted to not include the proposed changes, submitted by Ms. McConnell in the current rulemaking hearing rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Are subsections (1), (2), and (3) of Section 0455-01-05 still part of the rules.
Response: Yes, unless sections are specifically excluded, they remain a part of the rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Are sections .02, .03, and .04 of Section 0455-01-06 still part of the rules.
Response: Yes, unless sections are specifically excluded, they remain a part of the rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Ms. McConnell states that the Board previously approved additional continuing education credits be added as acceptable to Tenn. Comp. R. & Regs. 0455-01-.02, including services to a national or state association board; one (1) year of service on a committed verified by the chair; proctoring a national certification test; monitoring a national certification test; mentoring; outreach and additional activities; completing a proficiency test.
Response: The suggested additions will not be added as the existing continuing education rules sufficiently encompass of the listed activities. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Ms. McConnell made a suggestion that subsection 1(b) of Tenn. Comp. R. & Regs. 0455-01-06-.04 should be rephrased.
Response: The suggested change goes to a part of the rules that were not opened and/or published to public in the Notice of Rulemaking Hearing to be discussed. The proposed rule change will be discussed through a separate proposed change. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was Tenn. Comp. R. & Regs. 0455-01-06-.05 deleted?
Response: The section was deleted as it exceeded the authority of the Board of Court Reporting. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was Tenn. Comp. R. & Regs. 0455-01-06-.06 deleted?
Response: The section was deleted as it exceeded the authority of the Board of Court Reporting. There was no change to the rules as a result of the 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.

(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;

Answer: The rule changes would affect any court reporter licensed or person attempting to be licensed in the State of Tennessee. There are 699 licensed court reporters currently.

(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;

Answer: The rule changes would create a more efficient and concise for licensed court reporters and applicants. The administrative skills and/or costs required for compliance with the proposed rules set forth an increase in civil penalties for violations.

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

Answer: These rules will have no effect on consumers. Small business may be required to alter the method of payment and amount of fees in addition to the process of investigations and complaints.

(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;

Answer: The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

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

Answer: With regards to temporary licenses, there are state regulations that provide for the granting of additional temporary licenses upon proof of good cause, extenuating circumstances, and/or approval by the state's Board of Court Reporting. The proposed rule is drafted in a similar fashion.

(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.

Answer: An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

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 expected impact on local government by the promulgation of the proposed rules.

Additional Information Required by Joint Government Operations Committee

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

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

The amended rules remove references to the Administrative Office of the Courts, reduce the reinstatement fee to $350, allow for the Board to review good cause in granting an additional temporary license, and remove the licensure by grandfathering regulations. The amended rules also clarify the late renewal requirements, establish requirements for military applicants, clarify Board authority with respect to standards of professional conduct, and simplify investigation and complaint regulations, and increases civil penalties for violations. Finally, the amended rules remove the regulations related to formal and informal disposition of contested case, waiver of continuing education requirements and regulations for decisions of the board, clarify reinstatement regulations and remove regulations regarding reapplication.

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

These amended rules are drafted under the Tennessee Court Reporter Act of 2009, where the goal is "to establish and maintain a standard of competency for individuals engaged in the practice of court reporting and for the protection of the public and for litigants whose rights to personal freedom and property are affected by the competency of court reporters." Tenn. Code. Ann. § 20-9-601(b).

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

All current licensed court reporters as well as future applicants will be affected by these amendments. The Department urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to the amended rules.

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

The promulgation of these rules are not estimated to result in an increase or decrease in state and local government revenues and expenditures of two percent (2%) or greater or five hundred thousand dollars ($500,000).

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

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

Ashley N. Thomas
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Nashville, TN 37243
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No additional information requested.

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For Department of State Use Only

Sequence Number: 08-27-16
Rule ID(s): 6285-6290
File Date: 8/25/16
Effective Date: 11/23/16

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 Court Reporting
Division:	Department of Commerce and Insurance
Contact Person:	Ashley N. Thomas, Assistant General Counsel
Address:	500 James Robertson Parkway
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Revision Type (check all that apply):
X Amendment
X New
X 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**
0455-01	Tennessee Board of Court Reporting
Rule Number	**Rule Title**
0455-01-01-.04	Use of Forms
0455-01-01-.05	Maintenance and Inspection of Board Records
0455-01-02-.03	Verification of Tennessee License
0455-01-02-.04	Fees
0455-01-03-.01	Temporary License
0455-01-03-.02	Application for Licensure – Standard Process
0455-01-03-.03	Renewal
0455-01-03-.04	Military Applicants
0455-01-04-.01	Standards of Professional Conduct
0455-01-05-.04	Investigations and Complaints
0455-01-05-.05	Uniform Administrative Procedures Act
0455-01-05-.06	Civil Penalties
0455-01-05-.07	Reinstatement of A Suspended or Revoked License
0455-01-06-.01	Continuing Education Requirements

0455-01-05-.05	~~Board Action Following Investigation~~ Uniform Administrative Procedures Act
0455-01-05-.06	Civil Penalties
0455-01-05-.07	~~Formal Disposition of Contested Cases~~ Reinstatement of A Suspended or Revoked License
~~0455-01-05-.08~~	~~Informal Disposition of Contested Cases~~
~~0455-01-05-.09~~	~~Decisions of the Board~~
~~0455-01-05-.10~~	~~Application Following Denial of Licensure~~
~~0455-01-05-.11~~	~~Reinstatement of a Revoked License~~
0455-01-06-.01	Continuing Education Requirements
~~0455-01-06-.05~~	~~Non-Compliance With Continuing Education Requirement~~
~~0455-01-06-.06~~	~~Waiver of CE Requirements~~

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Rule 0455-01-01-.04 is amended to read as follows:

0455-01-01-.04 USE OF FORMS.
Applications and forms shall be made on the prescribed forms approved by the Board. Copies of instructions and forms are available from the ~~Administrative Office of the Courts~~Board of Court Reporting.

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-610, 20-9-613 and 20-9-614.

Rule 0455-01-01-.05 is amended by amending paragraphs (3) and (4) and deleting paragraph (5) so as to read as follows:

0455-01-01-.05 MAINTENANCE AND INSPECTION OF BOARD RECORDS.

(1) The Board shall maintain its records in ~~A~~accordance with the Tennessee Public Records law, T.C.A Title 10, Chapter 7.

(2) Public records maintained by the Board shall be subject to public disclosure pursuant to the Tennessee Public Meetings law, T.C.A. Title 8, Chapter 44 and the Tennessee Public Records law, T.C.A. Title 10, Chapter 7.

(3) Upon request to the Executive Director ~~of the Administrative Office of the Courts~~, public records maintained by the Board shall be available for inspection and duplication at the ~~Administrative Office of the Courts~~ Board of Court Reporting during regular business hours. The inspection and duplication of public records shall be under the supervision of the Executive Director of the ~~Administrative Office of the Courts~~ Board of Court Reporting or his/her designee.

(4) Any person wishing to obtain copies of public records shall submit a written request to the ~~Administrative Office of the Courts~~ Board of Court Reporting. Copies will be supplied upon payment of costs based on the most current version of the Schedule of Reasonable Charges issued by the Office of Open Records Counsel. ~~applicable under the Schedule of Reasonable Costs for Public Records published by the Administrative Office of the Courts.~~

~~(5) Public records maintained by the Board that are available for inspection and duplication include, but are not limited to:~~

~~(a) Names and business addresses of current licensees;~~

~~(b) Names of persons whose licenses have been suspended, revoked or subject to some other public discipline, including the type of license, date, infraction, the penalty incurred and the length of the penalty imposed;~~

~~(c) Rules and regulations of the Board as promulgated and published in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.~~

~~(d) Other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its duties and functions; and~~

~~(e) Final orders, decisions, declaratory rulings and opinions issued by the Board.~~

Authority: T.C.A. §§ 20-9-604, 20-9-605 and 20-9-607.

Rule 0455-01-02-.03 is amended by amending paragraph (1) and deleting paragraph (2) so as to read as follows:

0455-01-02-.03 VERIFICATION OF TENNESSEE LICENSE.
~~(1)~~Verification of licensure will be available ~~on~~ through the Board's website~~, to be maintained by the Administrative Office of the Courts~~.

~~(2) Upon receipt of a written request, the Director of the Administrative Office of the Courts, or his/her designee, shall provide written verification of Tennessee licensure.~~

Authority: T.C.A. §§ 20-9-604, 20-9-605 and 20-9-607.

Rule 0455-01-02-.04 is amended by amending paragraph (6), and deleting paragraph (7), so as to read as follows:

0455-01-02-.04 FEES.

(1) Fees and civil penalties are not refundable.
(2) Fees are payable by certified check, cashier's check, corporate or business check, money order, personal check or electronic means.

(a) Counter checks are not an acceptable method of payment. Personal checks shall be imprinted with the name, address and account number of the applicant or licensee.
(b) Personal checks by third parties are not acceptable.
(c) Applicants or licensees who submit personal checks returned due to insufficient funds may be prohibited from paying any future fees or civil penalties by personal check.
(d) Statutory charges for returned checks shall be paid by the applicant or licensee, along with any penalties and fees authorized pursuant to T.C.A Title 47, Chapter 29.

(3) Civil penalties are payable by certified check, cashier's check, corporate or business check, money order or electronic means.
(4) Payment, regardless of method, that is not honored by the financial institution may result in disciplinary action and/or reporting to the appropriate legal authorities for possible prosecution.
(5) A license may not be issued until funds are received by the Board.
(6) Standard Fee Schedule Amount

(a) License Fee.....$200
(b) Application Fee.....$50
(c) Renewal Fee.....$200
(d) Late Renewal Fee.....~~10% of License Fee for each late month~~$20 per month up to six (6) months or portion thereof
(e) Temporary License Fee.....$50
(f) Temporary License Renewal Fee.....$50
(g) Reinstatement Fee.....$~~500~~350

~~(7) The Board will prorate license fees for any license that is issued for a period of less than twenty-four (24) months, pursuant to T.C.A.§ 20-9-611.~~

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-610, 20-9-611, 20-9-612, ~~20-9-613~~ and 20-9-614.

Rule 0455-01-03-.01 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

0455-01-03-.01~~5~~ TEMPORARY LICENSURE.

Any person who provides to the board satisfactory proof of graduation from a court reporting program or its equivalent shall, upon application to the board on forms approved by the board and payment of a fee in an amount determined by the board, be issued a temporary license to practice as a court reporter. This temporary license shall expire sixty (60) days following the date upon which the next board-approved examination for licensure is given. ~~No more than three (3) additional temporary licenses shall be issued to any applicant who fails to pass the scheduled examination for licensure.~~ Up to three (3) additional temporary licenses may be granted upon sufficient proof of good cause for issuance.

~~(2) "Court reporting program" shall mean those educational programs, approved by the Tennessee Board of Court Reporting, that provide education related to court reporting as defined in T.C.A. § 20-9-602(2).~~

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-612 and 20-9-614

~~0455-01-03-.01 LICENSURE BY GRANDFATHERING – WORK EXPERIENCE.~~

~~(1) Any person who is engaged in the practice of court reporting on January 1, 2010 may apply for licensure by grandfathering. The application for grandfathering will require evidence that the court reporter is proficient in court reporting. Applications for grandfathering by work experience must be received by July 1, 2011. The application shall include:~~

~~(a) An affidavit setting forth past education and work experience as a court reporter;~~
~~(b) and an affidavit of either:~~

~~1. A judge for whom the person has worked as an official court reporter, or,~~
~~2. Affidavits of three (3) licensed attorneys, unrelated by blood or marriage to the person,~~

~~and who have utilized the services of the court reporter, which attest to the court reporter's proficiency in court reporting, or,~~
~~3. Affidavits of two (2) licensed attorneys and one (1) court reporting firm owner, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter or the affidavit of the court reporting firm owner may state that the applicant has engaged in the practice of court reporting, which attest to the court reporter's proficiency in court reporting, and;~~

~~(c) Payment of licensure fee.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-613.~~

Rule 0455-01-03-.02 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

0455-01-03-.02~~6~~ APPLICATION FOR LICENSURE – STANDARD PROCESS.

(1) Any person may submit an application to be licensed as a court reporter. The application shall include:
(a) Proof of passage of the National Court Reporters Association registered professional reporter examination, the National Verbatim Reporters Association certified verbatim reporter examination, or the American Association of Electronic Reporters and Transcribers certified electronic court reporter examination.
(b) Applications for licensure shall be signed and sworn by the applicants and submitted on forms furnished by the ~~b~~Board.
(c) Payment of licensure fee.

Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-609.

~~0455-01-03-.02 LICENSURE BY GRANDFATHERING – PRIOR EXAMINATION PASSAGE.~~

~~Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of passage of the National Court Reporters Association Registered Professional Reporter (RPR) examination, the National Verbatim Reporters Association Certified Verbatim Reporter (CVR) examination, or the American Association of Electronic Reporters and Transcribers Certified Electronic Court Reporter (CECR) examination shall be granted a license pursuant to this part.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-613~~

Rule 0455-01-03-.03 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

0455-01-03-.03~~7~~ RENEWAL.

(1) A newly issued court reporter license in Tennessee shall be valid for two (2) years or for other such period of time authorized by ~~statute~~ T.C.A. § 20-9-611. The holder of the license may renew such license during the 60 days preceding the expiration date thereof by paying the required fee and completion of the application for renewal.

~~(2) A license renewal is valid for a period of two (2) years or other such period of time authorized by T.C.A. § 20-9-612.~~

(2~~3~~) It is the responsibility of each licensee to notify the Board of any change of address within thirty (30) days. Failure to receive a renewal form from the Board shall not constitute an excuse for failure to renew licensure.

(3~~4~~) Late ~~R~~renewal~~s~~ applications may be received following expiration of license with the required fees.~~late renewal fee and application for renewal. Failure to renew a license within 180 days shall deem the license suspended and subject to reinstatement, as defined in 0455-01-11.~~No late renewal will be

granted if a completed application is not received by the Board within six (6) months of the expiration of the license. After six (6) months of the expiration of the license, the applicant shall apply for a new license.

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-611 and 20-9-612

~~0455-01-03-.03 LICENSURE BY GRANDFATHERING – FOREIGN STATE LICENSURE.~~

~~Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of a court reporter license issued by any state; provided, that the state has the same or more stringent requirements of this chapter, shall be granted a license pursuant to this part.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-613 and 20-9-614~~

Rule 0455-01-03-.04 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

~~0455-01-03-.04 LICENSURE BY GRANDFATHERING – TENNESSEE COURT REPORTERS ASSOCIATION CREDENTIAL.~~

~~(1) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter examination designation on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.~~

~~(2) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter designation on July 1, 2009, and does not apply for licensure within one (1) year of July 1, 2010, shall be required to pass the licensed court reporter examination and pay applicable licensure fees in order to become a licensed court reporter.~~

~~(3) Any member in good standing of the Tennessee Court Reporters Association who holds the registered professional reporter designation, or higher, from the NCRA, NVRA or AAERT on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609 and 20-9-613.~~

0455-01-03-.04 MILITARY APPLICANTS

(1) An applicant for certification, licensure, or registration meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a certification, license, or registration upon application and payment of all fees required for the issuance of such certification, license or registration, if, in the opinion of the Board, the requirements for certification, licensure, or registration of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's certification, license, or registration does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including - but not limited to – education, training, or experience, in order to meet the requirements for the certification, license, or registration to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular certification, license, or registration of the same type which shall allow such person to perform services as if fully certified, licensed, or registered for a set period of time that is determined to be sufficient by the Board for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full certification, license, or registration shall be issued to the applicant with an issuance date of the original issuance of the temporary permit and an expiration date as if the full certification, license, or registration had been issued at that time.

2. A temporary permit shall be issued for a period no longer than the length of a renewal cycle for a full certification, license, or registration of the same type.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full certification, license, or registration, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full certification, license, or registration of the same type.

(c) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any certification, license, or registration issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such certification, license or registration.

(2) Any certificate holder, licensee, or registrant who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose certification, license, or registration expires during the period of activation shall be eligible to be renewed upon the certificate holder, licensee, or registrant being released from active duty without:

(a) Payment of late fees or other penalties; or

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

2. The person performs the certified, licensed, or registered occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to Board.

(3) The certification, license or registration shall be eligible for renewal pursuant to Paragraph (2) for six (6) months from the person's release from active duty.

(4) Any person renewing under Paragraph (2) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to the renewal of any certification, license, or registration license pursuant to Paragraph (2).

Authority: T.C.A. §§ 4-3-1304(d)(1); 20-9-605

Rule 0455-01-04-.01 is amended by amending paragraphs (1)(g), (1)(k), adding paragraph(1)(l) and renumbering paragraphs (1)(m-p) so that the rule reads as follows:

0455-01-04-.01 STANDARDS OF PROFESSIONAL CONDUCT.

(1) In order to establish and maintain a high standard of integrity in the practice of court reporting, the following Standards of Professional Conduct shall be binding on every person holding a license, of any type, from the Board. A Tennessee licensed court reporter:

(a) Shall be fair and impartial toward each participant in all aspects of reported proceedings.
(b) Should only accept an assignment if ~~his/her~~ their level of competence will result in the preparation of an accurate transcript~~ and will remove the licensee from an assignment~~ , shall refuse an assignment if they believe their abilities are inadequate, ~~recommending or assigning~~ and shall recommend or assign an assignment to another licensee only if such licensee has the competence required for such assignment.
(c) Shall provide information regarding services to be rendered regarding administration of professional services to all parties and shall make timely delivery of transcripts. ~~The licensee must strive to meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified and provide immediate notification of delays.~~
(d) Must immediately disclose any conflict of interest or appearance of impropriety as soon as it arises pursuant to T.C.A. § 24-9-136.
(e) Should immediately seek inactive status and refrain from practice if they become impaired and unable to function according to the standards of practice. ~~It is the licensee's responsibility to seek supervision and/or personal therapy for any problem that is interfering with the ability to perform professional services.~~
(f) Shall preserve the confidentiality and ensure the security of information, oral or written, entrusted to the licensee by any and all of the parties in the proceeding.
(g) Shall establish a plan for the security and preservation of shorthand notes and any backups, both paper and electronic. All such plans shall preserve notes and backups for a period of time that complies with statutory requirement or rules and guidelines of the court. In the absence of a law or rule, notes and backups must be retained for no less than five (5) years.
(h) Shall affix the licensee's signature, license number and expiration date to a transcript to certify to its accuracy.
(i) Shall not authorize the use of the licensee number on any transcript not produced through the personal effort or supervision, or both.
(j) Shall not permit the use of the licensee name or firm's name, nor shall a licensee be associated in business ventures with persons or firms that the licensee has reason to believe to be engaging in fraudulent or dishonest business practices.
(k) Shall inform ~~the Disciplinary Counsel of~~ the Board of Court Reporting if they have knowledge that another court reporter has committed a violation of the Standards of Professional Conduct or the Tennessee Court Reporter Act of 2009 that raises a substantial question as to that court reporter's honesty, trustworthiness, or fitness as a court reporter ~~in other respects~~.
(l) A licensee shall also cooperate with any investigation resulting from a complaint for disciplinary action.
(m) ~~(l)~~ Shall not commit a criminal act that ~~is a felony, or~~ reflects on the court reporter's honesty, trustworthiness or fitness as a court reporter ~~in other respects~~.
~~(m~~(n)~~)~~ Shall be truthful and accurate when making public statements or when advertising qualifications or services provided.
~~(n~~(o)~~)~~ Shall meet all mandated continuing education requirements and should keep abreast of current literature and technological advances and developments as related to the profession of court reporting.
~~(o~~(p)~~)~~ Shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys or any other persons or entities associated with the litigation ~~(e.g., clients, witnesses, insurance companies, etc.), or to the representatives or agents of any of the foregoing~~, except for items that do not exceed twenty-five dollars ($25.00) in the aggregate per individual each year.

Authority: T.C.A. §§ 20-9-605 and 20-9-607

Rule 0455-01-05-.04 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

~~0455-01-05-.04 INVESTIGATION.~~

~~(1) Upon self-disclosure or receipt of a written complaint on a TBCR Consumer Complaint Form signed by the person making the complaint, alleging that a court reporter has violated a statute or rule by committing one or more of the acts specified as grounds for disciplinary action, the Disciplinary Counsel, to be designated by the Board, shall perform a preliminary review to determine if there is merit and~~

~~sufficient evidence to warrant formal proceedings. The Consumer Complaint Form must be complete before an investigation is launched.~~
~~Complaints must be submitted to the Board within ninety (90) days of the alleged occurrence, or within ninety (90) days of the discovery of a violation.~~

~~(2) When the Disciplinary Counsel determines there may be merit and sufficient evidence exists to warrant proceedings, a hearing committee shall be formed consisting of three members, one of which must be an attorney and one of which must be a court reporter.~~

~~(a) Within five (5) days of self-disclosure or receipt of a written complaint, the Disciplinary Counsel shall provide the court reporter against whom the complaint was made written notification of the complaint, allegation(s), and investigation process by certified mail or other delivery service that provides confirmation of delivery. The court reporter may submit, to the Disciplinary Counsel a written response and any supporting documentation within 15 days of the receipt of the written notification.~~

~~(b) The committee shall review the complaint and other information submitted to determine if further investigation is warranted.~~

~~1. If an investigation is warranted, the Disciplinary Counsel will conduct further investigation, retaining an investigator, if necessary. If retained, the investigator shall work under the direction of the Disciplinary Counsel to conduct further investigation.~~

~~2. At the conclusion of the investigation, the investigator shall submit an investigation report to be reviewed by the Investigative Committee who has the authority to act on the report. The Investigative Committee shall send written notification to the complainant and the court reporter, against whom the complaint was made, of any action it decides to take in response to the investigation report.~~

~~(c) If the committee determines that an investigation is not warranted, the Disciplinary Counsel may close the investigative file, provided that the matter may be reinvestigated at any time if circumstances so warrant. The Disciplinary Counsel shall notify the complainant and the court reporter against whom the complaint was made.~~

~~(3) When a preliminary review discloses that further investigation is not warranted, the Disciplinary Counsel may close the investigative file upon approval of the Chair of the Board, provided that the matter may be reinvestigated at any time if circumstances so warrant.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

0455-01-05-.04 INVESTIGATIONS AND COMPLAINTS.

(1) The Board may investigate any person engaged, or suspected of engaging, in any business or activity regulated under the Tennessee Court Reporter Act of 2009.

(2) Upon receipt of any written complaint regarding any licensee or person engaged in unlicensed activity, the Board shall provide a copy of the written complaint to the accused party within five (5) days. Such party shall file a written answer to the complaint, within twenty (20) days, upon request by the Board.

Rule 0455-01-05-.05 is amended by deleting the text of the rule in its entirety and substituting and renumbering rule 0455-01-05-.06 so the rule, as amended, shall read:

0455-01-05-.05~~6~~ UNIFORM ADMINISTRATIVE PROCEDURES ACT.

The Board hereby adopts by reference as its rules the Uniform Administrative Procedure Act, T.C.A. Title 4, Chapter 5, for governing contested cases, appeals, and related proceedings.

Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.

Rule 0455-01-05-.06 is amended by moving the text of the rule in its entirety to 0455-01-05-.05 and substituting instead the following so the rule, as amended, shall read:

0455-01-05-.06 CIVIL PENALTIES.

(1) With respect to any licensed court reporter or temporary licensed court reporter, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate statutory or regulatory violation not to exceed five hundred dollars ($500.00) per violation.

(2) With respect to any person required to be licensed in this state as a court reporter, the Board may assess a civil penalty against such person for each separate statutory or regulatory violation not to exceed five hundred dollars ($500.00) per violation.

(3) Each daily violation constitutes a separate offense.

(4) In determining the amount of any penalty to be assessed pursuant to this rule, the Board may consider such factors as the following:

(a) Whether the amount imposed will be a substantial economic deterrent to the violator;
(b) The circumstances leading to the violation;
(c) The severity of the violation and the risk of harm to the public;
(d) The economic benefits gained by the violator as a result of noncompliance;
(e) The interest of the public; and
(f) Willfulness of the violation.

Authority: 2009 Pub.Acts, c. 450, § 1; 2010 Pub.Acts, c. 1123, §§ 3, 7 and T.C.A. §§ 20-9-605, 20-9-606, 20-9-607, 20-9-608, 56-1-308.

Rule 0455-01-05-.07 is amended by inserting the text of rule 0455-01-05-.11, so the rule, as amended, shall read:
~~0455-01-05-.07 FORMAL DISPOSITION OF CONTESTED CASES.~~

~~(1) At least twenty one (21) days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant or court reporter personally or by registered or certified mail to the last known address shown on the records of the Board.~~

~~(2) The Board's complaint may be amended prior to the hearing but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the nature of any offense charged. The Board shall have the right to determine the sufficiency of the complaint.~~

~~(3) A motion for withdrawal of the complaint may be filed with the Board's designee. The circumstances surrounding the attempt to withdraw the complaint may be explained by the person who is attempting to withdraw the complaint and the explanation shall be considered. No complaint that is well-founded will be dismissed solely upon the motion of the original complainant.~~

~~(4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.~~

~~(5) Requests for subpoenas shall be filed with the Board at least ten (10) days prior to the hearing along with the appropriate subpoena-processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a respondent, either for witnesses or related to production of documents, are the responsibility of the party who requested the issuance of said subpoena.~~

~~(6) The hearing shall be conducted by the Board in the presence of a hearing officer or by a hearing officer, pursuant to T.C.A. § 4-5-301. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.~~

~~(7) A continuance may be granted by the Board or its designee upon the filing of a written motion and affidavit detailing the reasons for the continuance. No motion for continuance shall be granted unless filed~~

~~at least five days prior to the hearing. This provision may be waived upon showing of an emergency.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

0455-01-05-.07~~11~~ REINSTATEMENT OF A SUSPENDED OR REVOKED LICENSE.

(1) Application for reinstatement shall include evidence of corrective action taken by the licensee. ~~rehabilitation, or elimination or resolution of the conditions for revocation.~~ Such application shall be made utilizing the forms provided by the Board.

~~(2) Applications for reinstatement of a revoked license may be resolved informally or through the formal hearing process.~~

(2~~3~~) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:

(a) Severity of the act(s) that resulted in suspension or revocation of the license.
(b) Conduct of the applicant subsequent to the suspension or revocation of license.
(c) Lapse of time since suspension or revocation.
(d) Compliance with all reinstatement requirements stipulated by the Board.
(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
(f) ~~Whether the applicant is in violation of any applicable statute or rule.~~ Violation by the applicant of any applicable statute or rule.
(g) Direct~~ly~~ or implied representation(s) ~~that the person was a licensed court reporter~~ of licensure by the individual during the period of revocation.

Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.

Rule 0455-01-05-.08 is amended by deleting the text of the rule in its entirety.

~~0455-01-05-.08 INFORMAL DISPOSITION OF CONTESTED CASES.~~

~~(1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Such informal measures shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.~~

~~(2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-05-.09 is amended by deleting the text of the rule in its entirety

~~0455-01-05-.09 DECISIONS OF THE BOARD.~~

~~(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:~~

~~(a) Dismiss the complaint.~~
~~(b) Reprimand the respondent.~~
~~(c) The respondent's license placed on probation status, subject to any conditions imposed.~~
~~(d) Suspend the respondent's license. A suspended license is subject to expiration during the suspension period.~~
~~(e) Revoke the respondent's license.~~
~~(f) Deny approval of an application.~~
~~(g) Deny renewal or reinstatement of a license.~~

~~(h) Impose other sanctions, restrictions or conditions.~~

~~(2) The Board may levy a civil penalty not to exceed five hundred dollars ($500) per violation where any person undertakes or attempts to undertake the practice of court reporting for remuneration without first having procured a license, or knowingly presents or files false information with the board for the purpose of obtaining a license, or otherwise violates the Tennessee Court Reporter Act of 2009 or the rules promulgated thereunder. Each day of a violation after notice is considered a separate violation.~~

~~(3) The decisions of the Board shall be in writing in the form of an order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.~~

~~(4) The decisions of the Board shall be subject to public dissemination.~~

~~(5) Appeals may be made pursuant to the Uniform Administrative Procedure Act provisions on contested cases, T.C.A. Title 4, Chapter 5, Part 3.~~

~~(6) All members of the Board, including the Chair, are entitled to vote and to make or second motions in disciplinary matters except for any Board Member who may also serve on the Investigative Committee, serve as the Complainant, or have a conflict of interest in the case being decided. A majority of those members on the Board present and voting on any matter shall decide that matter before the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-05-.10 is amended by deleting the text of the rule in its entirety.

~~0455-01-05-.10 APPLICATION FOLLOWING DENIAL OF LICENSURE.~~

~~(1) Application for a license following denial of licensure shall include evidence of rehabilitation, or elimination or resolution of the conditions for denial.~~

~~(2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.~~

~~(3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:~~

~~(a) The severity of the act(s) or omission(s) which resulted in the denial of license.~~
~~(b) The conduct of the applicant subsequent to the denial of license.~~
~~(c) The lapse of time since denial of license.~~
~~(d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application.~~
~~(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.~~
~~(f) Whether the applicant is in violation of any applicable statute or rule.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-06-.01 is amended by adding paragraph (6) so that the rule reads as follows:

0455-01-06-.01 CONTINUING EDUCATION REQUIREMENTS.

(1) Beginning with the first renewal and every renewal thereafter, every licensee who applies for renewal of a license shall have completed two (2) credits of continuing education (CE) relevant to the practice of court reporting.

(2) A ~~R~~renewal ~~P~~period is the twenty-four (24) months preceding July 1 of the year of license expiration.

(3) A CE credit means ten (10) hours of continuing education.

(4) A CE hour means a minimum of fifty (50) minutes of actual clock time spent by a licensee in actual attendance at and completion of an approved CE activity. After completion of the initial CE hour, credit may be given in ~~one~~ half hour (.5) increments.

(5) Non-~~R~~ resident ~~L~~licensees shall comply with the CE Requirements set forth in this Section.

(6) Failure to obtain the requisite CE credits will result in an incomplete application and will cause the application to not be processed.

Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.

Rule 0455-01-06-.05 is amended by deleting the text of the rule in its entirety.

~~0455-01-06-.05 NON-COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENT.~~

~~(1) Each renewal applicant's CE credit will be reviewed to ensure that the CE requirement has been met.~~

~~(2) Where there appears to be a lack of compliance with the CE requirement, an applicant shall be notified in writing. Such applicant may request an interview with the Board.~~

~~(3) The Board may recommend steps being taken to begin formal disciplinary proceedings for non-compliance with the CE requirement.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.~~

Rule 0455-01-06-.06 is amended by deleting the text of the rule in its entirety.

~~0455-01-06-.06 WAIVER OF CE REQUIREMENTS.~~

~~(1) Any renewal applicant seeking renewal of a license without having fully complied with these CE requirements shall file with the Board a renewal application along with the required renewal fee, a statement setting forth the facts concerning non-compliance and request a waiver of the CE requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the Board, finds from the documentation submitted that extreme hardship has been shown for granting a waiver, the Board shall waive enforcement of CE requirements for the renewal period for which the applicant has applied. Extreme hardship shall be determined on an individual basis by the Board and be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the application pre-renewal period because of:~~

~~(a) Full-time service in the armed forces of the United States during a substantial part of the pre-renewal period;~~
~~(b) An incapacitating illness documented by a statement from a currently licensed physician;~~
~~(c) A physical inability to travel to the sites of approved programs documented by a currently licensed physician;~~
~~(d) Being retired from practice and not performing reporting services, or~~
~~(e) Any other similar extenuating circumstances.~~

~~(2) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver, in whole or in part, pursuant to the provisions of this Section, shall be deemed to be in good standing until the final decision on the applicant is made by the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.~~

* 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)
Ken Mansfield	X				
Britton Collins	X				
Earl Houston				X	
Terri Beckham				X	
John Rambo	X				
Ken Gibson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Court Reporting on 06/16/2016, 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: *04/26/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/16/2016*

Date: 8/3/16

Signature: Ashley Thomas

Name of Officer: Ashley N. Thomas

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 8/3/16

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

8/17/2016
Date

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Filed with the Department of State on: 8/25/16

Effective on: 11/23/16

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Accountancy
SUBJECT:	Licensing and Registration; Education and Experience; Rules of Professional Conduct; and Disciplinary Action and Civil Penalties
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-1-105(e)
EFFECTIVE DATES:	November 10, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule increases from three to six semester hours, or four to eight quarter hours, the number of academic units earned through participation in internship programs that may be applied to the educational requirement of 30 semester hours, or 45 quarter hours, in accounting. According to the Board, the additional rule changes increase the clarity and conformity of the existing rules with the statutes and other related rules. The additional rule changes include: 1. Defining "professional service"; 2. Specifying that dual credit hours may only be applied once towards and applicant's required semester hours; and 3. Deleting the requirement that a licensee whose certificate, registration or permit is subsequently suspended, revoked or expired must promptly return such certificate to the Board.

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)

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:

   This rule would affect any small business providing public accounting services. There are currently 4,324 licensed CPA and PA firms, 14,819 licensed CPAs (including active and inactive) in Tennessee.

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:

   This amendment increases in the number of hours permissible for an externship credit for licensure. Specifically the credits allowed have increased from 3 semester or 4 quarter hours to 6 semester or 8 quarter hours. As such, this may decrease the education costs associated for licensure. However, these changes are not anticipated to create a cost to a licensee or create a professional skill necessary for the preparation of a report or record for compliance.

   These amendments repeal the requirement for licensees to mail back a physical wall certificate to the board once their license status is closed. As such, this is a reduced administrative action which should save each previous licensee the cost of postage and time to prepare the postage for compliance. The current postage rate is $0.49.

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

   Consumers and small businesses will likely benefit from a clarification of these rules which will allow students to obtain more externship hours which count towards the required semester hours for licensure. In addition, small businesses and licensees will neither have to return wall certificates or expired licenses or be subject to discipline for failure to return certificates or licenses. There is no estimate as to any increase or decrease in the cost of such service.

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

   The proposed changes to the existing rules are not burdensome/intrusive to small businesses and there is no known less intrusive or less costly alternative methods. These rules decrease the administrative actions required and as such are less burdensome.

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

   There are no federal or state 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:

   These amendments do not create new requirements on small businesses. In one instance, the repeal of the rule requiring submission of a license from a closed licensee (expired or surrendered license) will reduce the current administrative requirements.

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)

(Insert statement here)

These proposed rules are not anticipated to have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The changed rule increases the amount of credit hours earned from internships to be utilized towards the requisite number of semester or quarter hours for licensure. The other changes to the increase the clarity and conformity of the existing rules with the statutes and other related rules.

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

There are no federal laws or regulations mandating such a rule. T.C.A. § 62-1-105(e) gives the board the power to adopt rules in order to enforce the statutes of the Tennessee Accountancy Act of 1998.

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

Licensed CPAs, non-licensed, CPAs, CPA firms and non-CPA firms employing CPAs are most directly affected by this rule and these entities are silent as to the adoption or rejection of this rule.

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

There are no known AG opinions or judicial rulings which directly relate to this rule.

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

There is no indication that there will be any increase or decrease in state and local government revenues and expenditures as a result of the promulgation of this rule. If there is any increase or decrease, such change will be less than two percent (2%) of the agency's annual budget.

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

Wendy Garvin and Benjamin Glover of the TN State Board of Accountancy from the TN Dept. of Commerce and Insurance.

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

Wendy Garvin and Benjamin Glover of the TN State Board of Accountancy from the TN Dept. of Commerce and Insurance.

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

Wendy Garvin
500 James Robertson Parkway
Nashville, TN 37243
615-532-7397
wendy.garvin@tn.gov

Benjamin Glover
500 James Robertson Parkway
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no additional information relevant to the rule requested.

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

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Sequence Number: 08-12-16
Rule ID(s): 6276-6279
File Date: 8/12/16
Effective Date: 11/10/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee State Board of Accountancy
Division:	Department of Commerce and Insurance
Contact Person:	Benjamin Glover
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-770-0085
Email:	Benjamin.Glover@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
X 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**
0020-01	Board of Accountancy, Licensing and Registration Requirements
Rule Number	**Rule Title**
0020-01-.01	Definitions
0020-01-.08	Renewal of Licenses
0020-01-.11	Application and Renewal of CPA and PA Firm Permits
0020-01-.12	Notification of Firm Changes

Chapter Number	**Chapter Title**
0020-02	Education and Experience Requirements
Rule Number	**Rule Title**
0020-02-.01	Recognized Colleges and Universities
0020-02-.02	Education

Chapter Number	Chapter Title
0020-03	Rules of Professional Conduct
Rule Number	**Rule Title**
0020-03-.17	Retention of Records

Chapter Number	Chapter Title
0020-04	Disciplinary Action and Civil Penalties
Rule Number	**Rule Title**
0020-04-.04	Return of Certificate, Registration or Permit.

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0020-01
Board of Accountancy, Licensing and Registration Requirements

Amendments

Rule 0020-01-.01(1) (Definitions) is amended by inserting a new subparagraph after subparagraph (o) consisting of the following language and renumbering the remaining subsequent subparagraphs consistent with the existing ordering:

(p) "Professional service" means any service performed or offered by a licensee for a client in the course of the practice of public accountancy.

Authority: T.C.A. §§ 62-1-103, 62-1-105, 62-1-105(e), 62-1-108, 62-1-111(a)(12), and Chapter No. 443 of the Public Acts of 1989, Sections 9 and 12.

Rule 0020-01-.08 (Renewal of Licenses) is amended by deleting paragraph (2) in its entirety and substituting, instead, the following language so that, as amended, the paragraph shall read:

(2) An individual or firm choosing not to renew his, her, or its license shall notify the Board of his, her, or its intention prior to the expiration of that license~~, and shall surrender the license to the Board immediately upon its expiration~~.

Authority: T.C.A. §§ 4-3-1304, 62-1-105, 62-1-107, 62-1-108, 62-1-109, 62-1-111 and 56-1-302.

Rule 0020-01-.11 (Application and Renewal of CPA and PA Firm Permits) is amended by deleting paragraph (1) in its entirety and substituting, instead, the following language so that, as amended, the paragraph shall read:

(1) Each ~~CPA and/or PA firm providing accounting services or engaged in the practice of public accountancy in this state as a sole proprietorship, partnership or corporation of certified public accountants and/or public accountants shall~~ sole proprietorship, corporation, partnership or other form of organization providing attest services to the public or using the title "CPAs," "CPA firm," "PAs," or "PA firm" shall obtain a permit from the Board for each office location for the ensuing calendar year. Applications for initial issuance and for renewal of permits shall be made on a form provided by the Board and, in the case of applications for renewal, shall be filed no earlier than two (2) months prior to and no later than the expiration date.

Authority: T.C.A. §§ 62-1-103, 62-1-105, 62-1-108, 62-1-111 and 62-1-113.

Rule 0020-01-.12 (Notification of Firm Changes) is amended by deleting subparagraph (1)(g) in its entirety and substituting, instead, the following language so that, as amended, the subparagraph shall read:

(g) Establishment of a new office or location ~~providing accounting services~~engaged in the practice of public accountancy in this ~~state~~State or the closing or change of address of an office location registered in this State; and

Authority: T.C.A. §§ 62-1-105, 62-1-108, 62-1-111 and 62-1-113.

Chapter 0020-02
Educational and Experience Requirements

Amendment

Rule 0020-02-.01 (Recognized Colleges and Universities) is amended by deleting paragraph (1) in its entirety and substituting, instead, the following language so that, as amended the paragraph shall read:

(1) As used in this chapter, a "semester hour" means the conventional college semester hour. Quarter hours may be converted to semester hours by multiplying them by two-thirds. Semester hours received from a class for which dual credit is given may only be applied once towards an applicant's required semester hours.

Authority: T.C.A. §§ 62-1-105, 62-1-106, and 62-1-111.

Rule 0020-02-.02 (Education) is amended by deleting subparagraph (1)(b) in its entirety and substituting, instead, the following language so that, as amended the subparagraph shall read:

(b) Not more than ~~three (3)~~ six (6) semester or ~~four (4)~~ eight (8) quarter hours may be internship programs which may be applied to the thirty (30) semester or forty-five (45) quarter hours in accounting; and,

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Chapter 0020-03
RULES OF PROFESSIONAL CONDUCT

Amendments

Rule 0020-03-.17 (Retention of Records) is amended by deleting the rule in its entirety and substituting, instead, the following language so that, as amended the rule shall read:

A licensee shall maintain copies, or other obtainable facsimile records, or computer records, in whatever manner kept, of all work papers and work product used to render or support rendering ~~public~~ accounting services to a client for a period of five (5) years. The five (5) year period shall commence at the end of the fiscal period in which the engagement was conducted. Premature destruction of these records shall subject the licensee to disciplinary action.

Authority: T.C.A. §§ 62-1-105(e)(4) and 62-1-111.

Chapter 0020-04
Disciplinary Action and Civil Penalties

The Table of Contents is amended by deleting it in its entirety and substituting, instead, the following language, so that the Table of Contents shall read:

0020-04-.01 Definitions
0020-04-.02 Civil Penalties
0020-04-.03 Grounds for Discipline Against Licensees
0020-04-.04 ~~Return of Certificate Registration or Permit~~Repealed
0020-04-.05 Review of Professional Work Product
0020-04-.06 Safe Harbor Language

Repeal

Rule 0020-04-.04 (Return of Certificate, Registration or Permit) is repealed in its entirety.

Authority: T.C.A. §§ 62-1-105.

* 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)
Bill Blaufuss	X				
Don Royston	X				
Casey Stuart	X				
Janet Booker-Davis	X				
Stephen Eldridge	X				
Larry Elmore	X				
Gay Moon	X				
Gabe Roberts	X				
Trey Watkins				X	
Charlene Spiceland				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Accountancy on 10/16/2015 (*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: 6/6/2016

Signature:

Name of Officer: Benjamin Paul Glover

Title of Officer: Assistant General Counsel, TDCI

VANESSA HUNTSMAN
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY
MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 6/6/2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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

8/4/2016
Date

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Filed with the Department of State on: 8/12/16

Effective on: 11/10/16

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Air Pollution Control Board
SUBJECT:	Limits on Emissions Due to Malfunctions, Startups and Shutdowns
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-105
EFFECTIVE DATES:	November 16, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Board, the rulemaking hearing rule clarifies that, in accordance with current practice, a single state official (the Technical Secretary) cannot exclude EPA or third-party enforcement of National Air Quality Standards (NMQS) through "excuse" of violations. This clarification is made by stating: (1) that reported facts related to excess emissions resulting from a start-up, shutdown, or malfunction (SSM) event will be used by the Division of Air Pollution Control for the determination of potential enforcement actions; and (2) that no emission will be allowed that is proved to cause or contribute to any violation of NMQS.

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.

Comment: The federal Environmental Protection Agency (EPA) commented that language in paragraph (4) of Rule 1200-03-20-.06 specifying reporting requirements "for any contaminant source not having startup or shutdown levels as a permit condition" seems unnecessary and is unclear and recommends deletion of the statement.

Response: Following review of the statement in paragraph (4) of Rule 1200-03-20-.06 in the context of the entirety of Chapter 1200-03-.06 it was determined by the Air Pollution Control Board that the intent of the wording in question is more clearly conveyed by previous language within Rule 1200-03-20-.06. Therefore, in response to this comment, paragraph (4) of Rule 1200-03-20-.06 has been further revised to delete the statement in question as recommended by EPA.

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 proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015. The proposed amendments bring the State of Tennessee into compliance with federal SSM SIP Call requirements and are federally mandated as provided by Tenn. Code Ann. § 4-5-404.

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 Department does not anticipate that these amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These proposed amendments to Rule 1200-03-20-.06 clarify that, in accordance with current practice, a single state official (the Technical Secretary) cannot exclude EPA or third-party enforcement of National Air Quality Standards (NAAQS) through "excuse" of violations. This clarification is made by stating 1) that reported facts related to excess emissions resulting from a start-up, shutdown, or malfunction (SSM) event will be used by the Division of Air Pollution Control for the determination of potential enforcement actions and 2) that no emission will be allowed that is proved to cause or contribute to any violation of NAAQS.

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

The proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015 (80 Fed. Reg. 33840). In the SSM SIP Call, the EPA took issue with the wording of paragraph (2) of Rule 1200-03-20-.06 relating to the Technical Secretary's discretion to "excuse or validate" an emission violation during SSM and with similar "excusal" language in paragraph (4) of Rule 1200-03-20-.06. The proposed amendments to Rule 1200-03-20-.06 clarify that reported facts will be used in the determination of potential enforcement actions and that the State of Tennessee will continue to effectively enforce violations of NAAQS.

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

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

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

There is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

Paul LaRock
Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 22nd Floor
Nashville, Tennessee 37243
(615) 532-0617
paul.larock@tn.gov

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

Lucian Geise Senior Counsel for Legislative Affairs Office of General Counsel

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

Office of General Counsel Tennessee Department of Environment and Conservation William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243 (615) 532-0108 Lucian.Geise@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any requests.

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: 08-17-16
Rule ID(s): 6283
File Date: 8/18/16
Effective Date: 11/16/16

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:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Paul LaRock
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0617
Email:	paul.larock@tn.gov

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

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

Chapter Number	**Chapter Title**
1200-03-20	Limits on Emissions Due to Malfunctions, Startups and Shutdowns
Rule Number	**Rule Title**
1200-03-20-.06	Report Required Upon the Issuance of a Notice of Violation

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-20
Limits on Emissions Due to Malfunctions, Startups and Shutdowns

Amendments

Paragraph (2) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

(2) The owner or operator of the violating air contaminant source shall submit within twenty (20) days after receipt of the notice of violation, the data required in paragraph (3) ~~to assist the Technical Secretary in deciding whether to excuse or validate the violation~~ of this rule. If the data required in ~~1200-03-20-.06~~ paragraph (3) of this rule has previously been available to the Technical Secretary or the Technical Secretary's representative prior to the issuance of the notice of violation no further action is required of the violating source. However, if the owner or operator of the source desires to submit additional information, then ~~this shall~~ the additional information must be submitted within the twenty (20) day time period.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

(4) Failure to submit the report required in paragraph (3) of this rule within the twenty (20) day period specified in ~~Paragraph~~ paragraph (2) of this rule shall preclude the admissibility of the data for ~~consideration of excusal for malfunctions~~ determination of potential enforcement actions~~, and for any air contaminant source not having startup or shutdown levels as a permit condition~~.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (6) of Rule 1200-03-20-.06 Report Required Upon the Issuance of a Notice of Violation is amended by deleting it in its entirety and substituting instead the following:

(6) ~~Irrespective of the startup and shutdown exemptions set forth on the operating permit of any air contaminant source, no~~ No emission during periods of malfunction, start-up, or shutdown that is in excess of the standards in Division 1200-03 or any permit issued thereto shall be allowed which can be proved ~~by the Technical Secretary~~ to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter ~~1200-3-3~~ 1200-03-03 or the National Ambient Air Quality Standards.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/13/2016, 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: *04/29/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/21/16*

Date: July 13, 2016

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

MALCOLM H. BUTLER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: July 13, 2016

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1-11-2017

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
Attorney General and Reporter

8/17/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/18/16

Effective on: 11/16/16

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	Air Pollution Control Board
SUBJECT:	Visible Emissions Regulations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-105
EFFECTIVE DATES:	November 16, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Board, the rulemaking hearing rule clarifies that notwithstanding due allowance regarding visible emissions during start-up and shutdown, no emission will be allowed that can be proved to cause or contribute to violations of National Ambient Air Quality Standards (NAAQS).

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.

Comment: The federal Environmental Protection Agency (EPA) commented that the proposed revision to paragraph (1) of Rule 1200-03-05-.02 presents the same deficiencies noted in the final Startup, Shutdown and Malfunction SIP call notices. Specifically, the EPA expressed concern that the revision still provides "an impermissible discretionary exemption because it allows a state official to give 'due allowance' to the fact that excess emissions occurred during startup or shutdown events."

Response: In response to EPA's comment relating to the proposed amendment, the Air Pollution Control Board draws EPA's attention to the regulatory language in the proposed rule changes that any "due allowance" shall not cause or contribute to violations of National Ambient Air Quality Standards (NAAQS) as established by EPA. Enforcement of the NAAQS fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.

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 proposed rule amendments are in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015. The proposed amendments bring the State of Tennessee into compliance with federal SSM SIP Call requirements and are federally mandated as provided by Tenn. Code Ann. § 4-5-404.

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 Department does not anticipate that these amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This proposed amendment to paragraph (1) of Rule 1200-03-05-.02 clarifies that notwithstanding due allowance regarding visible emissions during start-up and shutdown, no emission will be allowed that can be proved to cause or contribute to violations of National Ambient Air Quality Standards (NAAQS).

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

This proposed amendment is in response to the federal Environmental Protection Agency (EPA) Final Rule relative to start-up, shutdown and malfunction state implementation plan findings of inadequacy and call for revisions (SSM SIP Call) issued on June 12, 2015 (80 Fed. Reg. 33840). In the SSM SIP Call, EPA took issue with "due allowance" provisions that could be interpreted as allowing a state official to exclude excess visible emissions from enforcement actions. The addition of language expressly stating that no "due allowance" proved to cause or contribute to violations of NAAQS is authorized fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.

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

Large industrial facilities are most directly affected by the proposed rule amendments. Industry representatives were consulted during the drafting of the rule amendments. Other than a comment by EPA, no comments regarding the adoption or rejection of the rule amendments were made during the comment period.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this amendment.

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

There is no expected increase or decrease in revenues or expenditures resulting from promulgation of this rule.

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

Paul LaRock
Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 22nd Floor
Nashville, Tennessee 37243
(615) 532-0617
paul.larock@tn.gov

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

Lucian Geise Senior Counsel for Legislative Affairs Office of General Counsel

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

Office of General Counsel Tennessee Department of Environment and Conservation William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243 (615) 532-0108 Lucian.Geise@tn.gov

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

The Tennessee Air Pollution Control Board is not aware of any requests.

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Sequence Number: 08-18-16
Rule ID(s): 6284
File Date: 8/18/16
Effective Date: 11/16/16

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: Environment & Conservation
Division: Air Pollution Control
Contact Person: Paul LaRock
Address: William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN
Zip: 37243
Phone: (615) 532-0617
Email: paul.larock@tn.gov

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

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

Chapter Number	**Chapter Title**
1200-03-05	Visible Emissions Regulations
Rule Number	**Rule Title**
1200-03-05-.02	Exceptions

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-05
Visible Emissions Regulations

Amendment

Paragraph (1) of Rule 1200-03-05-.02 Exceptions is amended by deleting it in its entirety and substituting instead the following:

(1) Consistent with the requirements of Chapter 1200-3-20, due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions. However, no visible emission in excess of that permitted in this chapter shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-03-03 and the National Ambient Air Quality Standards. The owner or operator shall maintain a continuous, current log of all excess visible emissions showing the time at which such conditions began and ended~~ and that~~. ~~s~~Such record shall be available to the Technical Secretary or ~~his~~ the Technical Secretary's representative upon ~~his~~ request.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 07/13/2016, 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: *04/29/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/21/16*

Date: July 13, 2016

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

MALCOLM H. BUTLER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: July 13, 2016

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1-11-2017

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
Attorney General and Reporter

8/17/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/18/16

Effective on: 11/16/16

Tre Hargett
Secretary of State

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