G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Collection Service Board
SUBJECT:	Change of Ownership
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-20-104(g)
EFFECTIVE DATES:	January 24, 2017, through June 30, 2017
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Present law requires a collection service business to (1) notify the Board in writing of any change in ownership and (2) reapply for licensure upon any change in ownership. The proposed rule will require only entities with a change in ownership of 50 percent or more of the stock or ownership interest to notify the Board and reapply for licensure.

Regulatory Flexibility Addendum

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

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

   The new rule would not directly affect any small businesses that are currently licensed because it would not change any of the existing requirements. In contrast, the new rule will benefit any businesses that undergo a change in ownership of less than fifty (50) percent of the stock or ownership interest.

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

   There are no projected administrative costs as a result of this amendment.

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

   The effect will be a faster and less costly process for entities with ownership changes of less than fifty (50) percent of the stock or ownership interest.

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

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

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

   There are no known federal or state counterparts to the amended rule.

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

   An exemption for small businesses would not be beneficial.

Impact on Local Governments

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

The Tennessee Collection Service Board foresees no financial impact on any 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 current Tennessee Collection Service Board ("Board") statutes require an entity to (1) notify the Board in writing of any change in ownership and (2) reapply for licensure upon any change in ownership. The proposed new rule will require only entities with a change in ownership of fifty (50) percent or more of the stock or ownership interest to notify the Board and reapply for licensure.

(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 or state law mandating promulgation of this rule.

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

The proposed new rule to the Board rules will affect organizations, corporations, or other entities currently licensed with the Board that go through a change in ownership. Specifically, entities that undergo only a minor ownership change will no longer be required to notify the Board or reapply for licensure.

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

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

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

There is an estimated minimal fiscal impact for the promulgation of these rules. The minimal decrease will be a result of entities no longer having to reapply for licensure and therefore a decrease in application fees.

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

Sarah M. Mathews, Assistant General Counsel for the Collection Service Board

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

Sarah M. Mathews, Assistant General Counsel for the Collection Service Board

(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

500 James Robertson Parkway, Nashville, TN 37243; Phone: (615) 532-6303; Email: Sarah.Mathews@tn.gov

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

There is no known additional relevant information.

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Sequence Number: 10-18-16
Rule ID(s): 6341
File Date: 10/26/16
Effective Date: 1/24/17

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 Collection Service Board
Division:	Department of Commerce and Insurance, Regulatory Boards
Contact Person:	Sarah M. Mathews
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-6303
Email:	Sarah.Mathews@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
0320-01	Licensing
Rule Number	**Rule Title**
0320-01-.04	Change of Ownership

Redline – 2016 Proposed Rules
Tennessee Collection Service Board

Chapter 0320-01
Licensing

Table of Contents

New Rules

Rule 0320-01-.04 Change of Ownership.

As referenced in T.C.A. §§ 62-20-108 and 62-20-113, "change in ownership" means:

(1) In a sole proprietorship or partnership, any change in the person(s) having an ownership interest in the collection service business;

(2) In a corporation or limited liability company (LLC), an aggregate change of fifty (50) percent or more of the shares, ownership or other member interest, respectively.

Authority: T.C.A. §§ 62-20-104(g), 62-20-108 and 62-20-113.

* 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)
Bart Howard	X				
Steven Harb	X				
Chip Hellmann	X				
Angela Hoover	X				
Elizabeth Trinkler	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Collection Service Board on 07/13/2016, 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: October 5, 2016

Signature: Sarah M. Mathews

Name of Officer: Sarah M. Mathews

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: October 5, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: November 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

10/19/2016
Date

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Filed with the Department of State on: 10/26/16

Effective on: 1/24/17

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Labor and Workforce Development, Division of Occupational Safety and Health
SUBJECT:	Adoption and Citation of Federal Occupational Safety and Health Standards for General Industry, Construction, and Agriculture
STATUTORY AUTHORITY:	29 United States Code Annotated, Section 667 and Tenn. Code Ann., Section 50-3-201
EFFECTIVE DATES:	January 29, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. According to the Department, since the last amendments to the rules, there have been no substantive changes to the Occupational Safety and Health 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.

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 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

(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 Chapters 0800-01-01, 0800-01-06 and 0800-01-07. 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.

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Sequence Number: 10-24-16
Rule ID(s): 6352-6354
File Date: 10/31/16
Effective Date: 1/29/17

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**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	**Rule Title**
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	**Rule Title**
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2016" to "January 1, 2017".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~July 1, 2016~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2017 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-06-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2016" to "January 1, 2017".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~July 1, 2016~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2017 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2016" to "January 1, 2017".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~July 1, 2016~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2017 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "July 1, 2016" to "January 1, 2017".

Existing Rule:

(1) As of ~~July 1, 2016~~, there are no exceptions.

Proposed Amended Rule:

(1) As of January 1, 2017, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

* 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 09/12/2016 (*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: 9/12/16

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: September 12, 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

10/19/2016
Date

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Filed with the Department of State on: 10/31/16

Effective on: 1/29/17

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Real Estate Commission
SUBJECT:	Reinstatement of an Expired License
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-13-203
EFFECTIVE DATES:	January 16, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule makes a permanent an Emergency Rule that received a positive recommendation at the November 2016 Rule Review Meeting. The proposed rule removes the requirement that a person desiring to reinstate a license that has been expired for 60 days or longer must attend a Commission meeting.

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;

   This amendment would directly benefit the small businesses that are licensed as firms and as affiliate brokers, brokers and timeshare salespersons (working with firms as independent contractors) in the state of Tennessee in reducing compliance requirements for late renewal of a license after 60 days. Licensees with licenses expired one year or less will be able to reinstate their license by paying a late fee only. There are approximately 34,000 real estate licensees (firms or independent contractors) that are estimated to qualify as small business licensees that could potentially benefit.

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 rule does not create new reporting or recordkeeping requirements and, as such, there are no projected administrative costs as a result of this amendment. There will likely be a reduction in cost since licensees will no longer be required to travel and be away from their businesses in order to attend a meeting of the Commission.

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

   The effect will be a faster and likely less costly process for reinstating a license expired one year or less.

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

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

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

   Other state real estate commissions are expected to, in many cases, have similar laws and rules regarding reinstatement of licenses. For instance, Kentucky Real Estate Commission 324.090 requires a payment of a penalty up to $200 for late renewal up to one year late. Georgia Administrative Code § 520-1-.04(1)(a)(3) provides a penalty of $100 if a license is reinstated within four months of lapsing and $25 per month or part of a month beyond six months for individual brokers.

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

   An exemption for small businesses to this rule would not be beneficial, as the amended rule removes a requirement.

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 Real Estate Commission foresees no impact on any 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 amended rule eliminates the requirement to attend a meeting of the Commission as a condition for reinstatement of a license expired one year or less.

(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 or state law mandating promulgation of this rule.

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

Any individual real estate broker licensee reinstating a license after it has expired for more than 60 days will be affected by this rule. There are no known objections to the amended 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 opinions of the Attorney General and Reporter or any judicial ruling that directly relates to this rule.

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

This rule is not expected to create a probable increase or decrease state and local government revenues and expenditures.

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

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Mallorie Kerby, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072

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

Malcolm Young, Executive Director, Real Estate Commission
Mallorie Kerby, 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

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Sequence Number: 10-12-16
Rule ID(s): 6339
File Date: 10/18/16
Effective Date: 1/16/17

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:	Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Mallorie Kerby
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-532-6304
Email:	Mallorie.kerby@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**
1260-01	Licensing
Rule Number	**Rule Title**
1260-01-.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

Malcolm Young, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321
Malcolm.young@tn.gov

Mallorie Kerby, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072
Mallorie.kerby@tn.gov

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

There is no known additional relevant information.

Chapter 1260-01
Licensing
Amendments

Rule 1260-01-.21 is amended by deleting part (2)(b)3. in its entirety, deleting from part (2)(b)5. a reference to a requirement set forth in the deleted part (2)(b)3., and renumbering part (2)(b)4. as part (2)(b)3. and part (2)(b)5. as part (2)(b)4., so that, as amended, paragraph (2) shall read:

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars ($50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars ($50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars ($100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121st) day; and

~~3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.~~

~~4.~~ 3. Penalty fees will begin accruing on the first (1st) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.

~~5.~~ 4. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements~~, including timely attending one (1) entire regularly scheduled Commission meeting.~~

Authority: T.C.A. §§ 62-13-203 and 62-13-319.

Rules of the Real Estate Commission
Rules of the Tennessee Real Estate Commission
Chapter 1260-01 Licensing
Rule .21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
John Griess	x				
Rick Douglass				x	
Diane Hills	x				
Marcia Franks	x				
Bobby Wood	x				
Fontaine Taylor	x				
Johnny Horne	x				
Gary Blume	x				
Austin McMullen	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on September 7, 2016 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: 9/30/16

Signature: Mallorie Kerby

Name of Officer: Mallorie Kerby

Title of Officer: assistent General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: Sept 30, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov 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

10/6/2016

Date

Department of State Use Only

Filed with the Department of State on: 10/18/16

Effective on: 1/16/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Real Estate Commission
SUBJECT:	Electronic Filing
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-13-203
EFFECTIVE DATES:	January 16, 2017 through June 30, 2017
FISCAL IMPACT:	Minimal.
STAFF RULE ABSTRACT:	According to the Board, the proposed rule allows for electronic submission and processing of applications, renewals, and other administrative transactions. Rule 1260-01-.014 is amended to generally authorize electronic filing of documents with the commission. The rule authorizes the director to develop the electronic filing process. Rule 1260-02-.02 adds authorization for electronic filing of specific types of documents. Rule 1260-06-.10 removes the notarization requirement for applications for registration of a time share program and authorizes the electronic submission of such applications.

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;

   These amendments would directly benefit the small businesses that are licensed as real estate firms, vacation lodging services, or registered timeshare developments and as affiliate brokers, broker, and timeshare salespersons (working with firms as independent contractors) in the state of Tennessee by allowing for implementation of an online submission system for more efficient transacting with the Real Estate Commission. There are approximately 38,000 small business licensees (firms or independent contractors) that would potentially benefit from an online submission process.

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

   There are no projected administrative costs as a result of these amendments. There may be a reduction in costs if licensees and applicants choose to use online submission in lieu of paper forms.

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

   There is no expected impact on small business as a result of these amendments other than a potential option for communicating and transacting with Commission more efficiently via an online submission process.

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

   The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

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

   T.C.A. § 56-1-302(c): "Notwithstanding any other law to the contrary, the director of the division of regulatory boards of the department may implement a system for electronic submission of complaints or applications for licensure or registration to any regulatory program attached to the division, including any renewal thereof, and to notify licensees electronically of renewals, rulemaking or any other notification."

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

   An exemption for small businesses to these rules would not be beneficial, as these rules provide an option for such small businesses to transact certain business with the Commission online, if they wish.

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 Real Estate Commission foresees no financial impact on any 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 amended rules are designed to allow for electronic submission and processing of applications, renewals, and other administrative transactions.

(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 or state law mandating promulgation of these rules, however, T.C.A. § 56-1-302(c) allows the director of the division of regulatory boards to implement a system for electronic submission and the amended rules will create consistency between this statute and the program 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 applicants and licensees could be affected by the amended rules if an online submission process is implemented. There are no known objections to the amended 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 an estimated minimal fiscal impact for the promulgation of these rules.

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

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Davy Crockett Tower, 4th Floor
Nashville, TN 37243
615-741-3321

Mallorie Kerby, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
615-741-3072

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

Malcolm Young, Executive Director, Real Estate Commission
Mallorie Kerby, 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

Malcolm Young, Executive Director
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Malcolm.young@tn.gov

Mallorie Kerby, Assistant General Counsel
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Mallorie.kerby@tn.gov

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

There is no known additional relevant information.

Department of State
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: 10-11-16
Rule ID(s): 6336-6338
File Date: 10/18/16
Effective Date: 1/16/17

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:	Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Mallorie Kerby
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-532-6304
Email:	Mallorie.kerby@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**
1260-01	Licensing
Rule Number	**Rule Title**
1260-01-.14	Filing of Documents

Chapter Number	**Chapter Title**
1260-02	Rules of Conduct
Rule Number	**Rule Title**
1260-02-.02	Termination of Affiliation

Chapter Number	Chapter Title
1260-06	Time-Share Programs
Rule Number	**Rule Title**
1260-06-.10	Application for Registration

Chapter 1260-01
Licensing
Amendments

Rule 1260-01-.14 Filing of Documents is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Documents may be remitted to the Commission by:

(a) Mail;

(b) Fax;

(c) E-mail;

(d) Hand delivery; or

(e) Through an online submission approved by the Director containing substantially the same information as the document or form being submitted.

(2) When documents are remitted to the office of the Tennessee Real Estate Commission by mail for filing, the date of filing shall be determined by the official postmark on such mail. Documents submitted electronically or by hand-delivery shall not be considered filed if received after the Commission's ~~office~~ business hours ~~of~~ on the date of any applicable deadline.

(3) The Director is authorized to develop a process for the online submission of any of the documents or forms of the Commission. The online submission shall contain substantially the same information as the document or form being submitted and an electronic signature shall be required where a document or form is required to be signed. Nothing in this rule shall require that such an online submission be developed.

Authority: T.C.A. §§ 56-1-302(c) and 62-13-203.

Chapter 1260-02
Rules of Conduct
Amendments

Rule 1260-02-.02 Termination of Affiliation is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Any licensee or principal broker wishing to terminate the licensee's affiliation with a firm shall submit to the Commission a completed Transfer, Release and Change of Status Form (TREC Form 1) or submit the required information through an online submission. If the request is made using the TREC Form 1, the form must be hand-delivered, faxed, mailed, or e-mailed to the Commission to be effective. The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form or online submission. The principal broker shall retain a copy of the executed form or confirmation of online submission, whichever is applicable.

(2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in § 62-13-102 until a change of affiliation is received and processed by the Commission.

(3) With regard to firm transfer requests that ~~which~~ are completed ~~online~~ through an online submission, the Commission recognizes the transfer of an affiliated licensee to a new firm as having been completed at the time that said transfer request is completed online and the transfer confirmation is printed only if the following conditions are met:

(a) Prior to the submission of the online transfer request, the principal broker who is

receiving the affiliated licensee into his or her firm has verified that the affiliated licensee has an active Tennessee license and current errors and omissions insurance; and

(b) ~~A completed and signed TREC Form 1 is received by the Commission within five (5) business days of the date of the online transfer request. If the completed and signed TREC Form 1 is not received by the Commission within five (5) business days of the online submission,~~ The online submission is complete, the submission contains an electronic signature, and payment has been received. If the electronic submission is not complete, does not have an electronic signature, or payment has not been received then the transfer shall not be considered by the Commission to be a valid transfer and the affiliated licensee will be placed into broker release status.

(4) When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.

(5) Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.

(6) If the principal broker is deceased or physically unable to sign the release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.

(7) If the affiliated licensee is deceased or physically unable to sign a release or make an online submission, or refuses to sign a release or make an online submission, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1 or make an online submission.

(8) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

Authority: T.C.A. §§ 62-13-203 and 62-13-310.

Chapter 1260-06
Time-Share Programs
Amendments

Rule 1260-06-.10 Application for Registration is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) An application for registration of a time-share program shall be executed ~~and notarized~~ and submitted on the form prescribed by the Commission or through an online submission. In addition to the information required by T.C.A. § 66-32-123(a), the application shall include:

(a) Copies of the forms of sales contract, deed, and all other written materials to be used in the normal course of the sale of time-share intervals.

(b) Evidence of compliance with the zoning laws of the local government in which the timeshare project is located.

(c) The name and address of the sales agent to be employed by the developer for the sale of time-share intervals.

(2) The developer of a time-share project not substantially completed shall also include with the application for registration:

(a) An estimate, certified by the developer and accompanied by the information or documentation upon which it is based, of the cost to complete the time-share project (as represented in the public offering statement).

(b) Sufficient evidence of financial capacity to cover such cost (e.g., financial statement; construction loan documents; etc.).

(c) A copy of any contract(s) executed for the construction of the project.

(d) A copy of the agreement under which escrow funds are held in accordance with T.C.A. § 66-32-113; or, if alternate financial assurances are obtained as provided in that Section, copies of documents relating to such assurances.

(e) Such other materials that the Commission may require to determine that the time-share project will be substantially completed.

(3) The developer of a time-share project which is subject to an underlying blanket lien or encumbrance shall also include with the application for registration copies of non-disturbance agreements, subordination agreements, lien releases, bonds, or other financial arrangements designed to protect non-defaulting purchasers in accordance with T.C.A. § 66-32-128.

Authority: T.C.A. §§ 66-32-121 and 66-32-123.

Rules of the Tennessee Real Estate Commission
Chapter 1260-01 Licensing
Rule .14 Filing of Documents

Chapter 1260-02 Rules of Conduct
Rule .02 Termination of Affiliation

Chapter 1260-.06 Time-Share Programs
Rule .10 Application for Registration

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
John Griess	x				
Rick Douglass				x	
Diane Hills	x				
Marcia Franks	x				
Bobby Wood	x				
Fontaine Taylor	x				
Johnny Horne	x				
Gary Blume	x				
Austin McMullen	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on September 7, 2016, 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: 9/30/16

Signature: Mallorie Kerby

Name of Officer: Mallorie Kerby

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: Sept 30, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov 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

10/6/2016

Date

Department of State Use Only

Filed with the Department of State on: 10/18/16

Effective on: 1/16/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Fish and Wildlife Commission
SUBJECT:	Native Tennessean Annual License
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 70-1-206
EFFECTIVE DATES:	January 17, 2017 through June 30, 2017
FISCAL IMPACT:	Minimal.
STAFF RULE ABSTRACT:	The rulemaking hearing rule creates a Native Tennessean annual license that provides native born Tennesseans who no longer reside in the state to purchase annual hunting, trapping, and fishing licenses at resident license costs. Lifetime licenses will not be offered as part of the Native Tennessean license program.

Public Hearing Comments

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

RULE: 1660-01-28-.11

New	X
Amendment	
Repeal	

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

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

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

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

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

(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;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

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

The rule as proposed would have no effect on businesses or consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The rule puts forth necessary due process protections to fully implement previously passed legislation.

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

The rule is fairly similar to those that have been passed in participating compact states.

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

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

Impact on Local Governments

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

Will passage of this rule have a projected financial impact on local governments?

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

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

Additional Information Required by Joint Government Operations Committee

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

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

This rule would create a "Tennessee Native Son/Daughter License". If enacted, it would allow non-residents who were born in the State of Tennessee to purchase annual hunting and fishing licenses at resident license costs.

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

T.C.A. §70-1-206 allows the agency to establish new hunting, fishing and trapping licenses and permits along with necessary fees.

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

Tennessee Wildlife Resources Agency, non-resident hunters and fisherman born in Tennessee. There is no opposition or support for this rule.

(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;

This rule has minimal fiscal impact.

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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

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Sequence Number: 10-13-16
Rule ID(s): 6340
File Date: 10/19/16
Effective Date: 1/17/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Director's Office
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

___ Amendment
_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**
1660-01-28	Rules and Regulations Governing Licenses and Permit Fees
Rule Number	**Rule Title**
1660-01-28-.11	Native Tennessean Annual License

NEW RULE

1660-01-28-.11, Native Tennessean Annual License, is added as a new rule:

1660-01-28-.11 NATIVE TENNESSEAN ANNUAL LICENSE.

(1) Nonresidents who were born in Tennessee may apply for Native Tennessean annual licenses, which provide nonresidents who were originally born in the state but who no longer reside in the state, the opportunity to purchase annual Tennessee hunting/fishing/trapping licenses at the same cost as residents.

(2) Applicants for a Native Tennessean annual license must provide a certified copy of the original birth certificate showing that the applicant was born in the state of Tennessee and/or that the parent's address was in the state of Tennessee at the time of birth as shown on the certified birth

certificate, as well as a valid current photo identification.

(3) Native Tennessean annual licenses will only be sold through the Agency's revenue office. Native Tennessean annual licenses will be identical to annual resident licenses sold by the Agency, but will be properly designated "Native Tennessean."

(4) All regular annual licenses currently offered to residents will be made available to applicants who qualify as Native Tennesseans. Lifetime licenses will not be included in the Native Tennessean license program.

(5) Pursuant to T.C.A. Section 4-5-227, this rule shall automatically terminate on February 28, 2019.

Authority: T.C A. § 70-1-206. Administrative History: Original rule filed _____; effective _____.

* 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
Chad Baker	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Jeff Cook				✓
Bill Cox	✓			
Kurt Holbert	✓			
Connie King	✓			
Jeff McMillan	✓			
Jim Ripley	✓			
Bill Swan	✓			
Trey Teague	✓			
David Watson	✓			
Jamie Woodson	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 09/16/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *06/22/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *08/19/2016 and 09/16/2016*

Date: 9-20-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 9-20-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency Rule 1660-01-28-.11) 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

10/12/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/19/16

Effective on: 1/17/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Accountancy
SUBJECT:	Education Requirements
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-1-105(e)
EFFECTIVE DATES:	January 26, 2017 through June 30, 2017
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	According to the Board, the proposed rule clarifies what an "accounting concentration" is for admittance to sit for the examinations and for licensure. The rule also increases the clarity and conformity of the rule with the relevant statutes and rules. In order to sit for the CPA exam, Tenn. Code Ann., Section 62-1-106(c) generally requires that a person must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent. Present law authorizes the Board to admit to the CPA exam any candidate who has completed a baccalaureate or higher degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate. The proposed rule specifies that an applicant meets the educational requirement solely for the purpose of being admitted to take the CPA exam if the applicant has earned a baccalaureate or higher degree from an accredited educational institution and obtained at least 18 semester or 27 quarter hours of accounting education at the upper division level, junior level courses or higher. Semester or quarter hours from internship programs may not be applied to the 18 semester or 27 quarter hours in accounting required by the rule. The rule also specifies the timing within which a person may apply for examination under the 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:

   The proposed amendment to the rule would affect applicants seeking admission by examination. Currently, there are approximately 4,300 licensed CPA and PA firms, 14,800 licensed CPAs (including active and inactive) in Tennessee. The majority of CPA and PA firms are small businesses. Licensees and applicants will benefit from the rule because it clarifies the eligibility requirements to sit for examination pending competition of educational requirements.

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 sets the minimum hours of accounting education required to sit for the examination and allows applications for examination to be processed before the applicant obtains the necessary educational requirements, provided the applicant successfully completes the degree on or before the examination. Therefore, the amendment accelerates the application process without imposing any additional cost or reducing educational requirements.

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

   Small businesses, which make up the vast majority of CPA and PA firms in Tennessee, will benefit from the accelerated application process for the examination. The amendment allows students to apply to sit for the examination pending the completion of their degrees, provided they satisfy the educational requirements on or before they sit for examination. Consumers will also benefit from the influx of newly licensed CPAs as they are presumably more affordable than their more experienced colleagues.

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 amendments are not burdensome or intrusive to small businesses. There is no known alternative method that is less burdensome or intrusive.

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

   There are no known federal counterparts to the issues addressed by these rules. Other states have rules setting out the qualifications and procedures for a CPA applicant to take an examination. For instance, Alabama Rule 30-X-4-.02(b) requires that applicants have completed a degree from a four-year college or university. Similarly, Georgia Rule 20-3-.02(1) requires that applicants have "30 quarter hours or 20 semester hours in accounting subjects above the elementary level at a four-year accredited college or university which offers a baccalaureate degree" and that they have completed the requirements for a baccalaureate prior to sitting for examination.

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 any additional requirements on small businesses.

Impact on Local Governments

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

(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 proposed amendments to the rule clarify what an "accounting concentration" is for admittance to sit for the examinations and for licensure. The amendments also increase the clarity and conformity of the rule with the relevant statutes and 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 provisions 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;

Applicants for the CPA examination are most directly affected by this rule.

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

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
Acting Executive Director
500 James Robertson Parkway
Nashville, TN 37243
615-532-7397
wendy.garvin@tn.gov

Benjamin Glover
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-770-0085
benjamin.glover@tn.gov

(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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Sequence Number: 10-21-16
Rule ID(s): 6347
File Date: 10/28/16
Effective Date: 1/26/17

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
___ 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**
0020-02	Education and Experience Requirements
Rule Number	**Rule Title**
0020-02-.02	Education

(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 0020-02
Educational and Experience Requirements

Amendments

Rule 0020-02-.02 Education is amended by adding the phrase "for the purpose of being eligible to receive a certificate pursuant to § 62-1-106(c)(1)" immediately following the phrase "educational requirement" in paragraph (1) so that, as amended, the paragraph shall read:

(1) An applicant will be deemed to have met the educational requirement for the purpose of being eligible to receive a certificate pursuant to § 62-1-106(c)(1) if the applicant has earned a baccalaureate or higher degree from an accredited educational institution and obtained the minimum number of hours required by Tenn. Code Ann. § 62-1-106(c) which includes:

Authority: T.C.A. §§ ~~58-308,~~ 62-1-105~~,~~ and 62-1-106~~, and 62-1-111~~.

Rule 0020-02-.02 Education is amended by adding a new paragraph (4) to read as follows:

(4) An applicant for CPA examination shall be deemed to have met the educational requirement solely for the purpose of being admitted to take the CPA examination pursuant to § 62-1-106(c)(2) if the applicant has earned a baccalaureate or higher degree from an accredited educational institution and obtained at least eighteen (18) semester or twenty-seven (27) quarter hours of accounting education at the upper division level, junior level courses or higher. Semester or quarter hours from internship programs may not be applied to the eighteen (18) semester or twenty-seven (27) quarter hours in accounting required by this paragraph.

(a) An application to sit for examination may be filed, processed and approved prior to the completion of a baccalaureate or higher degree so long as the applicant submits materials with the application that demonstrate that, at the time of the first examination, the applicant will have a baccalaureate or higher degree with the hours of accounting education required by paragraph (4).

(b) A certificate of enrollment and certified transcript from the educational institution demonstrating that the applicant will have the required degree prior to the first examination shall be sufficient documentation to demonstrate that the applicant will have a baccalaureate or higher degree with the hours of accounting education required by paragraph (4) at the time of the first examination; provided, however, that the Board or its designee may accept such other reasonable documentation as an applicant may provide properly demonstrating that the applicant will have met the requirements of this paragraph prior to examination.

(c) No credit will be given to an applicant for an examination if that applicant fails to successfully obtain a baccalaureate or higher degree with the hours of accounting education required by paragraph (4) prior to the time the applicant took the examination.

Authority: T.C.A. §§ ~~58-308,~~ 62-1-105~~,~~ and 62-1-106~~, and 62-1-111~~.

* 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)
Judy Wetherbee	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 05/06/2016 (*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: 9/21/2016

Signature:

Name of Officer: Benjamin Paul Glover

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: 9/21/2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

Rules of the Tennessee State Board of Accountancy
Chapter 0020-02 Education & Experience
Rule 0020-02-.02 Education

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

10/19/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/28/16

Effective on: 1/26/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Examiners for Architects and Engineers
SUBJECT:	Registration; Rules of Professional Misconduct; Interior Designers; Continuing Education
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-2-203
EFFECTIVE DATES:	January 26, 2017 through June 30, 2017
FISCAL IMPACT:	Minimal.
STAFF RULE ABSTRACT:	According to the Board, the proposed rule clarifies certain procedures: the correct use of the title engineer if an individual is registered in another jurisdiction or if an individual was previously registered in another jurisdiction; inactive status; what are included as original sheets in working plans; how to designate on plans when multiple registrants work on a project; electronic seals clarification; and how to designate preliminary plans or drafts. The rule also updates the continuing education rules to allow credit for patents and authoring accepted licensing exam questions; it decreases the amount of time to earn continuing education credit after a deficiency is discovered from six months to three months; changes some civil penalties and adds aggravating and mitigating factors to consider, and repeals an interior design grandfathering rule that no longer applies. Rule 0120-01-.03 adds new language to specify that persons who are registered as an engineer, architect, or landscape architect in another state may not use a professional designation in this state unless it is used on conjunction with their state of registration. The rule also places into the rules the present law requirement that, in order for an out-of-state registrant to perform professional services in this state, such registrant must be acting as a consulting associate or working under the responsible charge of a Tennessee registrant. Rule 0120-01-.04 specifies that a person whose registration in another state expired may apply for

registration in Tennessee as a new exam applicant and the Board will decide on a case-by-case basis whether it will accept exams passed in another jurisdiction. The rule also places into the rules the present law authorization for registrants in other states to apply for registration in Tennessee by comity.

Rule 0120-01-.11 clarifies that the Board may, but is not required to, use the "Table of Equivalents" to evaluate the education and experience of applicants for examination and registration as an architect.

Rule 0120-01-.25 specifies that when a registrant who holds a retired certificate wishes to return to active status, the registrant must satisfy continuing education requirements as well as notifying the Board and paying a biennial renewal fee. The rule also establishes a procedure whereby a registrant may place their registration in inactive status and maintain such status for an indefinite period by paying the renewal fee and complying with professional privilege tax requirements.

Rule 0120-02-.07 adds providing false testimony to the Board as a basis for finding that a registrant is guilty of professional misconduct.

Rule 120-02-.08 clarifies when a registrant is required to stamp the registrant's seal.

Rule 0120-02-.09 increases minimum civil penalty amounts to $500 while retaining the present maximum amount of $1,000. Presently, the minimum amount of civil penalties ranges from $100 to $500. The rule also adds two new points of evidence that the Board may consider when determining the amount of a civil penalty.

Rule 120-02-.10 specifies that, if the Board orders a registrant to pass a laws and rules examination as part of an enforcement action, the minimum passing score is 80 percent.

Rule 120-04-.10 has the same effect as Rule 0120-02-.07 (above), but applies to registered interior designers instead of engineers, architects, and landscape architects.

Rule 120-04-.11 has the same effect as Rule 0120-02-.09 (above), but applies to registered interior designers instead of engineers, architects, and landscape architects.

Rule 0120-04-.12 has the same effect as Rule 120-02-.10 (above), but applies to registered interior designers instead of engineers, architects, and landscape architects.

Rule 0120-04-.09 repeals a rule that specifies the manner by which persons having requisite experience in interior design could be registered without taking the exam, if such persons applied prior to January 1, 1994.

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;

These amendments would impact small businesses that are run and/or owned by Board licensed individuals.

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

There are no projected administrative costs as a result of these amendments.

(3) A statement of the probable effect on small businesses and consumers:

There is no expected adverse impact on small businesses as a result of these amendments.

(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 Board knows of no other alternative method to achieve the goals exhibited by these rules.

(5) A comparison of the proposed rule with any federal and state counterparts:

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

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

The effect of making an exemption from these rules would place Board licensed individuals who run or own small businesses at an unfairly advantageous place in comparison to those other Board licensed individuals working for larger companies.

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 Board of Architectural and Engineering Examiners licenses only individuals and foresees no financial impact on any local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rules clarify certain procedures: the correct use of the title engineer if an individual is registered in another jurisdiction or if an individual was previously registered in another jurisdiction; inactive status; what are included as original sheets in working plans; how to designate on plans when multiple registrants work on a project; electronic seals clarification; and how to designate preliminary plans or drafts.

These rules also update the continuing education rules to allow credit for patents and authoring accepted licensing exam questions; it decreases the amount of time to earn continuing education credit after a deficiency is discovered from six months to three months; changes some civil penalties and adds aggravating and mitigating factors to consider, and repeals an interior design grandfathering rule that no longer applies.

(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 or state law or regulation 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;

Registrants will be affected by these rules. Representatives of the professional societies for architects, engineers, interior designers, and landscape architects were present during the discussion of the rules at the board meetings and did not voice any objections or concerns either in the board meeting or after.

(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 an estimated minimal fiscal impact for the promulgation of these rules.

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

John Cothron, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3221

Benjamin Glover, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3072

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

John Cothron, Executive Director, Board of Architectural and Engineering Examiners
Benjamin Glover, 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

John Cothron, Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3221
John.Cothron@tn.gov

Benjamin Glover, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3072
Benjamin.Glover@tn.gov

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

There is no known additional relevant information.

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Sequence Number: 10-19-16
Rule ID(s): 6342 - 6345
File Date: 10/28/16
Effective Date: 1/26/17

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 Architectural and Engineering Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Benjamin Glover, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee 37243
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Email:	Benjamin.Glover@tn.gov
Agency/Board/Commission:	Tennessee State Board of Architectural and Engineering Examiners

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**
0120-01	Registration Requirements and Procedures
Rule Number	**Rule Title**
Table of Contents	
0120-01-.03	Individuals Registered in Other Jurisdictions
0120-01-.04	Applications – General
0120-01-.09	References
0120-01-.11	Education & Experience Requirements – Architect
0120-01-.25	Renewal of Registration

Chapter Number	**Chapter Title**
0120-02	Rules of Professional Conduct
Rule Number	**Rule Title**
0120-02-.07	Misconduct
0120-02-.08	Seals

0120-02-.09	Civil Penalties
0120-02-.10	Other Enforcement Actions

Chapter Number	**Chapter Title**
0120-04	Interior Designers
Rule Number	**Rule Title**
Table of Contents	
0120-04-.10	Professional Conduct
0120-04-.11	Civil Penalties
0120-04-.12	Other Enforcement Actions
0120-04-.09	Repeal

Chapter Number	**Chapter Title**
0120-05	Continuing Education
Rule Number	**Rule Title**
0120-05-.06	Types of Acceptable Continuing Education
0120-05-.07	Credits
0120-05-.11	Disallowance

Redline – 2016 Proposed Rules
Tennessee Board of Architectural and Engineering Examiners

Chapter 0120-01
Registration Requirements and Procedures

New

The Table of Contents is amended by changing Repealed Rule 0120-01-.03 to new rule Individuals Registered in Other Jurisdictions, so that the amended Table of Contents shall read as follows:

Rule 0120-01-.03 Repealed is substituted with new rule Individuals Registered in Other Jurisdictions so that the Rule reads as follows:

(1) Unless properly registered, individuals shall not make use of the title "engineer," "architect," "landscape architect," or any appellation thereof that gives the impression that the individual is an architect, engineer, or landscape architect in Tennessee. Individuals not registered in Tennessee but registered in other jurisdictions may use these titles so long as the jurisdiction in which they are registered is clearly specified so as not to mislead the public regarding their credentials. This clarification is not required on communications from an out-of-state office, provided that the individual is registered in that jurisdiction.

(2) Individuals registered in other jurisdictions cannot offer or perform architectural, engineering, or landscape architectural services to the public in Tennessee unless they are either acting as consulting associates in accordance with T.C.A. § 62-2-103(2) or working under the responsible charge of a Tennessee registrant.

Authority T.C.A. §§ 62-2-101, 62-2-103, and 62-2-203(c).

Chapter 0120-01
Registration Requirements and Procedures

Amendments

Rule 0120-01-.04 Applications – General is amended by adding new paragraphs (4) and (5) so that the Rule, as amended, reads as follows:

(1) Applications for registration and certification are available on the Board website and upon request from the office of the Board.

(2) Any application submitted which lacks required information or reflects a failure to meet any requirement will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed five (5) years from the date of application.

(3) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded.

(4) An individual who was previously registered in another jurisdiction but whose registration has expired may apply in Tennessee as a new exam applicant. The Board will decide on a case-by-case basis if it will accept exam(s) passed in another jurisdiction.

(5) Individuals who are currently registered in another state may apply by comity in accordance with T.C.A. § 62-2-304.

Authority: T.C.A. §§ 62-2-203(c)~~.~~, 62-2-301, and 62-2-304.

Rule 0120-01-.09 References is amended by deleting paragraph (3) in its entirety and replacing it with the following paragraph, so that as amended the paragraph reads as follows:

(3) A maximum of three (3) references shall be obtained from ~~the~~ an employer listed by the applicant. ~~References are required~~ The Board prefers references from both the applicant's current employer/supervisor and a past employer/supervisor, ~~(~~if available~~ applicable)~~.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-301(a).

Rule 0120-01-.11 Education and Experience Requirements – Architect is amended by changing the word "will" to "may" in paragraph one (1), so that as amended the paragraph reads as follows:

(1) For purposes of evaluating the education and experience of applicants for examination and registration as an architect, the Board ~~will~~ may utilize the "Table of Equivalents" contained in Appendix "A" to Circular of Information No. 1, published in July 1983 by the National Council of Architectural Registration Boards (NCARB), except to the extent that such document conflicts with any applicable statute.

Authority: T.C.A. §§ 62-2-203(c), 62-2-502, and 62-2-503.

Rule 0120-01-.25 Renewal of Registration is amended by amending paragraph (5) and adding a new paragraph (6) so that the rule, as amended, shall read as follows:

(1) All certificates of registration issued to engineers, architects and landscape architects are subject to biennial renewal (every two (2) years) in accordance with the provisions of T.C.A. § 56-1-302(b).

(2) An architect, engineer or landscape architect may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-05-.04.

(3) Fees for biennial renewal of certificates of registration shall be as follows:

Engineer	$140
Architect	$140
Landscape Architect	$140

(4) The penalty fee for late renewal shall be in the amount of ten dollars ($10.00) for each month or fraction of a month which lapses during the six (6)-month late renewal period before payment is tendered.

(5) Retirement Status.

(a) A registered certificate holder (over age 62) may place the registrant's certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew the registrant's certificate by so notifying the Board.

(b) A registrant holding a retired certificate may refer to oneself as an engineer, architect, or landscape architect, including on correspondence and business cards, provided that the word "retired" is used in conjunction with the title. However, a holder of a retired certificate may not engage in or offer to engage in the practice of engineering, architecture or landscape architecture as defined by T.C.A. § 62-2-102. Practice or offer to practice in violation of this subparagraph shall be considered to be misconduct and may subject the registrant to disciplinary action by the Board.

(c) A registrant holding a retired certificate may not engage in any activity constituting the practice or offer to practice of engineering, architecture or landscape architecture in the State of Tennessee without first notifying the Board, in writing, as to a change to "active" status, satisfying the continuing education requirements of rule 0120-05-.08(d), and paying the ~~a~~ biennial ~~license~~ registration renewal fee ~~of one hundred forty dollars ($140.00)~~.

(6) Inactive Status.

(a) A registrant may place the registrant's certificate, if in good standing, in inactive status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required to establish inactive status. The registrant with an inactive certificate is still required to pay the biennial registration renewal fee.

(b) A registrant holding an inactive certificate shall follow the requirements pertaining to payment or non-payment of the professional privilege tax established in T.C.A. § 67-4-1701 *et. seq.*, in accordance with T.C.A. § 67-4-1702(b).

(c) A registrant holding an inactive certificate may not engage in any activity constituting the practice or offer to practice engineering, architecture, or landscape architecture in the State of Tennessee without first notifying the Board, in writing, as to a change to "active" status and satisfying the continuing education requirements of Rule 0120-05-.08(d).

Authority: T.C.A. §§ 62-2-203(c) and (d), ~~and~~ 62-2-307(c), 67-4-1701, and 67-4-1702.

Chapter 0120-02
Rules of Professional Conduct

Amendments

Rule 0120-02-.07 Misconduct is amended by adding subparagraph (e) to paragraph (5) so that the paragraph, as amended, shall read as follows:

(5) A registrant may be deemed by the Board to be guilty of misconduct in the registrant's professional practice if:

(a) The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;

(b) The registrant's license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or the registrant fails to report such action to the Board in writing within sixty (60) days of the action;

(c) The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or

(d) The registrant fails to comply with a lawful order of the Board.

(e) The registrant provides false testimony or information to the Board.

Authority: T.C.A. §§ 62-2-203(c), 62-2-204, 62-2-212, and 62-2-308.

Rule 0120-02-.08 Seals is amended by modifying paragraphs (2), (4), (8), and adding a new paragraph (9), so that, as amended, paragraphs (2), (4), (8), and (9) read as follows:

(2) The registrant shall stamp with the registrant's ~~his~~ seal the following documents:

(a) All original sheets of any bound or unbound set of working drawings or plans; original sheets shall include tracings or other reproducible sheets;

(b) The original cover or index page(s) identifying all specification pages covered; and

(c) The original cover or index page(s) for ~~D~~ design calculations that are submitted for review.

(4) ~~Any portions of working drawings, plans, reports or other design documents prepared by registered consultants shall bear the seal and signature of the consultant responsible therefor.~~ When multiple registrants contribute to a project, each registrant shall sign and seal the portions of the project for which that registered consultant is responsible. When multiple registrants in responsible charge provide content on the same document, all such registrants should seal the document, and, if there is any question, a description of the areas of responsibility should be included. All registrants in responsible charge who work on a set of specifications are required to seal either the cover page of the specifications, or the cover page(s) for the section(s) of the specifications they produce.

(8)

(a) Subject to the requirements of this rule, rubber-stamp, embossed, transparent self-adhesive or electronically generated seals may be used. Such stamps or seals shall not include the registrant's signature or date of signature.

(b) Subject to the requirements of this rule, the registrant may affix an electronically generated signature and date of signature to documents. When used, e ~~E~~lectronic signatures and dates of signature ~~are not required to~~ shall be placed either across the face and beyond the circumference of the seal~~, but must be placed~~ or adjacent to the seal. Documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:

1. Unique to the individual using it;
2. Capable of verification;
3. Under the sole control of the individual using it; and
4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed

(9) All working or partially completed plans, or any drawings that are not construction documents, shall be designated "preliminary – not for construction," "for review only," "draft," or other designation clearly indicating that the drawings are not complete.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, ~~62-2-306(d),~~ and 62-2-307(f).

Rule 0120-02-.09 Civil Penalties is amended by modifying paragraphs (1), (2), and (4) so that the Rule, as amended, reads as follows:

(1) With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such registrant for each separate violation of a statute, rule or order pertaining to the Board in accordance with the following schedule:

Violation		Penalty
(a)	T.C.A. § 62-2-306(b)	~~$250-1000~~ $500-1000
(b)	T.C.A. § 62-2-308(a)(1)	~~250-1000~~ $500-1000
(c)	Rule 0120-02-.02	~~100-1000~~ $500-1000
(d)	Rule 0120-02-.03	$500-1000
(e)	Rule 0120-02-.04	~~50-1000~~ $500-1000
(f)	Rule 0120-02-.05	$500-1000
(g)	Rule 0120-02-.06	~~250-1000~~ $500-1000
(h)	Rule 0120-02-.07	$500-1000
(i)	Rule 0120-02-.08	~~100-1000~~ $500-1000
(j)	Board Order	~~100-1000~~ $500-1000

(2) With respect to any person required to be registered in this state as an architect, engineer or landscape architect, the Board may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation		Penalty
(a)	T.C.A. § 62-2-101	~~$100-1000~~ $500-1000
(b)	T.C.A. § 62-2-105(a)(1)	$500-1000
(c)	T.C.A. § 62-2-105(b)(1	$500-1000
(d)	T.C.A. § 62-2-601	$500-1000
(e)	T.C.A. § 62-2-602	$500-1000

(3) Each day of continued violation may constitute a separate violation.

(4) In determining the amount of civil 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 violation;

(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 non-compliance; ~~and~~

(e) The interest of the public~~.~~;

(f) Prior disciplinary action in any jurisdiction or repeated violations; and

(g) Self-reporting of the offense, cooperation with the Board's investigation, and any corrective action taken.

Authority: T.C.A. §§ 56-1-308, 62-2-105, 62-2-106, and 62-2-203(c).

Rule 0120-02-.10 Other Enforcement Actions is amended by deleting the Rule in its entirety and replacing it with the following language, so that as amended the Rule reads as follows:

With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, take enforcement action against any registrant who is a respondent in a disciplinary case. Other enforcement actions may include, but are not limited to, the following:

(1) Passage of a laws and rules examination with a minimum passing score of 80%;

(2) Completion of additional, Board-assigned continuing education hours (with appropriate documentation required); or

(3) Assignment of a probationary period with peer review of all technical work, accompanied by reporting requirements from the reviewer.

Authority: T.C.A. §§ 62-2-106 and 62-2-203(c).

Chapter 0120-04
Interior Designers

Amendments

The Table of Contents is amended by deleting it in its entirety and substituting, instead, the following language, so that the amended Table of Contents shall read as follows:

Rule 0120-04-.10 Professional Conduct is amended by adding subparagraph (e) to paragraph (14) so that. As amended, the paragraph reads as follows:

(14) The registrant may be deemed by the board to be guilty of misconduct if:

(a) The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;

(b) The registrant's license or certificate of interior design title is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings in another jurisdiction or the registrant fails to report such action to the Board in writing within sixty (60) days of the action;

(c) The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; ~~or~~

(d) The registrant fails to comply with a lawful order of the Board~~.~~; or

(e) The registrant knowingly provides false testimony or information to the Board.

Authority: T.C.A. §§ 62-2-105 and 62-2-203(c).

Rule 0120-04-.11 Civil Penalties is amended by modifying paragraphs (1), (2), and (4) so that the Rule, as amended, reads as follows:

(1) With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such registrant for each separate violation of a statute, rule or order pertaining to the Board in accordance with the following schedule:

	Violation	Penalty
(a)	T.C.A. § 62-2-308(a)(1)	$500-~~$~~1,000
(b)	Rule 0120-04-.10	$500-1,000
(c)	Board Order	~~100-1,000~~ $500-1000

(2) With respect to any person required to be registered in this state to use the title "registered interior designer," the Board may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

	Violation	Penalty
(a)	T.C.A. § 62-2-101	~~$100-1000~~$500-1000
(b)	T.C.A. § 62-2-105(a)(1)	500-1,000
(c)	T.C.A. § 62-2-105(b)(1)	500-1,000
(d)	T.C.A. § 62-2-903	500-1,000

(3) Each day of continued violation may constitute a separate violation.

(4) In determining the amount of civil 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 violation;

(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 non-compliance; ~~and~~

(e) The interest of the public~~.~~;

(f) Prior disciplinary action in any jurisdiction or repeated violations; and

(g) Self-reporting of the offense, cooperation with the Board's investigation, and any corrective action taken.

Authority: T.C.A. §§ 56-1-308, 62-2-105, 62-2-106, and 62-2-203(c).

Rule 0120-04-.12 Other Enforcement Actions is amended by deleting the Rule in its entirety and substituting instead the following language, so that the Rule, as amended, reads as follows:

With respect to any registrant, the Board may, in addition to or in lieu of any other lawful disciplinary action, take enforcement action against any registrant who is a respondent in a disciplinary case. Other enforcement actions may include, but are not limited to, the following:

(1) Passage of a laws and rules examination with a minimum passing score of 80%; or

(2) Completion of additional, Board-assigned continuing education hours (with appropriate documentation required).

Authority: T.C.A. §§ 62-2-106 and 62-2-203(c).

Repeals

Rule 0120-04-.09 Registration Without Examination is Repealed:

0120-04-.09 ~~REGISTRATION WITHOUT EXAMINATION.~~ Repealed.

~~(1) The education and experience requirements for an applicant for registration as a registered interior designer without examination shall be those prescribed in T.C.A. §62-2-905.~~

~~(2) For purposes of *T.C.A. §62-2-905*, an applicant shall be deemed to have "satisfactory interior design experience" if, for each year the applicant claims credit, the applicant has worked a minimum of one thousand six hundred (1,600) hours performing interior design services. For purposes of this rule, "satisfactory interior design experience" shall mean design services which do not necessarily require performance by an architect, including consultations, studies, drawings and specifications in connection with reflected ceiling plans, space utilization, furnishings or the fabrication of non-structural elements within the surrounding interior spaces of buildings, but specifically excluding the services specified by law to require other licensed professionals, such as the design of mechanical, plumbing, electrical and load bearing structural systems, except for specification of fixtures and their location within interior spaces.~~

~~(3) Satisfactory interior design experience shall be demonstrated to the Board by the applicant who shall provide the following:~~

~~(a) An affidavit by the applicant attesting that the applicant has used or been identified by the title "interior designer" and has engaged in the practice of interior design for the number of years for which the applicant is claiming experience;~~

~~(b) Three (3) references, on forms supplied by the Board, certifying that the applicant has provided interior design services for the period of experience claimed by the applicant; such references to be submitted from the following:~~

1. Interior designers who have passed the NCIDQ examination;

2. Registered architects; and/or

3. Professional members of any of the professional organizations specified under paragraph (3)(c)1. of this rule; and

(c) Documentation of the interior design experience claimed by using any one (1) of the two (2) methods enumerated below:

1. Providing certification of active professional membership in one (1) of the following professional organizations which require six (6) years education and experience substantially similar to the education and experience required by *T.C.A. §62-2-905*:

(i) American Society of Interior Designers;

(ii) Institute of Business Designers;

(iii) Interior Design Society; or

(iv) Any other professional interior design organization that requires successful completion of the NCIDQ Examination or its equivalent or the experience requirements of *T.C.A. §62-2-905*; or

2. Furnishing documentation of the number of years of interior design experience claimed as set forth below:

(i) Verification by the employer for each year worked under an interior designer who holds active professional membership in any of the professional organizations specified in paragraph (3)(c)1. of this rule, or a registered architect; and/or

(ii) A combination of no less than three (3) of the following documents per year as proof of experience:

(I) Tax returns listing occupation as interior designer or Schedule C listing business as interior design;

(II) Affidavits from clients, attesting to the interior design services provided and when the applicant provided such services;

(III) Business licenses; or

(IV) Tax identification numbers issued prior to January 1, 1988; and/or

(iii) Equivalent proof as determined by the Board.

(4) Notwithstanding any provision to the contrary, no more than one (1) year of credit for satisfactory design experience shall be given for interior design related sales experience.

(5) Notwithstanding any other provision to the contrary, an applicant claiming experience for the teaching of interior design may use such experience to qualify for registration without examination, pursuant to the provisions of *T.C.A. §62-2-905(2)*.

(a) Any combination totaling six (6) years of satisfactory interior design experience, as defined in this rule, and experience being regularly engaged in the teaching of interior design, such

~~teaching experience being part of a program leading to a degree at an accredited institution recognized by the Board shall meet the requirements of *T.C.A. §62-2-905(2).*~~

~~(b) To demonstrate satisfactory interior design experience, the applicant shall do so in the manner provided above by this rule. To demonstrate teaching experience, the applicant shall submit an affidavit by the applicant and a statement from an accredited institution stating the number of years the applicant was regularly engaged in the teaching of interior design.~~

~~(c) "Regularly engaged" shall mean a full-time teaching position in which no less than twelve (12) credit hours per semester or the equivalent hours per quarter are taught for each semester or quarter of a year.~~

~~***Authority:*** *T.C.A. §§ 62-2-203(c) and 62-2-905.*~~

Chapter 0120-05
Continuing Education

Amendments

Rule 0120-05-.06 Types of Acceptable Continuing Education is amended by modifying paragraph (2) so that, as amended, the paragraph shall read:

(2) Continuing education activities for which credit may be given by the Board include, but are not limited to the following:

(a) Successful completion or monitoring of college or university sponsored courses;

(b) Successful completion of courses which are awarded continuing education units (CEU's);

(c) Attendance at structured seminars, tutorials, short courses, correspondence courses, televised courses, Internet courses, or videotaped courses;

(d) Attendance at in-house educational programs sponsored by corporations or other organizations;

(e) Teaching or instructing as described in (a) through (d) above, unless teaching or instructing is the registrant's regular employment;

(f) Authoring published papers, articles, ~~or~~ books, or accepted licensing examination items;

(g) Making presentations at technical meetings;

(h) Attendance at program presentations at related technical or professional meetings where program content is comprised of at least one (1) PDH;

(i) Attendance at Board meetings and professional society legislative events, and active participation in a technical/professional society or organization, or a technical or professional public board, as an officer or committee member;

(j) Active participation in educational outreach activities involving K-12 or higher education students; ~~and,~~

(k) Patents granted; and,

(~~k~~l) All such activities as described in (a) through (j~~k~~) above must be relevant to the practice of architecture, engineering, landscape architecture or interior design as determined by the Board and may include technical, ethical or managerial content.

Authority: T.C.A. § 62-2-203(d).

Rule 0120-05-.07 Credits is amended by deleting the Rule in its entirety and substituting instead the following language, so that the Rule, as amended, reads as follows:

(1) Professional Development Hours of credit for qualifying courses successfully completed which offer semester hour, quarter hour, or CEU credit are as specified above. All other activities will be credited one (1) PDH for each contact hour with the following exceptions:

(a) Monitoring of university or college courses will be credited at one-third (1/3) the above-stated conversion table.

(b) Teaching or instructing qualifying courses or seminars will be credited at twice the PDH's earned by a participating student and may be claimed for credit only once.

(c) Authorship of papers, articles, or books cannot be claimed until actually published. ~~Credit earned will equal preparation time spent not to exceed twenty-five (25) PDH's per publication.~~ A maximum of ten (10) PDH's per biennium may be claimed for each published peer-reviewed paper, article, or book. A maximum of five (5) PDH's per biennium may be claimed for each published paper, article, or book that is not peer-reviewed.

(d) Correspondence course PDH's may be considered acceptable to the Board, but the registrant shall submit, upon request, supporting documentation to demonstrate high quality course content.

(e) A maximum of eight (8) PDH's per biennium may be claimed for attendance at Board meetings and professional society legislative events, and active participation in technical/professional societies or organizations, or technical or professional public boards, as an officer or committee member.

(f) A maximum of four (4) PDH's per biennium may be claimed for active participation in educational outreach activities involving K-12 or higher education students.

(g) A maximum of ten (10) PDH's per biennium may be claimed for each patent.

(h) A maximum of five (5) PDH's per biennium may be claimed for writing accepted licensing examination items.

Authority: T.C.A. § 62-2-203(d).

Rule 0120-05-.11 Disallowance is amended by deleting paragraph (1) and substituting instead the following language:

(1) If the Board disallows claimed PDH credits, the registrant shall ~~within one hundred eighty (180)~~ have ninety (90) days after notification ~~of same~~ to either substantiate the original claim or earn other credit to meet the minimum requirements.

Authority: T.C.A. § 62-2-203(d).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Richard D. Thompson, RA	X				
Robert G. Campbell, Jr., PE	X				
Susan K. Ballard, RID	X				
Susan Hadley Maynor	X				
Harold P. Balthrop, Jr., PE	X				
Philip K. S. Lim, PE	X				
Paul W. Lockwood, RLA	X				
Jerome Headley, RA	X				
Frank W. Wagster, RA	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Architectural and Engineering Examiners on February 11, 2016, 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: 9/21/2016

Signature:

Name of Officer: Benjamin Glover

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: 09/21/2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

Rule of the Board of Architectural and Engineering Examiners
Chapter 0120-01 Registration Requirements and Procedures
Rule 0120-01-.03 Individuals Registered in Other Jurisdictions
Rule 0120-01-.04 Applications – General
Rule 0120-01-.09 References
Rule 0120-01-.11 Education & Experience Requirements – Architect
Rule 0120-01-.25 Renewal of Registration

Chapter 0120-02 Rules of Professional Conduct
Rule 0120-02-.07 Misconduct
Rule 0120-02-.08 Seals
Rule 0120-02-.09 Civil Penalties
Rule 0120-02-.10 Other Enforcement Actions

Chapter 0120-04 Interior Designers
Rule 0120-04-.09 Repeal
Rule 0120-04-.10 Professional Conduct
Rule 0120-04-.11 Civil Penalties
Rule 0120-04-.12 Other Enforcement Actions

Chapter 0120-05 Continuing Education
Rule 0120-05-.06 Types of Acceptable Continuing Education
Rule 0120-05-.07 Credits
Rule 0120-05-.11 Disallowance

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

10/19/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/28/16

Effective on: 1/26/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Education
SUBJECT:	Individualized Education Accounts
STATUTORY AUTHORITY:	Tennessee Public Chapter Numbers 431, 620, and 793 of 2015
EFFECTIVE DATES:	October 28, 2016 through April 26, 2017
FISCAL IMPACT:	See the Fiscal Note for SB27/HB138 (included following the signature page for this rule) which states an estimate of the probable fiscal impact resulting from the implementation of this rule.
STAFF RULE ABSTRACT:	The emergency rule effectuates the Individualized Education Act as required by Public Chapter 431 of 2015. The Act provides options for account holders to select educational opportunities that best meet the individual needs of an eligible student by giving the student direct access to state and local public education funds. The rule is substantially similar to the Board's IEA permanent rule that received a positive recommendation from the Senate Government Operations Committee and no recommendation from the House Government Operations Committee at the November 2016 Rule Review Meeting. Other than the effective dates, the only difference between the two rules appears to be the removal of the definition of "agreement" in the emergency rule.

Impact on Local Governments

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

This rule will have no impact on local governments.

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 effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds.

(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;

Tennessee Public Chapters Nos. 431, 620, and 793

(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;

Parents of students with disabilities and local school districts are most directly affected by this rule. Feedback was gathered at a rulemaking hearing, and the rules being presented have been revised based on the feedback from the public comments and the IEA External Advisory Group. The feedback gathered primarily contemplated adoption of the rule and focused on how the program would be implemented.

(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;

Please see the Fiscal Note for SB 00027 - HB 00138, attached to this form as exhibit 1, which states an estimate of the probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule and the assumptions and reasoning upon which the estimate is based.

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

Elizabeth Taylor Elizabeth.Taylor@tn.gov Nathan James Nathan.James@tn.gov

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

Elizabeth Taylor Elizabeth.Taylor@tn.gov Nathan James Nathan.James@tn.gov

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

Elizabeth Taylor Elizabeth.Taylor@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-253-5707 Nathan James Nathan.James@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-532-3528

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

N/A

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For Department of State Use Only

Sequence Number: 10-20-16
Rule ID(s): 6346
File Date (effective date): 10/28/16
End Effective Date: 4/26/17

Emergency Rule Filing Form

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy 1st Floor Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

On May 18, 2015, Governor Haslam signed into law the Individualized Education Act (Public Chapter 431) which creates individualized education accounts (IEAs) for eligible students with disabilities to use for educational purposes. The program provides options for parents of certain students with disabilities to choose the educational opportunities that best meet the individual needs of their child by giving them direct access to state and local public education funds. The program will go into effect in the 2016-17 school year. The student application window will open by August 2, 2016, and students will be able to enroll in the program beginning January 1, 2017.

The proposed rules were developed by State Board staff and the Tennessee Department of Education in consultation with the Tennessee Department of Health and by feedback from stakeholders from across Tennessee. The rules were approved by the State Board on final reading on January 19, 2016. After final approval of the rules, the Attorney General's office provided several revisions. The Board approved these revisions on May 27, 2016. However, the new revisions proposed lengthened the promulgation process, and the rules were ultimately assigned an effective date of December 1, 2016.

The State Board must approve the rules for the IEA Program before the Department of Education can approve student and private school applications. Moreover, the Department of Education must be able to approve applications before the parents can sign the IEA contract with the State. If the rules do not become effective until December 1, the timeline for implementation will be delayed, and it is unlikely that the state or school districts will be able to process the student information in time to have students enroll in the IEA Program on the start date of January 1, 2017.

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

Chapter Number	**Chapter Title**
0520-01-11	Individualized Education Accounts
Rule Number	**Rule Title**
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Contract and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools and Providers
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest
0520-01-11-.12	Reserved

RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS

TABLE OF CONTENTS

0520-01-11-.01 PURPOSE.

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015).

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.02 DEFINITIONS.

(1) "Account holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the account holder for the IEA funds, and is responsible for complying with all the requirements of the IEA Program.

(2) "Act" means the Individualized Education Act.

~~(1)~~(3) "Agreement" means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the Department.

(4) "Application" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).

~~"Agreement" means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the Department.~~

(5) "Computer hardware" means technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware must meet one of the following criteria:

(a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or

(b) Allows a student to access instruction or instructional content.

(6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers must maintain documentation that any persons providing services to participating students has undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school

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grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.

(7) "Department" means the Tennessee Department of Education.

(8) "Educational purposes" means the curriculum of a participating school and educational therapies.

(9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques.

(10) "Eligible postsecondary institution" means a community college, college of applied technology, or university of the University of Tennessee system or the Tennessee Board of Regents system, a Tennessee public postsecondary institution, or a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).

(11) "Eligible student" means:

(a) A resident of this state with any of the following disabilities as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:

1. Autism;

2. Deaf-blindness;

3. Hearing impairments;

4. Intellectual disability;

5. Orthopedic impairments;

6. Traumatic brain injury; or

7. Visual impairments.

(b) Has an IEP in effect at the time the Department receives the request for participation in the program; and

(c) Meets at least one (1) of the following requirements:

1. Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment means that the student was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.

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2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state;

3. Has not previously attended a school in Tennessee during the two (2) semesters immediately preceding the semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;

4. Received an IEA in the previous school year; or

5. If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.

(12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.

(13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.

(14) "IEA" means a Tennessee individualized education account.

(15) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.

(16) "Local education agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

(17) "Nonpublic online learning program or course" means online courses designated and approved by the Department.

(18) "Parent" means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.

(19) "Participating school" means a nonpublic school that meets the requirements established in the Act, and meets related rules, regulations, policies and procedures of the state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.

(20) "Participating student" means an eligible student whose parent is participating in the IEA program or an eligible student who has attained the age of majority and is participating in the IEA program.

(21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.

(22) "Program" means the individualized education account (IEA) program.

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(23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of education and health for participating providers.

(24) "Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.

(25) "Tutoring services" means services provided by a tutor accredited by a state, regional, or national accrediting organization.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1401 et seq.*

0520-01-11-.03 APPLICATION.

(1) To receive an IEA the parent of an eligible student, or a student who has attained the age of majority, must first request an IEA by filing a notice of intent with the Department and fully completing an application available through the Department's website by the deadline set by the Department.

(a) A school district, a nonpublic school, or the Department may assist a parent or student who has attained the age of majority in filing the application.

(b) An application must include all information requested by the Department and must be approved by the Department.

(2) The Department shall make a determination of eligibility and notify the parent or student who has reached the age of majority.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.04 TERM OF THE IEA

(1) For purposes of continuity of educational attainment, a student who enrolls in the program shall remain eligible until the participating student meets one of the following, whichever occurs first:

(a) Enrolls full-time in a public school in the LEA in which the parent or student who has attained the age of majority resides;

(b) Graduates from high school. The student may continue in the program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this program; or

(c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the program past August 15 of the next school year after they have reached twenty-two (22) years of age.

(2) The account holder may remove the participating student from the nonpublic school and place the student in a public school. The account holder shall notify the Department of the student's withdrawal from the IEA program and return to the LEA by the date set by the Department.

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(3) Upon reasonable notice to the Department, the student's parent (or a student who has attained the age of majority) may move the student from one participating nonpublic school to another participating nonpublic school.

(4) In order for students to continue in the program, the parent or participating student who has attained the age of majority shall annually renew the IEA by following the procedures posted on the Department's website.

(5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) years after a student has aged out of the program. Account holders are not required to spend the entire sum each year; however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months).

(a) If overall spending does not equal fifty (50) percent at the close of the contract year and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws from the IEA program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

Authority: T.C.A. § 49-1-302.

0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.

(1) Upon notification by the Department that an IEA may be established, a parent or student who has attained the age of majority shall sign an agreement to:

(a) Provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;

(b) Not to enroll the participating student in a public school during the time the student is enrolled in the IEA program; and

(c) Release the LEA in which the student resides and the school which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA program.

(2) The Agreement template shall be available on the Department's website. Parents or students that have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.

(3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.

(4) The Agreement shall be signed by the parent of an eligible student or by the student who has attained the age of majority and a designee of the Department. The Agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, the responsibilities of the parent or student that has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.

(5) Upon receipt of the signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.

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(6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

(7) After the initial payment to the IEA, the account holder shall submit receipts for all IEA funds expended by the date set by the Department before the next IEA payment is disbursed.

(8) In accordance with the procedures of the Department, the Department may remove any account holder from eligibility for an IEA if the account holder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(9) If the Department determines that IEA funds have been misspent, the Department shall notify the account holder, and the account holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, account holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.06 USE OF FUNDS.

(1) Account holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:

(a) Tuition or fees at a participating school;

(b) Textbooks required by a participating school;

(c) Tutoring services provided by an individual tutor that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);

(d) Payment for purchase of curriculum, defined as a complete course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;

(e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists);

(f) Tuition or fees for a nonpublic online learning program or course provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;

(g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;

(h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;

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(i) Educational therapies or services for participating students from a licensed or accredited practitioner or provider;

(j) Services provided under a contract with a public school, including individual classes and extracurricular programs;

(k) Tuition or fees at an eligible postsecondary institution. Eligible postsecondary institutions include community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).

(l) Textbooks required for courses at an eligible postsecondary institution;

(m) Fees for the management of the IEA by private financial management firms;

(n) Computer hardware approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Account holders must receive prior approval from the Department or a licensed treating physician before purchasing computer hardware using IEA funds.

(o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.

(2) Account holders shall obtain pre-approval for educational therapies and/or tutoring services. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.07 MONITORING AND COMPLIANCE.

(1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.

(2) The Department shall conduct an annual review of all IEAs.

(3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, participating school(s), or participating provider(s) of state laws relating to program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.

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(4) The Department may terminate a participating school/ participating provider or participating student/ parent from participation in the program upon finding that a participating school/ provider or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school/ participating provider or participating student/ parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(5) Notice of termination shall be provided electronically and via first-class USPS mail.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.08 PARTICIPATING SCHOOLS AND PROVIDERS.

(1) For the purposes of the IEA program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:

(a) Students with disabilities are educated with non-disabled children; and

(b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.

(2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.

(a) The Department shall determine the application process for nonpublic schools to participate in the program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.

(b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.

(c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.

(3) Participating schools shall include in their initial application to participate in the IEA program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.

(a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department, prior to the start of each school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.

(b) Participating schools shall provide to the Department all documentation required for a student's participation, including the nonpublic school's and student's fee schedules.

(4) Participating schools and participating providers shall:

(a) Be academically accountable to the account holder for meeting the educational needs of the student by:

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1. At a minimum, annually providing to the account holder a written explanation of the student's progress; and

2. Cooperating with the parent of a student enrolled in the IEA program, or a student enrolled in the IEA program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.

(b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the participating provider;

(c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;

(d) Conduct criminal background checks on employees;

(e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a participating provider; and

(f) Exclude from employment any person who might reasonably pose a threat to the safety of students.

(5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide account holders with a receipt for all qualifying expenses.

(6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website. The Department may suspend or remove a school from participating in the IEA program if the school fails to verify a student's continued enrollment and attendance. A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the program by following the procedures developed by the Department.

(8) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.

(9) The Department may suspend or terminate a participating school or participating provider from participating in the program if the Department determines the school or provider has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.

(a) If the Department suspends or terminates a school's or provider's participation, the Department shall notify affected participating students and/or their parent of the decision. If a participating school or provider is suspended or if a participating school or provider withdraws from the program, affected participating students remain eligible to participate in the program.

(b) A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.

(10) If a student withdraws from a participating school and transfers to another participating school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another participating school, the

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funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(11) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1405.*

0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.

(1) A participating student may return to the LEA in which the student resides and the school which the student is zoned to attend upon termination of the student's participation in the program.

(2) If the student transfers from a nonpublic school and enrolls in the LEA for which the student is zoned to attend, the parent or student shall notify the Department by following the procedures and timeline set by the Department.

(3) Upon a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the school, participating schools and providers shall send all educational records of the participating student to the LEA or other school identified by the parent.

(4) The LEA shall enroll the student and provide instruction in the general education curriculum.

(5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1403.*

0520-01-11-.10 APPEAL PROCEDURES.

(1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the IEA program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, preauthorization request, a denial of an expense paid for using IEA funds, or removal of the student from the IEA program pursuant to the following two (2) step appeal process:

(a) Step one (1): The appeal should be on the form provided by the Department and should be submitted to the commissioner of education within ten (10) business days of receipt of the notice of denial, suspension, termination, and/or removal. Notice of denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.

(b) Step two (2): The account holder shall be notified of the commissioner's decision for in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the account holder within thirty (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: *T.C.A. § 49-1-302.*

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0520-01-11-.11 CONFLICT OF INTEREST.

(1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.

(a) It is a conflict of interest and is considered a misuse of IEA funds against IEA program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA program.

(b) It is also a conflict of interest and against IEA program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

Authority: T.C.A. § 49-1-302.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Allison Chancey	X				
Mike Edwards	X				
Lillian Hartgrove	X				
Cato Johnson	X				
Carolyn Pearre				X	
Lonnie Roberts				X	
William Troutt				X	
Wendy Tucker	X				
Tiffany Cook	X				
Fielding Rolston	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education (board/commission/ other authority) on 10/14/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

PHYLLIS E. CHILDRESS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 8-20-2019

Date: 10/24/16

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 10/24/16

Notary Public Signature: Phyllis E. Childress

My commission expires on:

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

10/27/2016
Date

Department of State Use Only

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SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 10/28/16

Effective for: 180 *days

Effective through: 4/26/17

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

Tre Hargett
Secretary of State

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 27 – HB 138

April 21, 2015

SUMMARY OF ORIGINAL BILL: Creates the "Individualized Education Act". Authorizes parents or guardians of special education students to receive payments into their child's Individual Education Account (IEA) in order to enroll their child in a participating non-public school. The maximum amount of funding that a student may be eligible for is the amount of state and local required Basic Education Program (BEP) funding. Sets forth eligibility requirements; terminating events; and how such funding may be used. Sets forth the duties of the Department of Education (DOE) in administering the program. The DOE may collect an administrative fee equal to three percent of the total appropriations used to fund IEAs for expenditures related to administration of the program. For the purposes of enrollment, participating students shall continue to be counted in the enrollment data for their home local education agency (LEA).

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - $235,000/FY15-16
Exceeds $235,000/FY16-17 and Subsequent Years

Increase State Expenditures –
$300,900/FY15-16
$284,400/FY16-17 and Subsequent Years

Decrease Local Revenue –
$2,059,000/FY15-16/Federal IDEA
Exceeds $2,059,000/FY16-17 and Subsequent Years/
Federal IDEA

Decrease Local Expenditures –
Exceeds $2,875,800/FY15-16 and Subsequent Years

Other Fiscal Impact – There will be annual shifts of state and local BEP funding from LEAs to the various Individual Education Accounts of participating students. An estimated $7,599,300 will shift in FY15-16 and an amount estimated to exceed $7,599,300 will shift in FY16-17 and subsequent years.

SUMMARY OF AMENDMENTS (004779, 006556, 006394, 006513, 006903): Amendment 004779 deletes and rewrites the bill such that the substantive changes are: (1) to revise the definition of eligible child to require an eligible student to have a disability as defined by federal statute; (2) to authorize Individual Education Account (IEA) funding to be used to

purchase computer hardware or other technological devices approved by a doctor or physician and is used for a student's educational needs; (3) to encourage parents to seek participating schools with inclusive educational settings; (4) to require the Department of Education (DOE) to list participating schools with inclusive educational settings on its website; (5) to require the DOE to promulgate rules and regulations that allow for the return of a student to a public school; (6) to require the DOE to post a list of participating schools and other information relative to participating schools on its website; and (7) to authorize the DOE to collect a four percent administrative fee.

Amendment 006556 deletes and rewrites subdivision (3)(A) of Section 3 of amendment 004779 which defines "eligible student" as a child with a disability as set forth in 20 U.S.C. § 1401(3) of the Individuals with Disabilities Education Act (IDEA); except that a child with a disability does not include a child with an emotional disturbance or a child having other health impairments as defined by 34 CFR § 300:8.

Amendment 006394 makes various changes to Sections 4 and 6 of amendment 004779 in order for the State Board of Education to promulgate rules and regulations to effectuate the bill requirements in lieu of the Department of Education.

Amendment 006513 deletes and rewrites Section 8 of amendment 004779 and authorizes the State Board of Education to promulgate rules and regulations and prohibits the promulgation of any emergency rules and regulations to implement the bill prior to August 1, 2016. Deletes and rewrites Section 10 of amendment 004779 and makes the bill effective upon passage for the purposes of promulgate rules and regulations. For all other purposes, including the development of administrative procedures by the Department of Education to make the awards of IEA during the 2016-2017 academic year, the effective date of the bill is January 1, 2016.

Amendment 006903 deletes and rewrites Section 3, subdivision 3(A), of amendment 004779 and limits students that are eligible to participate to students with the following disabilities: autism, deaf-blindness, hearing impairments, intellectual disability, orthopedic impairments, traumatic brain injury, and visual impairments. Makes a typographical change to Section 6 of amendment 004779 as amended by amendment 006394. Adds an additional subdivision to Section 6 of amendment 004779 and requires the Department of Education to create an application and approval process for nonpublic schools and providers to become participants, respectively, in accordance with the rules and regulations promulgated by the State Board of Education in consultation with the Department of Education and the Department of Health.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue - $239,400/FY16-17
Exceeds $239,400/FY17-18 and Subsequent Years

Increase State Expenditures - $209,500/FY15-16
$199,500/FY16-17 and Subsequent Years

Decrease Local Revenue -
Exceeds $1,573,000/FY16-17 and Subsequent Years/Federal IDEA

Decrease Local Expenditures –
Exceeds $2,197,000/FY16-17 and Subsequent Years

Other Fiscal Impact – There will be annual shifts of state and local BEP funding from LEAs to the various Individual Education Accounts of participating students. An estimated $5,745,700 will shift in FY16-17 and an amount estimated to exceed $5,745,700 will shift in FY17-18 and subsequent years.

Assumptions for the bill as amended:

- Based on information from the DOE, the IEA program will not become operational until the FY16-17 academic year.
- The DOE will hire three new positions to manage the IEA program statewide. These positions will be necessary beginning in FY15-16 to perform required work before the program begins to function in FY16-17.
- Salary and benefits for a director are estimated to be $93,619; one finance position is estimated to be $65,464; and one administrative assistant is estimated to be $40,374.
- The recurring increase in state expenditures is estimated to be $199,457 ($93,619 + $65,464 + $40,374).
- These positions will also require one-time expenses related to equipment and supplies, estimated to be $10,074.
- The total increase in state expenditures in FY15-16 is estimated to be $209,531 ($199,457 + $10,074).
- The recurring increase in state expenditures beginning in FY16-17 is estimated to be $199,457.
- Based on information from the Department of Education, an estimated 18,061 students will be eligible to participate in FY16-17. It is assumed that the number of eligible students will increase in FY17-18 and subsequent fiscal years.
- Based on information from the Department of Education, it is estimated a minimum of five percent of eligible students (or 903) will participate annually.
- The amount of BEP per pupil expenditure that will transfer from LEAs to IEAs in FY16-17 is estimated to be $6,628 and exceed $6,628 in FY17-18 and subsequent fiscal years.
- The estimated total amount of funding that will be eligible for transfer to IEAs in FY16-17 is estimated to be $5,985,084 (903 x $6,628).
- The state will be eligible for a four percent fee from the total amount of funding transferring into IEA accounts annually; the amount of the DOE administrative fee revenue in FY16-17 is estimated to be $239,403 ($5,985,084 x 4.0%); in FY17-18 and subsequent years is estimated to exceed $239,403.
- The amount of estimated state and local BEP funding that will transfer to IEA accounts in FY16-17 is estimated to be $5,745,681 ($5,985,084 - $239,403) and to exceed this amount in FY17-18 and subsequent fiscal years.

- The cost to provide special education services varies widely by student and by LEA.
- LEAs will have a decrease in local expenditures as a result of no longer providing special education and other services to participating students. LEAs currently spend an average of $2,433 per student above what the BEP formula requires.
- The per pupil expenditure is estimated to increase in FY15-16 and subsequent years.
- The decrease in local expenditures for services related to special education is estimated to exceed $2,196,999 ($2,433 x 903). Services include but are not limited to transportation, bus purchases, and special classroom accommodations.
- LEAs will no longer receive federal funding from the Individuals with Disabilities Act (IDEA) for participating students since participating students will no longer be a part of the LEA classroom experience.
- Based on information from the DOE, the estimated decrease in IDEA funding in FY16-17 is $1,742 per student annually; a total estimated decrease in local revenue of $1,573,026 ($1,742 x 903).
- The extent of reduced federal funding will increase in FY17-18 and subsequent fiscal years when the program becomes operational.
- No change in the BEP funding formula.
- The DOE will post information on its website in the normal course of business without an increase in personnel or a reduction in its reversion to the General Fund.
- The DOE and SBE will promulgate rules and regulations without an increase in personnel or a reduction in their reversion to the General Fund.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Jeffrey L. Spalding, Executive Director

/msg

G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Education
SUBJECT:	Child Nutrition Programs; Salary Schedules; Educator Licensure
STATUTORY AUTHORITY:	Tenn. Code Ann., Sections 49-1-302, 49-5-108, and 49-6-2303
EFFECTIVE DATES:	January 5, 2017 through June 30, 2017
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	Rule 0520-01-06-.05 is added to create a waiver process whereby high schools located in school districts that decide not to participate in the National School Lunch Program could be exempted from federal nutrition standards that apply to Program participants. According to the Board, all Tennessee school districts currently participate in the National School Lunch Program. Under present rules, if a district decides not to participate in the Program, that district must still comply with the federal nutrition standards applicable to Program participants. According to the Board, Rule 0520-01-02-.02 is amended to reflect local flexibilities in determining educator salaries. Key changes include: clarifying that school systems have statutory authority to propose an alternative salary schedule for Board approval; clarifying that the educator bears the burden of proving his/ her experience and/or training; providing general guidance of allowable types of experience and reinforces the latitude of LEAs to recognize work-related experiences, determining how educators accrue years of experience, and determining which training it recognizes; and inclusion of the statutory requirement that LEAs adopt differentiated pay policies in accordance with Board guidelines. 0520-02-03-.04 adds an educational interpreter license under the category of School Services Personnel and provides professional recognition for those holding a bachelor's degree and national

certification including professional salary. According to the Board, this professional licensure will offer competitive compensation for those currently graduating from higher education preparatory programs and encourage them to remain in Tennessee and serve Tennessee students to ensure that students who are deaf, deaf-blind, or hard of hearing will have the same access to the curriculum and educational opportunities as all other students in Tennessee.

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)

Not applicable.

Impact on Local Governments

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

These rules 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;

0520-01-02-.02 Salary Schedules - This amendment to rule 0520-01-02 is an update to reflect local flexibilities in determining educator salaries. Key changes include: clarifying that school systems have statutory authority to propose an alternative salary schedule for Board approval; clarifying that the educator bears the burden of proving his or her experience and/or training; providing general guidance of allowable types of experience and reinforces the latitude of LEAs to recognize work-related experiences, determining how educators accrue years of experience, and determining which training it recognizes; and inclusion of the statutory requirement that LEAs adopt differentiated pay policies in accordance with Board guidelines.

0520-02-03-.04 School Service Personnel Licenses – This amendment adds an educational interpreter license under the category of School Services Personnel and provides professional recognition for those holding a bachelor's degree and national certification including professional salary. This professional licensure will offer competitive compensation for those currently graduating from higher education preparatory programs and encourage them to remain in Tennessee and serve Tennessee students to ensure that students who are deaf, deaf-blind, or hard of hearing will have the same access to the curriculum and educational opportunities as all other students in Tennessee.

0520-01-06-.05 Minimum Requirements for Non-Participation – Currently all school districts in Tennessee participate in the National School Lunch Program. However, if a district decided to no longer participate in the School Lunch Program, they would still be legally required to follow the nutrition standards of the federal program under current state board rules. This new rule added to the School Nutrition Chapter establishes a waiver process from the federal nutrition standards for those districts that choose not to participate in the National School Lunch Program.

(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;

0520-01-02-.02 Salary Schedules – Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt a policy establishing levels of compensation that are correlated to levels and standards of teacher competency approved by the board.

0520-02-03-.04 School Service Personnel Licenses - T.C.A. § 49-5-108 vests complete jurisdiction over the issuance and administration of licenses for supervisors, principals and public school teachers for kindergarten through grade twelve (K-12) with the State Board of Education.

0520-01-06-.05 Minimum Requirements for Non-Participation - Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt policies, formulas and guidelines for school food services. Moreover, T.C.A. § 49-6-2303 authorizes the State Board of Education to promulgate rules with regard to child nutrition programs in Tennessee.

(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;

0520-01-02-.02 Salary Schedules – This rule most directly affects local boards of education and educators who have neither urged adoption nor rejection of this rule. The Board supports the rule change.

0520-02-03-.04 School Service Personnel Licenses - Local boards of education and educational interpreters are most directly affected by this rule. Initially, stakeholders believed the rule would apply to foreign language interpreters and urged rejection. However, after it was explained that the rule is only for persons employed by local school systems as interpreters for students who are deaf, deaf-blind, or hard of hearing; they were amenable to adoption. The State Board supports the rule change.

0520-01-06-.05 Minimum Requirements for Non-Participation – Local boards of education and their school nutrition program are most directly affected by this rule neither of which has urged adoption nor rejection of the rule. The State Board supports the rule change.

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

N/A

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

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

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

N/A

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

For Department of State Use Only

Sequence Number: 10-06-16
Rule ID(s): 6330-6332
File Date: 10/7/16
Effective Date: 1/5/17

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Parkway Andrew Johnson Tower 1st Floor Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Revision Type (check all that apply):

X 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**
0520-01-06	Child Nutrition Programs
Rule Number	**Rule Title**
0520-01-06-.05	Minimum Requirements for Non-Participation

Chapter Number	Chapter Title
0520-01-02	Administrative Rules and Regulations
Rule Number	**Rule Title**
0520-01-02-.02	Salary Schedules

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	**Rule Title**
0520-02-03-.04	School Service Personnel Licenses

RULE
OF
THE STATE BOARD OF
EDUCATION

CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS

TABLE OF CONTENTS

0520-01-06-.01 GENERAL REGULATIONS.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 7 C.F.R. Parts 210 and 220 in their entirety unless otherwise provided herein as the policies and procedures for administration of nutrition programs and services in the state.

Authority: *T.C.A. §§ 49-41-320 and 49-6-2303.* ***Administrative History***: *Original rule certified June 10, 1974. Repeal and new rule filed April 15, 1983; effective May 16, 1983. Repeal and new rule filed May 21, 1987; effective August 29, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed May 26, 2015; effective August 24, 2015.*

0520-01-06-.02 SCHOOLS ELIGIBLE TO RECEIVE FEDERAL ASSISTANCE FOR CHILD NUTRITION PROGRAMS.

(1) The State Department of Education shall determine which schools are eligible to participate in the national school lunch, school breakfast, and other food service programs based upon an application submitted by the local board of education.

(2) The State Department of Education shall enter into a USDA approved standard form of agreement with the appropriate local board of education. The agreement shall cover the operation of the national school lunch program, school breakfast program, and any other applicable child nutrition programs. This agreement shall contain all of the conditions prescribed in the federal-state agreement. The State Department of Education shall not reimburse a school in the absence of an agreement nor permit retroactive agreements.

Authority: *T.C.A. § 4 9-6-2301 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed April 15, 1983; effective May 16, 1983. Repeal and new rule filed May 21, 1987; effective August 29, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992.*

0520-01-06-.03 MINIMUM REQUIREMENTS FOR EACH PARTICIPATING SCHOOL.

Facilities and equipment for the storage, preparation, and serving of food shall be maintained by the local school system.

Authority: *T.C.A. § 49-6-2301 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed April 15, 1983. Repeal and new rule filed May 21, 1987; effective August 29, 1987.*

0520-01-06-.04 SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS.

LEAs may set special exemptions for infrequent school-sponsored fundraisers that sell foods or beverages that do not meet the nutrition standards for Smart Snacks, Such specially exempted fundraisers shall take place no more than twenty (20) days per semester per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the twenty (20) day limit per semester is not exceeded.

(Rule 0520-01-06-.04, continued)

LEAs shall include the special exemptions set for infrequent school-sponsored fundraisers in the Local Wellness Policy required by the Healthy, Hunger-Free Kids Act of 2010.

*LEAs may request approval to exceed the twenty (20) day limit per semester from the Department of Education.**

**Final rule approval pending*

Authority: *T.C.A. §§ 49-1-302, 49-6-2303, 78 Fed. Reg. 125 (June 28, 2013).* ***Administrative History:*** *Original rule filed May 25, 2005; effective August 8, 2005. Amendment filed November 30, 2007; effective March 28, 2008. Repeal and new rule filed May 26, 2015; effective August 24, 2015; Amendment.*

0520-01-06-.05 MINIMUM REQUIREMENTS FOR NON-PARTICIPATION

High Schools may decline participation in the National School Lunch Program or the minimum nutrition standards established in this chapter through a district waiver request to the Department of Education provided that:

(1) Schools must still provide free and reduced priced meals to qualifying students following the standards set forth by USDA;
(2) The district complies with all other relevant provisions of T.C.A. § 49-6-2303; and
(3) The district acknowledges that it will not receive federal or state funding for meals served at schools that are granted a waiver from participation in the National School Lunch program.

Waivers must be submitted to the department prior to July 1 annually. Waivers will not be granted to any school serving students below grade 9. Waivers do not apply to snack food and beverages sold to students during the school day.

Authority: T.C.A. §§ 49-1-302, 49-6-2303.

Substance of Proposed Rule

0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

Rule 0520-01-02-.02 Salary Schedules, is amended so that, as amended, it shall read:

0520-01-02-.02 SALARY SCHEDULES.

(1) The State Board of Education shall adopt annual salary schedule(s) for all licensed personnel; such salary schedule(s) shall be effective for all school systems.

(2) Schools systems may adopt a proposed ~~an~~ alternatived salary schedule, subject to approval by the State Board of Education, and the Commissioner of Education.

(~~2~~3) The salary of a licensed educator ~~(except a substitute teacher who is teaching for a regular teacher on leave whose accumulated leave has not been exhausted)~~ is determined by a combination of experience and academic training. In the case where a licensed teacher is serving as a substitute for a regular teacher on leave whose accumulated leave has not been exhausted the school system may compensate the licensed educator as a substitute.

(4) The individual educator shall provide evidence of experience and training to the school system for verification and approval.

(~~3~~5) Experience.

(a) ~~Kinds of Recognized Experience.~~School systems, at their discretion, may recognize the following types of work-related experience including but not limited to:

1. Verified administrative, supervisory and teaching experience in public schools or ~~in private~~non-public schools approved by recognized accrediting agencies or approved by the Tennessee Department of Education, or any Pre-K program funded by the Tennessee Department of Education.

2. Verified teaching experience in the PreK-12 schools operated by the United States government either within or outside the United States.~~Experience as a professional employee of the Office of Education Accountability, the State Board of Education or the State Department of Education;~~

3. Verified teaching experience in a regionally accredited institution of higher education.~~Higher education teaching experience in an institution approved by a regional accrediting association;~~

4. Verified teaching experience as a part of visiting teacher programs authorized by the United States government or a foreign ministry of education.~~U.S. Government service teaching programs;~~

5. Verified experience as a professional employee of the State Board of Education, the State Department of Education, Comptroller's Office of Educational Accountability (OREA).~~Teacher exchange programs;~~

6. Verified active military service in the armed forces of the United States shall be recognized. Military service in the Reserve or in the National Guard, other than active duty, shall not be counted.~~Experience as president of the Tennessee Education Association; and~~

7. Verified professional work experience in the fields typically held by school service personnel (audiology, speech-language pathologist, psychology, social worker, counselor) in settings other than public or private schools. ~~Active military service in the armed forces of the United States shall be recognized. Military service in the Reserve or in the National Guard, other than active duty, shall not be counted.~~

~~8. Verified experience as a licensed/certificated speech-language pathologist or audiologist in settings other than public or private schools may be counted for salary purposes on the system-wide salary schedule if approved by the local director of schools.~~

(b) Amounts of Experience. ~~The burden of proof of experience rests with the individual teacher.~~

~~(c) Amounts of Experience.~~

1. An educator may accrue one year of experience for teaching for a specified period determined by the school system.

~~During any one fiscal year (July 1 through June 30) not more than ten months of experience may be counted. The number of years' teaching experience shall be determined by dividing the total number of months taught by ten. A fraction of five or more months shall be counted as a full year's teaching experience.~~

2. An educator may accrue one year of experience for each year of work-related experience obtained prior to joining a school system as long as the work experience is greater than or equal to a year of experience, as determined by the school system, including military experience. ~~Not more than five years' experience in the armed forces of the United States shall be counted.~~

3. Credit for c~~C~~ollege or university teaching experience shall be based upon the teaching load carried by a full-time teacher as certified by the college official in charge of teachers' records.

(4~~6~~) Training. Salary ratings shall be adjusted for college or university course work completed after the start of the current school year as follows:

(a) For college or university course work completed after the start of the current school year but before September 1, the salary rating shall be adjusted as of September 1 of the current school year. ~~–~~The employee must notify the local education agency of the employee's intent to complete course work prior to Aug. 31, and the local education agency must file documentation of changes to the employee's salary rating with the State Department of Education on or before October 15 of the current school year.

(b) For college or university course work completed after August 31 but before January 1 of the current school year, the salary rating shall be adjusted as of January 1 of the current school year. The employee must notify the local education agency of the employee's intent to complete course work prior to Jan. 1. ~~, and t~~The local education agency must file documentation of changes to the employee's salary rating with the State Department of Education on or before February 15 of the current school year.

(7) Differentiated Pay

(a) ~~(a)~~ School systems shall develop, adopt and implement a differentiated pay plan under guidelines established by the State Board of Education and subject to approval by the Department of Education to aid in staffing hard-to-staff subject areas

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and schools and in hiring and retaining highly qualified teachers.

(b) School systems are encouraged to make annual adjustments to their differentiated pay plans. Differentiated pay plans should be targeted to aid districts in meeting their staffing needs.

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(5), 49-3-306, 49-5-402, and 49-6-101.

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Substance of Proposed Rule

CHAPTER 0520-02-03
EDUCATOR LICENSURE

TABLE OF CONTENTS

0520-02-03-.01 General Information and Regulations.

(1) Prospective Educators.

(a) Securing a License. The educator shall be responsible for securing a license, verifying its accuracy, maintaining its validity, registering it with the employing board of education, and meeting the requirements of T.C.A. § 49-5-101.

(b) Unless otherwise designated in this chapter, prospective educators seeking initial licensure must hold a bachelor's degree from a regionally accredited college or university, be enrolled in or have completed a state-approved educator preparation program, and meet all requirements regarding assessments and qualifying scores as specified by State Board of Education rules or policy.

(c) Prospective educators seeking initial licensure must meet requirements in at least one area of endorsement.

(d) In-State Applicant for Initial License. An In-State applicant applying for an initial license must apply through the appropriate official of the educator preparation provider.

(e) At the time of application, prospective educators seeking initial licensure must be recommended by an approved educator preparation provider.

1. For applicants who have completed a licensure program, the provider must indicate that the applicant has successfully completed all required components of the program and indicate the area(s) of endorsement for which the applicant has successfully completed requirements. Recommendations must be received within five (5) years of the date of program completion. If a candidate completed a program more than five (5) years prior to the date of the application, the candidate may attempt to secure an updated recommendation from the provider. Educator preparation providers are under no obligation to issue an updated recommendation. Recommendations must attest that the candidate has met current standards for licensure.

2. For applicants who are enrolled in a licensure program, the provider must indicate the area(s) of endorsement for which the applicant has successfully demonstrated content competency. Verification of successful program completion, including verification of the endorsement areas for which the candidate is recommended, must be submitted by the end of the validity period of the initial license.

(f) Official transcripts of all college credits, bearing the school seal and/or signature of the registrar, must be submitted with the application. These transcripts and forms upon which licensure is granted become the property of the State of Tennessee. Photocopies are not acceptable.

(g) Upon receipt of the applications, transcripts, and results of required assessments, materials will be evaluated and a license will be issued to the applicant or the applicant will be notified of deficiencies.

(2) Licensed Educators.

(a) Duration of License or Certificate. Initial licenses become valid on the date of issuance. The end of the validity period of the license will be set for August 31. The year of expiration is determined by the date of issuance and advances one year on March 1 of each year.

(b) Licensure Expectations. All expectations for licensure advancement and renewal shall be defined in State Board of Education policy.

(c) Change of Name and Address. If a licensed educator changes his or her name or address by legal means, the holder must report such changes to the Office of Educator Licensing within thirty (30) days of making the change.

Authority: T.C.A. § 49-1-302.

0520-02-03-.02 Teacher Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all teacher licenses.

(2) Licenses Currently Issued.

(a) Practitioner License. Initial three-year (3) teacher license issued to applicants who hold a bachelor's degree, are enrolled in or have completed a preparation program approved by the State Board of Education, and have verified content knowledge as defined in State Board policy. The Practitioner License may be renewed once.

(b) Professional License. A six-year (6) teacher license issued upon meeting licensure expectations at the practitioner level and completion of an approved educator preparation program. The Professional License is renewable.

(c) Non-Public School Teacher License. A ten-year (10) license issued to individuals who qualify for or hold a valid Tennessee teaching license, have current certification from the National Board for Professional Teaching Standards, or hold a valid license from another state. The non-public license only provides license for an educator to work in a Tennessee non-public school. The Non-Public School Teacher License is renewable.

(d) JROTC Teacher License. A five-year (5) license issued to active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) teachers, based upon a certification of preparation by the branch of the military approving the teacher placement. The JROTC teacher license does not entitle an individual to teach courses other than those designated as part of the JROTC program, consistent with the requirements of T.C.A. § 49-5-108. No other teaching endorsements may be added to a JROTC license. JROTC teachers may earn a teaching license with an endorsement in a content area through an educator preparation program approved by the State Board of Education. The

JROTC Teacher License is renewable.

(e) Adjunct License. A one-year (1) license issued to applicants who teach no more than three (3) classes in subject areas of critical shortage as designated by the State Board of Education and who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program approved by the State Board of Education. The Adjunct License is renewable nine (9) times.

Adjunct teachers must meet the following criteria:

1. The applicant must hold at least a bachelor's degree or a master's degree from a regionally accredited institution of higher education that includes at least twenty-four (24) semester hours of credit in the content area in which they will be teaching.

2. The applicant must have at least five (5) years of work experience in the subject(s) to be taught.

3. The applicant must have completed the pre-service portion of an adjunct licensure program that addresses the knowledge and skills in the professional education core and that has been approved by the State Board of Education.

4. A Tennessee director of schools must state intent to employ the applicant for specific subject(s) and course(s) not to exceed three (3) classes and must provide a mentor teacher for the applicant during the first year of teaching.

5. Applicants are eligible for an adjunct license for the specific subject(s) or course(s) indicated on the application in subject areas of critical shortage as designated by the State Board of Education.

6. School systems shall assess the effectiveness of the teachers annually using the evaluation procedures approved by the State Board of Education.

7. Applicants may renew an adjunct license annually but not more than nine (9) times provided that a director of schools states intent to employ and provided that the applicant has received a successful evaluation in the preceding year. Before the first renewal, the applicant must have passed all required licensure examinations.

8. The teacher shall not attain licensure beyond the approved subject(s) or course(s) without successfully completing the state's regular or alternative licensure programs.

(f) International Teacher Exchange License. The international exchange teacher license is a time-limited license designed to allow eligible teachers from other nations to teach in Tennessee schools for up to three (3) consecutive years. The validity period begins on the date all application requirements for the license are met or July 1, whichever is more recent, and expires on June 30, three (3) years later. If the applicant is employed between January 1 and June 30, the validity period begins on the first (1st) day of the month of employment and expires June 30, three (3) years later. If the teacher wishes to remain beyond the third (3rd) year, the teacher must satisfy all requirements for a professional teacher license. Districts that wish to employ teachers holding this license must adhere to State Board of Education policies regarding mentoring and evaluation of these teachers. The International Teacher Exchange License is nonrenewable.

Teachers participating in an international teacher exchange program must meet the following criteria:

1. Hold primary citizenship outside the United States;

2. Hold the U.S. equivalent of a bachelor's degree or higher;

3. Hold a foreign teacher credential in a field comparable to that recognized in Tennessee;

4. Demonstrate proficiency in English;

5. Provide verification from a Tennessee director of schools of intent to employ; and

6. Provide a recommendation by the government of a country with whom the Department of Education has signed a memorandum of agreement or by a recognized international exchange program.

(3) License Advancement and Renewal.

(a) Practitioner License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(4) Additional Endorsements.

(a) Licensed teachers must submit qualifying scores on all required, state-approved teacher licensure specialty assessments for additional endorsements.

(b) Licensed teachers seeking to add endorsements may complete an educator preparation program. In some cases, as defined in State Board policy, teachers may add an endorsement by using a test-only.

(c) Licensed teachers who complete programs of study for additional endorsements at education preparation providers in other states may be recommended by the out-of-state provider to the Tennessee Department of Education.

Authority: T.C.A. § 49-1-302.

0520-02-03-.03 Licensure, Instructional Leader.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all instructional leader licenses.

(2) Licenses currently issued:

(a) Instructional Leadership License-Aspiring (ILL-A). Initial five-year (5) instructional leader license issued candidates who are enrolled in an instructional leader preparation program approved by the State Board. The Instructional Leadership License-Aspiring is not renewable.

(b) Instructional Leadership License-Beginning (ILL-B). Initial five-year (5) instructional leader license issued to candidates who have completed an instructional leader preparation

program approved by the State Board and have submitted a qualifying score on the required licensure assessment. The Instructional Leadership License-Beginning is renewable.

(c) Instructional Leadership License-Professional (ILL-P). Five-year (5) instructional leader license issued to educators who have met licensure expectations for advancement from the ILL-B. The Instructional Leadership License-Professional is renewable.

(d) Instructional Leadership License-Exemplary (ILL-E). Eight-year (8) instructional leader license issued to educators who have held an ILL-P or Professional Administrator License (PAL) for at least two (2) years and are eligible for the ILL-E as stipulated by State Board policy. The Instructional Leadership License-Exemplary is renewable.

(3) License Advancement and Renewal.

(a) Instructional Leadership License-Aspiring (ILL-A). At the end of the validity period of the initial ILL-A, if the educator has met licensure expectations, the license will be advanced to the ILL-B. At the end of the validity period of the initial ILL-A, if the educator has not met licensure expectations, the license will become inactive.

(b) Instructional Leadership License-Aspiring (ILL-B). At the end of the validity period of the ILL-B, if the educator has met licensure expectations as defined in State Board policy, the license will be advanced to the ILL-P. If the educator has not met licensure expectations by the end of the first validity period of the license, the ILL-B may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(c) Instructional Leadership License-Professional (ILL-P). At the end of the validity period of the ILL-P, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(d) Instructional Leadership License-Professional (ILL-E). At the end of the validity period of the ILL-E, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(4) Those who hold a Professional Administrator License (PAL) license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P or ILL-E license will be required.

(5) Assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed.

Authority: T.C.A. § 49-1-302.

0520-02-03-.04 School Service Personnel Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all school service personnel licenses.

(2) Licenses Currently Issued.

(a) Practitioner School Service Personnel License. Initial three-year (3) license issued to applicants upon completion of a preparation program approved by the State Board of

Education, leading to endorsement as a school counselor, school psychologist, school social worker, educational interpreter, school food service supervisor, school speech-language pathologist, or school audiologist. Applicants must have also submitted qualifying scores on the state required licensure assessment. The Practitioner School Service Personnel License is renewable once.

(b) Professional School Service Personnel License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, as a school counselor, school psychologist, school social worker, educational interpreter, school food service supervisor, school speech-language pathologist, or school audiologist. The Professional School Service Personnel License is renewable.

(3) License Advancement and Renewal.

(a) Practitioner School Service Personnel License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional School Service Personnel License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302.

0520-02-03-.05 Occupational Education Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all occupational education licenses, except for the requirement of a bachelor's degree.

(2) Licenses Currently Issued.

(a) Practitioner Occupational Education License. Initial three-year (3) license issued to applicants who have met endorsement requirements pursuant to State Board of Education policy and have had content verification provided by the Tennessee Department of Education. The Practitioner Occupational Education License is renewable once.

(b) Professional Occupational Education License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, completing coursework covering the professional education standards and additional requirements as defined in State Board of Education policy. The Professional Occupational Education License is renewable.

(3) License Advancement and Renewal.

(a) Practitioner Occupational Education License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional Occupational Education License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302.

0520-02-03-.06 Out of State Applicants.

(1) General Requirements.

(a) Tennessee has adopted the provisions of Interstate Agreement on Qualification of Educational Personnel as proposed by the National Association of State Directors of Teacher Education and Certification (NASDTEC). Participation in this agreement is evidenced by signed reciprocal contracts between Tennessee and other participating states as defined by the Interstate Certification Project (ICP).

(b) Licensure may be awarded to applicants from states which are not parties to the ICP but which are accredited by or affiliated with the national accrediting body with which the State of Tennessee has entered into an agreement on the same basis as those applying from states which are party to the ICP agreement.

(c) Licensure may be awarded to applicants not covered by Paragraphs (a) or (b) above on the same basis as those applying from states which are party to the ICP agreement if one of the following conditions is met:

1. The applicant has received a recommendation from an educator preparation provider which is accredited by the same national accrediting body with which the State of Tennessee has entered into an agreement; or

2. The Tennessee Department of Education has reviewed a state's process for approving educator preparation providers and has found the process to be acceptable for purposes of granting full licensure in Tennessee.

(d) An applicant from a state other than Tennessee must apply directly to the Office of Educator Licensing.

(e) The application for licensure must be accompanied by a set of official transcripts supplied by all institutions attended by the applicant.

(f) An applicant from another state must submit qualifying scores for assessments required by the State Board of Education. Scores must have been obtained within five (5) years prior to the date of application for licensure.

(g) No license or endorsement which requires a Master's Degree or above as part of its requirements may be awarded to an individual not possessing said degree.

(2) Teacher Licensure for Applicants Trained in Other States.

(a) Applicants meeting all requirements will be issued a practitioner license except those who have been certified by the National Board for Professional Teaching Standards who will be issued a professional license.

(b) Licensure will be awarded in all endorsement areas (the areas most similar to those awarded in Tennessee), which are reflected on the full, currently valid licensure credential(s) supplied by the other qualifying state(s) and the area most closely related to the area of certification by the National Board for Professional Teaching Standards.

(c) Applicants with an out-of-state endorsement in a teaching area covering a grade span that is

more narrow than the comparable Tennessee K-12 teaching endorsement, shall be awarded the Tennessee endorsement based on parameters defined by State Board policy.

(3) Instructional Leader Licensure for Applicants Trained in Other States.

(a) Applicants who have completed an instructional leader preparation program approved in a state other than Tennessee who have not yet submitted qualifying scores on the required licensure assessment may be issued an ILL-A. Upon submitting qualifying scores, the educator license may be advanced to the ILL-B.

(b) Applicants meeting all requirements will be issued an ILL-B.

(4) School Service Personnel Licensure for Applicants Trained in Other States.

(a) Applicants meeting all requirements will be issued a Practitioner License.

(b) The Practitioner School Services Personnel License will be awarded to applicants who hold a full and valid school service personnel license from another state.

Authority: T.C.A. § 49-1-302.

0520-02-03-.07 Other Special Cases.

(1) Correspondence and Extension Credit. Credit earned by correspondence and extension instruction with a member of the National University Extension Association or the Teacher College Association for Extension and Field Services shall be accepted for licensure purposes to the extent of one-fourth of the amount of credit necessary for the particular license desired.

(2) Experience in Lieu of Student Teaching. An individual applying for a license who holds at least a bachelor's degree may present evidence of three (3) years of successful teaching experience in an approved school or a National Association for the Education of Young Children (NAEYC) accredited early childhood education program at the grade level of work authorized by the endorsement sought in lieu of student teaching.

(3) Military Service.

(a) The duration of a license may be extended from the date of termination of military service for the number of years, not to exceed four (4), which the holder spent in military service during the life of the license. Four (4) calendar months of military service during any school year shall be counted as a full year for purposes of extending the license.

(b) The five (5) years preceding the issuance of a teacher license, within which time academic credit must be earned, shall not include the years spent in military service.

(4) Validation of Credit from an Unapproved Institution.

(a) Credit from an unapproved institution may be accepted for licensure when such credit has been accepted in full on a transcript by an approved institution for advanced standing toward a degree, provided that not less than eight (8) semester hours of satisfactory work has been completed in the approved institution.

(b) Degree or credit from an institution accredited by a regional accrediting association but not approved for teacher education will be accepted.

(c) An applicant who holds the bachelor's degree from an unapproved institution and has otherwise met all of the requirements for a license may validate the degree and apply for a license as follows:

1. Enter an approved graduate school and complete a minimum of eight (8) semester hours in an approved educator preparation program. The applicant must successfully complete the approved educator preparation program in order to advance to a Professional License.

2. Secure a properly certified statement from an educator preparation program approved by the State Board of Education indicating all deficiencies and/or probations have been met.

(5) Emergency Teaching Credential. A one-year (1) credential, effective for only one school year, to be issued to displaced licensed teachers under one of the following circumstances:

(a) The Governor declares a state of emergency or declares a disaster under T.C.A. § 58-2-107, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons, or

(b) A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons.

Authority: T.C.A. § 49-1-302.

0520-02-03-.08 Permits.

(1) Permits.

(a) The state may issue a permit when a school district or public charter school meets the following requirements:

1. A director of schools or public charter school leader must state intent to employ and indicate the position to be held by the applicant.

2. The school district or public charter school must indicate that it is unable to obtain the services of a licensed educator for the type and kind of school in which a vacancy exists.

3. The school district or public charter school must identify and document a targeted recruitment strategy for the position or shortage areas. The strategy may include, but is not limited to, partnerships with educator preparation providers, advertisements, or recruitment campaigns.

(b) The state may issue a permit to a school district or public charter school to hire an applicant one (1) time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.

Authority: T.C.A. § 49-1-302.

0520-02-03-.09 Denial, Formal Reprimand, Suspension and Revocation.

(1) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(2) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of narcotics;

(c) Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;

(d) Falsification or alteration of a license or documentation required for licensure;

(e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or

(f) Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, default on a student loan pursuant to T.C.A. § 49-5-108(d)(2) or failure to report under part (e).

For purposes of this part (2), "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of the denial, suspension or revocation.

(3) Restoration of License.

(a) A person whose license has been suspended shall have the license restored after the period of suspension has been completed, and, where applicable, the person has complied with any terms prescribed by the State Board. Suspended licenses are subject to expiration and renewal rules of the State Board.

(b) A person whose license has been denied or revoked under parts (1) or (2) may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and shall be

voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.

(4) Notice of Hearing. Any person who is formally reprimanded or whose license is to be denied, suspended or revoked under part (2) or who is refused a license or certificate under part (3) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

(5) Notification of Office of Educator Licensing. It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within thirty (30) days of receiving knowledge of the conviction.

Authority: T.C.A. § 49-1-302.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson				X	
Pearre	X				
Roberts	X				
Rolston	X				
Tucker	X				
Troutt				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 04/15/2016 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: August 24, 2016

Signature:

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 8-26-2016

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/26/2016
Date

Department of State Use Only

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PUBLICATIONS

Filed with the Department of State on: 10/7/16

Effective on: 1/5/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Board of Water Quality, Oil and Gas
SUBJECT:	Rock Harvesting
STATUTORY AUTHORITY:	Tenn. Code Ann., Sections 63-3-105 and 69-3-143 through 69-3-147
EFFECTIVE DATES:	January 1, 2017 through June 30, 2017
FISCAL IMPACT:	According to the Board, any impact is not significant. The Board estimates because of the addition of exploration and less burdensome permitting procedures that the number of general permit notices of intent processed will increase and that the number of individual permit applications processed will decrease. The fiscal impact is not expected to be more than 2% or $500,000.
STAFF RULE ABSTRACT:	According to the Board, the rulemaking hearing rule will broaden access to general permit coverage by aligning the rule language relative to discharges with the Antidegradation Statement and by clarifying the types of processing activities that trigger the requirement for an individual permit instead of a general permit. In addition, the rule adds flexibility to reclamation requirements and establishes time-limited coverage for exploration under the general permit immediately upon submission of a streamlined notice of intent. Rule 0400-40-18.02 is amended to specify circumstances for which an individual permit will be required in order to adequately protect water quality. Rule 0400-40-18-.03 is added provides a process where persons seeking to excavate a potential rock harvesting site for exploratory purposes may seek coverage under the general permit by filing a notice of intent. Rule 0400-40-18-.04 is amended to specify that the requirements for sediment and erosion control during rock harvesting also apply during exploration. The rule is further amended to

authorize an alternative revegetation requirement ("revegetation to the extent practicable plus surface stabilization of the site") for situations where the TDEC determines that the existing revegetation requirements are not practicable at a given site.

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 rule, as proposed, could allow a rock operation of unlimited size to be covered under a general permit. The magnitude of pollution potential from 50-100 acres (or more) of bare ground with its associated overburden is substantial. A Construction General Permit (CGP) requires specific phasing for sites above certain acreage. Due to the overburden, mining can exceed construction impact in both magnitude and duration. Therefore, please consider whether some size limitation or phasing requirement might be appropriate for permitting rock harvesting/dimension stone sites under a general permit.

Response: Permits are currently issued under the Tennessee Multi-Sector Permit, Sector J (TMSP General Permit) or individual National Pollutant Discharge Elimination System (NPDES) rules found in Chapter 0400-40-05 and the Rock Harvesting rules found in Chapter 0400-40-18. The proposed rules do not change this permitting procedure. The current rules and TMSP General Permit do not utilize size limitation or phasing requirements; however, under the current and proposed Rock Harvesting rules in Rule 0400-40-18-.02(10)(b), backfilling and grading operations are to be carried out concurrently with mining excavation. This requirement is intended to reduce the magnitude of disturbed mining area and duration of such disturbance to prevent the potential of the pollution suggested by the commenter.

Comment: Rock harvesting often begins in areas where the rock strata have conveniently been exposed through natural erosion. Thus rock harvest areas are typically located in steep topography on/near stream banks. Mining at close proximity is a threat to water quality because disturbed soils may be more easily transported to streams. Water quality can also decline due to reduced stream shading and lower allochthonous input when mining extends onto streambanks. A buffer requirement would help protect the permit holder by reducing the likelihood of significant sediment transport from the mine site to waters of the state. Given steep topography, a buffer of at least 50-100 feet from streambank edge to new permit area may be appropriate. Buffer requirements should be higher for Exceptional Tennessee Waters (ETWs) and/or sediment impaired receiving streams than for less critical watersheds.

Response: The commenter is correct in regard to some rock strata being located in steep topography and in close proximity to stream banks. The Division agrees with the commenter that water quality could be threatened if appropriate buffers and Best Management Practices (BMPs) are not installed or maintained. However, specified buffer requirements in the proposed rules are not necessary because under both the current and proposed rules and the TMSP General Permit, the Division may require a buffer, enhanced BMPs, or other measures when necessary to control discharges and prevent a person from causing a condition of pollution or violating water quality standards in a receiving stream.

Unlike under the current rules, discharges to sediment impaired streams, or waters with unavailable parameters, will be eligible for general permit coverage under the proposed rules. General permit coverage will only be available if the applicant can demonstrate that the discharge as proposed will cause no measurable degradation of the parameter that is unavailable. Otherwise the operation will require an individual permit with site-specific water quality-based effluent limitations to ensure the discharge will not cause measurable degradation.

Comment: The NPDES program relies heavily on self-monitoring. Therefore, permits such as the CGP require certification of inspectors performing site assessments and BMP inspections. An inspector training requirement may be a reasonable protective measure to add to the rock harvesting draft rules with the goal of ensuring self-inspection competency.

Response: It is assumed that the commenter is referring to requiring certification of members of the Pollution Prevention Team as described in the TMSP General Permit. The TMSP General Permit does not require any certification of the designated Pollution Prevention Team members; however, under the permit, the operator must provide employee training for storm water pollution prevention activities, including on-site visual assessments and BMP inspections. The Division believes this training enables self-inspection competency.

Comment: Rock Harvesting requirements are tied to the activity rather than the permit type. The proposed rule language at Rule 0400-40-18-.02(1) seems more ambiguous than the statute with regard to the above issue. Please consider changing a portion of the statement at Rule 0400-40-18-.02(1) to "Operators shall submit applicable forms along with the required supplemental information to obtain permit coverage. Permit coverage shall be available under the applicable general permit unless individual NPDES permit coverage is required for the Rock Harvesting activity." (Then Reasons for requiring an individual permit include the following:

...For Rule 0400-40-18-.02(2) please consider the statement: "An original and two copies of all applicable forms and supporting materials shall be submitted."

Response: The proposed language referenced is the same as the language used in the current rules relative to the concern submitted by the commenter. An additional amendment to the current rules has been made in Rule 0400-40-18-.02(2) to clarify that either application forms for an NPDES individual permit or a notice of intent for general permit coverage must be submitted and that the information required relative to rock harvesting operations must be included regardless of the type of permit.

Comment: Subcontractor Concerns:

A. Please consider whether subcontractors should be required to sign on to TMSP general permit coverage in a manner similar to the CGP subcontractor process. Requiring subcontractors to sign on would better ensure that the subcontractors are aware of storm water pollution prevention plan requirements. It is not uncommon for several subcontractor crews to simultaneously work different areas of a large site under a single permit. No single point of oversite is necessarily required for these crews. Often this multi-directional mining begins after the permit is obtained and was not taken into account in the pollution prevention plan design. Drainage patterns may be altered through multipoint mining in ways that render Erosion Prevention Sediment Control (EPSC) designs ineffective. Such activity multiplies risk for environmental harm. Although the permittee has nominal responsibility for EPSC, that responsibility alone may be ineffectual.

B. The statute regarding rock harvesting, as written, indicates that the requirements for liability and workmen's compensation apply to subcontractors as well as to the primary permittee. The proposed rules, however, contain no provision for tracking or enforcing those requirements. Please address this apparent deficiency.

Response:

A. It is the responsibility of the operator to assure that any subcontractor who is allowed to work on the site follows the requirements of the TMSP General Permit and the storm water prevention plan. While the Division does not necessarily disagree with the concern raised by the commenter, the concern would more appropriately be raised during the comment period for the new TMSP General Permit to address all similar activities addressed by the permit. The current TMSP general permit expires April 14, 2020.

B. Tenn. Code Ann. § 69-3-145(b) requires the operator to submit proof of general liability, and if applicable, workers' compensation insurance coverage. Operators are permitted to subcontract if the subcontractor meets the requirements of Tenn. Code Ann. Title 69, Chapter 3, Part 1. It is the operator's responsibility to ensure either that the operator's insurance covers the subcontractor or that the subcontractor also has insurance.

Comment: To Rule 0400-40-18-.03...Please consider adding the word "or" to the end of subparagraph (3)(a). It appears the word "or" may have been left out as a typographic error.

Rule 0400-40-18-.03(3)(c)... Please provide detail to adequately characterize the "Stabilize the site and withdraw from the area" option with regard to what it means to stabilize the exploration site. Will either rock armor or establishment of diverse native perennial vegetation be required? Will vegetation have to survive a full growing season or more for the site to be considered stabilized?

Response: There was no typographical error. The placement of "or" in (b) is conjunctive with the word "either" in the first sentence and is properly placed.

Exploration activity can only include a disturbance of no more than one (1) acre and removal of less than 100 tons of mineral. The proposed rules require only that the site be stabilized to prevent the loss of sediment from the site and do not specify particular stabilization methods or requirements because of the relatively limited scope of exploration.

Comment: The Department is encouraged to consider drafting a general permit targeted solely at the dimension stone industry because of the industry's unique characteristics.

Please consider drafting a general permit for dimension stone that would streamline the permitting process for the Department and the industry.

Response: The Division is willing to explore the idea of a general permit for the dimension stone industry, to include exploration, rock harvesting, and associated processing on site. Any such permit could only apply to discharges causing de minimis degradation to waters with available parameters or less than measurable degradation to waters with unavailable parameters.

Regulatory Flexibility Addendum

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

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

The businesses applying for rock harvesting permits are dimension stone mining companies (larger rock harvesting operations) and small rock harvesting operations/businesses. The estimated number of small businesses that will be affected by the proposed rule is approximately 100, with approximately 75, or 75%, seeing a direct benefit from increased eligibility for general permits. The remaining 25, or 25%, will continue to be permitted under Individual Permits, as required by the rules.

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

There should be no additional reporting, recordkeeping or other administrative costs added as a result of this rulemaking. As a result, no new professional skills will be required to comply with reporting requirements.

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

These rules will not impact consumers. The rule will benefit small businesses by providing increased access to efficient permitting and potentially decreasing administrative costs. General permit coverage can be provided faster and with fewer application requirements than an individual permit.

(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.

As this rulemaking was being developed, the regulated community was involved in giving input on the best methods to correct existing shortcomings in the current rules. The methods in this rulemaking are the least burdensome, least intrusive and least costly alternative to meet the objectives of this program at this time. During the public comment period, there were discussions with the industry prior to the rulemaking about the possibility of the development of a general permit for the dimension stone industry, to include exploration, rock harvesting and processing. Implementation of this recommendation will be explored by the Division; however, processing activities can have water quality impacts which would preclude permitting through a general permit.

(5) A comparison of the proposed rule with any federal or state counterparts.

There is no known federal counterpart. These rules are being promulgated under the authority of T.C.A. §§ 69-3-143 through 69-3-147, which was added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011. This is an update of the existing Rock Harvesting rules found in Chapter 0400-40-18. These rules are similar to those in surrounding states that are involved in the permitting of dimension stone and rock harvesting operations – coverage is provided either under a general permit or an individual permit, based on whether or not processing is occurring on site.

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

Exemption of small businesses from the proposed rules would prevent those businesses from benefiting from the improved access to general permit coverage and increased flexibility relative to reclamation. In addition, exploration activities currently appear to be conducted without the permits required by the Clean Water Act, leaving a potential regulatory gap and subjecting the activities to potential enforcement. Exemption of small businesses would prevent those businesses from benefiting from the proposed solution of streamlined permit coverage for exploration activities.

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 anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule amendments will broaden access to general permit coverage by aligning the rule language relative to discharges with the Antidegradation Statement and by clarifying the types of processing activities that trigger the requirement for an individual permit instead of a general permit. In addition, the proposed rule amendments add flexibility to reclamation requirements and establish time-limited coverage for exploration under the general permit immediately upon submission of a streamlined notice of intent.

(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 rules are being promulgated under the authority of Tenn. Code Ann. §§ 69-3-143 through 69-3-147, added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011.

(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 dimension stone and rock harvesting community constitute the persons affected by this rule. The Tennessee Mining Association, consultants, engineers and the rock harvesting community were contacted, and several meetings were held, prior to and during the formulation of the proposed rules. Many of their suggestions were incorporated into the final version of the proposed rules. The Division also met with several legislators during the formulation of the rules. These groups had positive reactions regarding the proposed rules.

(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.

(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 should be a not significant fiscal impact to state and local government. It is estimated because of the addition of exploration and less burdensome permitting procedures that the number of general permit notices of intent processed will increase and that the number of individual permit applications processed will decrease. The fiscal impact is not expected to be more than 2% or $500,000.

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

Bryan Epperson
Mining Section Manager
3711 Middlebrook Pike
Knoxville, TN 37921-6538
(865) 594-5529
Bryan.epperson@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 Department is not aware of any.

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Sequence Number: 10-01-16
Rule ID(s): 6328
File Date: 10/3/16
Effective Date: 1/1/17

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 and Conservation
Division:	Water Resources
Contact Person:	Bryan Epperson Mining Section Manager
Address:	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, TN
Zip:	37921-6538
Phone:	(865) 594-5529
Email:	Bryan.epperson@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**
0400-40-18	Rock Harvesting
Rule Number	**Rule Title**
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

(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)

0400-40-18
Rock Harvesting

Amendments

Chapter 0400-40-18 Rock Harvesting is amended by deleting it in its entirety and substituting instead the following:

Table of Contents

0400-40-18-.01 Purpose

The purpose of these ~~regulations~~ rules is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.02 Application or Notice of Intent for Rock Harvesting

(1) Operators shall submit a Notice of Intent for Rock Harvesting to obtain coverage under ~~Sector J of the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities~~ the applicable general permit unless the ~~division~~ Division informs ~~them~~ an operator that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:

(a) There will be a discharge of any water which, during manufacturing or processing, comes into direct contact with, or results from, the production of any raw material, intermediate product, finished product, byproduct, or waste product process associated with stone processing operation(s), which includes crushing, sawing, screening, and/or uncovered breaking on the site;

(b) There will be ~~a discharge of any waste water other than~~ any other non-storm water discharges from the site, including but not limited to mine dewatering and domestic sewage;

(c) There will be a discharge from the rock harvesting site to Exceptional Tennessee Waters that would cause degradation of any applicable available parameter above the level of de minimis as defined by paragraph (4) of Rule 0400-40-03-.04;

(d) ~~The receiving stream is listed as impaired for the pollutant(s) to be discharged from the site; or~~ There will be a discharge from the rock harvesting site to waters with unavailable parameters that may cause measurable degradation of the parameter that is unavailable, unless the Division determines the estimated pollutant loading is consistent with an EPA-approved total maximum daily load; and

(e) The ~~division~~ Division determines that an individual permit is required ~~in order~~ to adequately protect water quality in the receiving stream(s).

(2) An original and two copies of all individual NPDES application forms ~~and~~ or the notice~~s~~ of intent and supporting materials for the application forms or notice of intent, including the information required by this rule, shall be submitted.

(3) Written proof of general liability insurance coverage shall be submitted by the operator along with the

permit application or notice of intent.

(a) Liability coverage shall be in an amount no less than one million dollars ($1,000,000).

(b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.

(c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.

(d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy issued after the initial ~~one~~ policy no later than one week after ~~it~~ the new policy becomes effective.

(4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.

(5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.

(6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be submitted with the permit application or notice of intent.

(7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:

(a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;

(b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (a) of this paragraph to the department; and

(c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (a) and (b) of this paragraph.

(8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.

(9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:

(a) A title block which contains:

1. The name of the operator;

2. The name of the owner of the surface rights and the name of the owner of the mineral rights;

3. The county(ies) in which the operation is located;

4. The total number of acres to be disturbed by mining operations and haul roads; and,

5. The date the map was prepared along with a certification of its accuracy by the preparer.

(b) The body of the site/operations map shall show:

1. The proposed permit boundary, including haul roads, marked in red;

2. The location and type of all water treatment structures, including Best Management Practices;

3. The location and name(s) of all stream(s) receiving drainage from the operation;

4. The location and names of all property owners within 500 feet of the permit boundary;

5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);

6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;

7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and

8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.

(10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a minimum:

(a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;

(b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:

1. The altered land conformation and drainage patterns that will exist after mining;

2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and

3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability~~.~~ and

(c) A revegetation plan which specifies:

1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;

2. The type(s) and spacing of trees to be planted; and

3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.03 Notice of Intent for Exploration

(1) For purposes of this chapter, "exploration" means the excavation of a potential rock harvesting site that disturbs less than 1 acre of land, does not result in removal of more than 100 tons of minerals as defined in T.C.A. § 69-3-144(1), and does not involve processing as described in subparagraph (1)(a) of Rule 0400-40-18-.02.

(2) Persons seeking coverage under the general permit for exploration shall submit a Notice of Intent for exploration at least 7 days prior to engaging in exploration. The Notice of Intent for exploration shall include the following:

(a) The legal name and address of the owner and/or operator;

(b) The facility name and location;

(c) Proof of property owner notification;

(d) A general location map produced from a USGS 7½ minute quadrangle map that shows the location of the exploration area(s) and haul road(s), which shall be marked in red, and includes: the name of the facility; the name and number of the quadrangle; the receiving stream(s); and an indication of whether any stream crossings are required. (Note: stream crossings must in compliance with the requirements of Chapter 0400-40-07); and

(e) Description of the erosion prevention and sediment control measures for the site as required by Rule 0400-40-18-.04.

(3) Coverage under the applicable general permit shall be effective upon receipt of the Notice of Intent for exploration by the Division for a period of no more than 60 days, by which time the permittee must either:

(a) Submit a Notice of Intent for Rock Harvesting in accordance with Rule 0400-40-18-.02;

(b) Submit an application for an individual permit; or

(c) Stabilize the site and withdraw from the area.

If a Notice of Intent for Rock Harvesting or an application for an individual permit is timely submitted, coverage under the general permit covering exploration including applicable restrictions (*i.e.*, disturbance of less than one acre of land and removal of less than 100 tons of mineral) shall continue until the Division issues a notice of coverage for rock harvesting operations under the applicable general permit, issues an individual permit, or denies permit coverage for the operation.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

~~0400-40-18-.03~~ 0400-40-18-.04 Requirements for Sediment and Erosion Control ~~During and After Harvesting~~

(1) During Rock Harvesting or Exploration

(a) ~~Rock harvesting operations~~ Operators and persons engaged in exploration shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.

(b) Operators and persons engaged in exploration shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.

(c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations and exploration.

(d) Approved sediment and erosion control measures must be maintained throughout the life of the rock harvesting operation until reclamation has been approved as being successful by the ~~division~~ Division. Approved control measures must also be maintained throughout the exploration

activity until the site has been stabilized.

(e) Operators and persons engaging in exploration shall operate and maintain ~~harvesting~~ sites so that there are no discharges of oil or other waste to waters of the state.

(f) Operators and persons engaging in exploration shall comply with all provisions of permits.

(g) Operators and persons engaging in exploration shall modify practices or control measures, as directed and/or approved by the ~~division~~ Division, to control discharges.

(2) Reclamation

(a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment or other waste into waters of the state.

(b) Grading shall be conducted so as to return the affected area as closely as ~~possible~~ is reasonable to its pre-harvesting condition and drainage patterns ~~conformation~~, considering the amount of available overburden, drainage control, and post-harvesting land use ~~and other factors~~.

(c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons. If the Division determines this level of revegetation is not practicable at a given site, the operator shall (1) revegetate to the extent practicable and (2) provide surface stabilization for the entire site.

Authority: T.C.A. §§ 69-3-101 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:

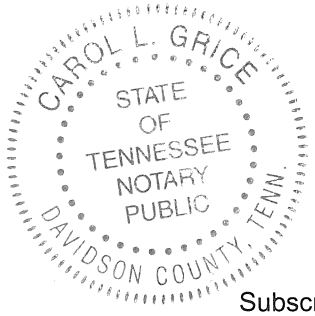
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)				X	
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)				X	
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 08/16/2016, 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: *04/06/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/01/16*



Date: August 16, 2016

Signature: Stephanie A. Durman

Name of Officer: Stephanie A. Durman

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: August 16, 2016

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Rules of the Board of Water Quality, Oil and Gas
Chapter 0400-40-18 Rock Harvesting
0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
0400-40-18-.04 Requirements for Sediment and Erosion Control

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

Herbert H. Slatery III
Attorney General and Reporter

9/29/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/3/16

Effective on: 1/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Labor and Workforce Development, Bureau of Workers' Compensation
SUBJECT:	Utilization Review
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 50-6-124
EFFECTIVE DATES:	January 29, 2017 through June 30, 2017
FISCAL IMPACT:	According to the Bureau, overall effect will have little fiscal impact upon state or local government.
STAFF RULE ABSTRACT:	According to the Bureau, the rulemaking hearing rule makes updates to utilization review rules necessitated by the 2013 reform act. The amendments to the rules will expand and clarify the definitions of utilization review, medical necessity and preauthorization. Many of the rule's provisions make stylistic changes for clarity or to reflect the Bureau's current structure and processes. Rule 0800-02-06-.01 makes revisions to various definitions Rule 0800-02-06-.02 specifies that the Bureau's Administrator, the Medical Director or the Court of Worker's Compensation Claims may determine whether utilization review was conducted properly. The current rules authorize the Medical Director and Workers' Compensation Specialists to make this determination. Rule 0800-02-06-.03 specifies that treatment that follows the administrator's treatment guidelines is entitled to a presumption of medical necessity, which may only be overcome by clear and convincing evidence. The rule also specifies that that questions arising from a utilization review denial concerning whether a treatment follows the guidelines, or whether a treatment poses an unwarranted risk to an injured worker, may be presented to the Medical Director for a written determination.

Rule 0800-02-06-.04 modifies and adds to the requirements for utilization review reports.

Rule 0800-02-06-.05 clarifies that utilization review is mandatory when the employer and the authorized treating physician disagree about the medical necessity of a recommended treatment. The current rule mandates utilization review when there is such a disagreement between the "parties".

Rule 0800-02-06-.06 specifies that a utilization review decision to deny a treatment, and determinations upheld on appeal by the Medical Director, are effective for six months, unless there is a material change documented by the treating physician that merits a new review.

Rule 0800-02-06-.07 authorizes penalties, including civil penalties of $50-$5,000 for an employer's failure to timely pay utilization review fees.

Rule 0800-02-06-.09 removes the prohibition against a utilization review organization subcontracting with another utilization review organization for the performance of utilization reviews.

Rule 0800-02-06-.10 changes the amount of civil penalties that may be assessed against an employer, insurer, third party administration, or utilization review organization for violation of rules pertaining to utilization review from $100-$1,000 to $50-$5,000.

Public Hearing Comments

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

PUBLIC COMMENTS AND RESPONSES

1. Comment: Current Rule 0800-02-06-.08(3) states: "All utilization review agents must file an annual report on a form prescribed by the Division and accessible through the Division's website." – Referenced form in current rule does not exist – need to be sure such form is not referenced in proposed Utilization Review Rules.

Response: The bureau agrees with the comment and has made the recommended change.

2. Comment: proposed Rule 0800-02-06-.04(2) states: "any modification in the recommended treatment ... shall be considered to be a denial of the entirety of the treatment...." – Does that mean if the UR agent recommends any modification to the treatment which would then result in the agent approval, per the rule, it would instead be a denial?

Response: The bureau agrees with the comment and has amended Rule 0800-02-06-,04(2) as follows: "If a Utilization Review appeal is filed, any recommended modification in a Utilization Review Report will be considered a denial by the Bureau."

3. Comment: proposed Rule 0800-02-06-.07(6) – Language that the determination by the medical director is final for administrative purposes is confusing and may result in an argument that the Court is part of the administrative system and cannot overrule the medical director, even though subsection (6) appears to give authority to the Court – suggest clarifying the subsection (6) with the word "Notwithstanding" and then expanding the language in subsection (6) to specify who may appeal – Suggest modifying proposed rule 0800-02-06-.07(6) to read as follows: "(6) Notwithstanding the provisions of subsection (4), if any party, including an employee, an employer, or a carrier, disagrees with a determination of the Medical Director's recommended or denied treatment, then the aggrieved party may file a Petition for Benefit Determination (PBD) with the Court of Workers' Compensation Claims within seven (7) days of the receipt of the determination to request a hearing of the dispute in accordance with applicable statutory provisions."

Response: The bureau agrees with the comment and has amended Rule 0800-02-06-.07(4) as follows:

(4) "For dates of injury on or after July 1, 2014, if the determination of the Medical Director is to approve part or all of the recommended treatment then, within seven (7) business days of the receipt of the determination letter from the Medical Director, referenced in subsection (3) above, the insurance carrier is required to inform the provider that the procedure and /or treatment, including medications, has been approved and request that the procedure or treatment be scheduled. The penalties for noncompliance with this subsection are those set forth in T.C.A §50-6-118."

In accordance with the above-referenced comment, the bureau has also amended Rule 0800-0¬6-.07(6) as follows:

(6) "Notwithstanding the provisions of subsection (4), if any party, including an employee, an employer, or a carrier, disagrees with a determination of the Medical Director's recommended or denied treatment, then the aggrieved party may file a Petition for Benefit Determination (PBD) with the Court of Workers' Compensation Claims within seven (7) business days of the receipt of the determination to request a hearing of the dispute in accordance with applicable statutory provisions."

4. Comment: Medical recommendations are subject to Utilization Review (UR) and whether they meet the ODG guidelines is the whole point – T.C.A. § 50-6-124 refers to UR and sets a standard of review in UR – proposed Rule 0800-02-06-.03(4) conflicts with the statute – need to follow the wording in the statute - need modification and clarification of proposed Rule 0800-02-06-.03(4) which states: "Any procedure or treatment,

including medications, which follow the treatment guidelines approved by the Bureau is not subject to utilization review. See T.C.A. 50-6-124."

Response: The bureau agrees with the comment and has amended Rule 0800-02-06-.03(4) as follows:

(4) "Any treatment that explicitly follows the treatment guidelines, including medications, adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker."

5. Comment: Proposed Rule 0800-02-06-.03(4) indicates that "any procedure or treatment, including medications, which follow the treatment guidelines approved by the Bureau is not subject to utilization review."
(a.) This language seems troublesome, as it does not explain who makes the initial determination regarding whether the proposed treatment follows the ODG. If the ATP can merely state that the recommended treatment follows the ODG in order to avoid Utilization Review (UR) altogether, that seems to be a little like "the fox guarding the henhouse."
(b.) Compare this language to proposed Rule 0800-02-25-.03(2), which states that '[a]ny treatment that explicitly follows the treatment guidelines ... or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes." This language comes straight from T.C.A. §50-6-124(h).
(c.) These two sections seem inconsistent. If an employer is precluded from seeking UR as long as an Authorized Treating Physician (ATP) says that the recommended treatment follows the ODG guidelines, why do we need the presumption offered in proposed Rule 0800-02-25-.03(2)?
Suggest removing 0800-02-06-.03(4) and/or replacing it with the same language that is in T.C.A. §50-6-124(h) (the first sentence) to resolve this inconsistency. But that still would not answer the question, "Who determines as an initial matter whether the recommended treatment follows the ODG guidelines?"

Response: The bureau agrees with the comment. See Response to Comment #4 above. Additionally, the bureau is adding a new subsection 0800-02-06-.03(5), which shall read as follows:

(5) If a question arises in a Utilization Review denial, as to whether a recommended treatment follows the guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, or that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker, then the employee or authorized treating physician may appeal the Utilization Review denial, and the Medical Director will make a written determination and communicate that determination in accordance with the provisions in 0800-02-06-.07.

6. Comment: Proposed Rule 0800-02-06-.05(1) indicates that "the parties are required to participate in utilization review under this Chapter whenever a dispute arises as to the medical necessity of a recommended treatment."
(a.) Who can decide when a dispute over medical necessity has arisen?
(b.) How is that language consistent with proposed Rule 0800-02-06-.03(4), which seems to preclude Utilization Review (UR) as long as the recommended treatment follows the ODG guidelines?
(c.) What if the Authorized Treating Physician (ATP) says that the recommended treatment follows the ODG guidelines, but the employer's adjuster claims it does not and is not medically necessary? Can the adjuster initiate Utilization Review (UR) even though the ATP says that the recommended treatment follows the ODG guidelines?
Suggest that when a dispute arises as to medical necessity, the ATP should document why and how the recommended treatment "explicitly follows the treatment guidelines" or "is reasonably derived therefrom." Thereafter, the UR reviewing physician could respond with his or her opinion as to whether they believe the recommended treatment follows or does not follow the guidelines. If a UR administrative appeal is sought, the Medical Director would make the final call.

Response: The bureau agrees with this comment. See Response to Comment #5 above. The bureau is also amending Rule 0800-02-06-.05(1) to read as follows: "If the employer as defined in 0800-02-06-.01 disagrees with the Authorized Treating Physician about the medical necessity of a recommended treatment, then the employer must participate in Utilization Review as defined in 0800-02-06-.01."

7. Comment: Suggest modifying the Definition of Preauthorization, proposed Rule 0800-02-06-.01(16) to read

as follows: "'Preauthorization' for workers' compensation claims means that the employer ... Preauthorization for workers' compensation claims shall not mean utilization review as defined by 0800-02-06-.01(20)." – suggest this change to better refine this definition and better align it with current pharmacy processing practices as well as to ensure congruence with adopted drug formulary rules. At present existing drug formulary rules, specifically 0800-02-25-.04 permits prior approval of medications without subjecting these medications to the formal utilization review processes. Suggested language is intended to ensure there is no confusion between these proposed utilization rules and adopted drug formulary rules as well as to eliminate potential confusion between rules which could stifle delivery of pharmacy care. Suggested language would protect the ability of the adjuster or claims administrator to approve usage of medications without having to submit each medication or prescription to the defined utilization review processes.

Response: The bureau agrees with the comment and has made the recommended change.

8. Comment: Suggest modifying the Definition of Utilization Review, proposed Rule 0800-02-06-.01(20) to read as follows: "'Utilization Review' means evaluation of the medical necessity, appropriateness, efficiency and quality of medical services ... For workers' compensation claims, 'utilization review' shall not mean preauthorization as defined by 0800-02-06-.01(16)." – suggest this change to better clarify that utilization review and evaluation is tied directly to true medical necessity of the treatment. The lack of defining utilization review to medical necessity as proposed could create unintended exploitation of the term 'necessity' as being of and including any necessity, a clearly subjective word, other than medical. The proposed subjective phrasing could create an unmanageable process between providers and payors and result in greater fee disputes for the Bureau to handle – suggest change to ensure consistency in the definitions of preauthorization and utilization review.

Response: The bureau agrees with the comment and has amended the third sentence of Rule 0800-02-06-.01(20) to read as follows: "For workers' compensation claims, 'utilization review does not include preauthorization as defined in Rule 0800-02-06-.01(16)."

9. Comment: support addition of the proposed language to Time Requirements - proposed Rule 0800-02-06-.06(7) Application of UR Decisions – strongly believe the proposed language will assist in timely processing of pharmacy claims as well as streamline utilization review processes for medications and application of the drug formulary – should also help clarify the proper application of utilization review determinations.

Response: The bureau agrees with the comment. No additional change is recommended.

10. Comment: proposed Rule 0800-02-06-.03(4) should be deleted as it causes unnecessary conflict – proposed Rule 0800-02-06-.03(4) states, "Any procedure or treatment, including medications, which follow the treatment guidelines ... is not subject to utilization review." – The current rule which is already in effect provides that "any treatment that explicitly follows a treatment guidelines adopted by the administrator or is reasonably derived therefrom, shall have a presumption of medical necessity for utilization review purposes...." - It is confusing as to who will determine whether a given treatment "follows" the ODG guidelines – Numerous adjusters are confused and concerned about the new Utilization Review (UR) process and whether they can even submit anything to UR – Essentially, in order to determine whether something follows the ODG guidelines, explicitly or otherwise, it must be submitted to a medical professional – Adjusters are not able to make this determination and therefore proposed Rule 0800-02-06-.03(4) could have a far reaching effect of neutralizing any UR. Given the mandate for utilization review in T.C.A. §50-6-124, the proposed Rule 0800-02-06-.03(4) should be revised or deleted and the currently existing rule in the treatment guidelines chapter should govern the process.

Response: The bureau agrees with the comment and the recommended change has been made. See Responses to Comments #4 and #5 above.

11. Comment: With respect to proposed Rule 0800-02-06-.07 and utilization review appeals determinations, it is important to require the appeal determination to be in writing and provide a rationale – Without a rationale from the medical director, additional litigation is invited – Moreover, since the Workers' Compensation Court is not populated with medical professionals, it is imperative that any determination regarding the presumption of correctness and/or whether the ODG guidelines have been followed be conveyed in layman terms – This will be necessary to resolve any Utilization Review (UR) issues as the current process for filing a Petition for Benefit Determination (PBD) will only allow for significant delay. PBD's and Dispute Certification Notices (DCN's) are taking over a month to issue, and even more time will be necessary for a hearing. If the decisions of the medical director are clear and concise, this will result in less litigation and a swifter delivery of medical services.

Response: The bureau disagrees with the comment. The present rule and statute adequately address this question. There is no requirement for additional explanation of the decision of the medical director in the determination.

12. Comment: Comment concerning how few appeared at the Rulemaking Hearing on the proposed Utilization Review Rules is an indication that most attorneys handling Workers' Compensation Claims were likely never given notice.

Response: The bureau disagrees with the comment. Secretary of State filing provisions have been followed, and the bureau's website has posted the rulemaking hearing information well in advance. TAR (TN ADMIN REGISTER) publishes notices on their website also.

13. Comment: As presently operated, the Utilization Review (UR) System delays, prolongs, or prevents treatment of injured workers – It does not, as the law intended, promote timely quality medical care to return a worker to employability and it is not being used for that purpose – Workers' Compensation Utilization Review fails the injured employees by denying the prompt and proper medical treatment – In at least two (2) cases, it has left the injured employees with no treatment options so that they cannot reach maximum medical improvement (MMI) and are therefore in permanent TTD status – In a third case, the appeal denial resulted only with a costly court action and a delay for the employee of up to six (6) months – In that case, Attorneys on both sides agree that the appeal should have overruled the UR denial of the requested treatment. Unless the whole Utilization Review System is restructured, the proposed changes will have very little benefit to injured employees.

Response: The Bureau disagrees with the comment and this analysis of the utilization review program. These examples given already have a remedy in place.

14. Comment: The Insurance Carriers and self-insured Employers game the system to their benefit at the employees' expense –
(a.) They use Utilization Review (UR) companies that employ out of state doctors, primarily east and west coast doctors – These doctors rarely, if ever, have patient ratings of more than 1.5 stars and their efforts to contact local doctors usually occur when the treating doctors are seeing patients at hospitals or in surgery.
(b.) The Insurance Carriers further game the system by only providing those records for review that they wish to provide and not the full record. This should not be surprising since they also direct injured employees to specific doctors by giving them a list and telling them if they choose a particular doctor they can get them seen right away or on that day while the other doctors will take days to set up. Thus, the employee goes to see the employer or carrier's pet doctor.
(c.) Carriers next game the system with nurse "case managers." These individuals under the law are supposed to see that the employee gets prompt and proper care. In reality, these individuals are nothing more than company spies and agents whose goals are to get the employees' claim closed as soon as possible and at the least cost. They frequently attempt to tell the doctor what he can and cannot do and push the doctor to return the employee to full duty status. They schedule appointments for the injured employee at the nurse case managers' convenience and not that of the employee.

Response: The bureau disagrees with these comments. It is noted that the bureau has adopted case management rules and that claims handling rules are presently being drafted by the bureau pursuant to the authority given the bureau in PC 803 (2016).

15. Comment: Regarding proposed Rule 0800-02-06-.03:
(a.) In subsection (1.), the phrase "A Utilization Review Agent may ..." should be changed to "SHALL CONTACT"
(b.) Subsection (2.) is a joke. The doctors are not submitting information; the insurance companies are. The doctors' treatment requests goes to the insurance adjuster who then sends the records they want reviewed to their Utilization Review Company only.
(c.) Subsection (3.) should include the requirements that all advisory medical practitioners should be doctors actually practicing in Tennessee and not just licensed in Tennessee along with umpteen other states.

Response: The bureau agrees in part and disagrees in part. While the internal policies of the insurers are of some concern as to what they require the adjusters to send to utilization review, the bureau has no evidence of this practice by adjusters.

The bureau carefully reviews the credentials of physicians performing utilization review services. TCA § 50-6-124 as revised in 2015 now requires URAC or NCQA accreditation. Such accreditation requires as one of the provisions that on appeal the Advisory Medical Practitioner performing utilization review has similar specialty requirements as the recommending authorized treating physician. Rule 0800-02-06-.01(2) also includes this requirement in the definition of "Advisory Medical Practitioner."

The bureau has amended the second sentence of Rule 0800-02-06-.03(1) to read as follows: "A utilization review agent shall contact the authorized treating physician regarding the recommended treatment pursuant to applicable law and Rule 0800-02-06-.06; provided that such contact shall not constitute a waiver of any other applicable privilege or confidentiality."

The bureau has also amended the first sentence of Rule 0800-02-06-.06(6)(b) to read as follows: "If requested by the Bureau, within three (3) business days of receiving a utilization review determination that is either an approval or denial, the employer as defined in Rule 0800-02-06-.01 shall forward such determination to the Bureau."

16. Comment: Regarding proposed Rule 0800-02-06-.04:
(a.) Subsection (4)(a) – The way this is written I would question whether Insurance Adjusters will still be allowed to edit what records are provided to review. This also seems to promote Cook-Book medicine and decisions.
(b.) Subsection (4)(c) needs to add requirements that the physician actually practice in Tennessee, not just have a Tennessee License.

Response: The bureau disagrees. The rules adequately address these comments.

17. Comment: Regarding proposed Rule 0800-02-06-.06:
(a.) Subsection (1) appears to be in conflict with proposed Rule 0800-02-06-.03
(b.) Subsection (7)(a) and (b) – These provisions would effectively prevent treatment of employees and render them TTD or TPD for the six (6) month period until a new request for treatment could be made, as it bars renewed requests for the same treatment. In the real world, the statement "remain effective for a maximum of 6 months" will have the effect of being a six (6) month bar to treatment. I have two (2) current cases that are effectively permanent TTD because of this problem.

Response:
(a.) The bureau agrees and changes have been made. See Response to Comment #15
(b.) The bureau has considered the comment but we disagree: the current proposed language is sufficient.

18. Comment: Regarding proposed Rule 0800-02-06-.07:
(a.) Subsection (2.)(a) – I have concerns as to who the "designated contractor" would be as the contractors presently used by the Insurance Carriers are worthless.
Not germane to the rules. The public does not select whom the Bureau chooses as a contractor.
(b.) Subsection (2.)(b) – There needs to be a provision requiring that parties be given notice of any information not supplied but deemed necessary and allowing time for that information to be submitted.

Response: The Bureau disagrees. In Rule 0800-02-06-.06(5), there are time provisions for requesting further records, and the Bureau routinely issues warning letters in these situations.

19. Comment: Regarding proposed Rule 0800-02-06-.09 – Subcontractors should only be allowed to use doctors licensed and practicing in Tennessee – If not, this rule is a waste of ink.

Response: This comment has been reviewed previously. See prior Response to Comment #15.

20. Comment: Recommend amending the language "is not subject to utilization review" in proposed Rule 0800-02-06-.03(4) to "does not require submission of a referral for utilization review." The reason for this suggested change is that the recommended language would mean that a provider who submits a request to a Utilization Review Organization (URO), where the request is then reviewed in utilization review and is found to comply with the Bureau approved treatment guidelines, would not result in the URO approving the request, but rather a response that Utilization Review (UR) is not required. Based on other rules for UR, we do not believe that the intent is not to conduct UR if requested, but rather, to reflect that medical care within the approved treatment guidelines does not require submission for UR.

Response: The bureau has addressed this comment. See Responses to Comments #5 and #6 above.

21. Comment: Currently proposed Rule 0800-02-06-.04(2) could be interpreted to mean that utilization review shall not issue a modification decision and must either approve or deny the treatment request in whole. We do not believe that is the intent, as other rules indicate that modifications in utilization review can occur; for example, Rule 0800-02-06-.04(4)(d) and 0800-02-06(7)(a). We believe this change reflects the intent of the Bureau. Should the Bureau only want to suggest that a modification may trigger an appeal, we would suggest that the language in the proposed rule note "that for appeal purposes only" or something of the like.

Response: The bureau agrees with the comment. The change in 0800-02-06-.04(2) recommended in Response to Comment #2 addresses this concern.

22. Comment: Proposed Rule 0800-02-06-.01(10) Definition of "Inpatient Services" – Recommend that the length of stay be based on a "One Midnight Rule," as opposed to the "Two Midnight Rule" embodied in the Medicare rules for inpatient status. We believe that a window of 48 (as opposed to 72) hours provides physicians with sufficient observation time to determine whether individuals with work-related injuries should be admitted on an inpatient basis, thereby avoiding the increased costs of reimbursing under Medicare Part A where that is not medically necessary. We also recommend that the proposed amendments to the definition of "Outpatient services" in subsection (13) be revised accordingly.

Response: The bureau neither agrees nor disagrees with the comment. The bureau intends to comply with the Medicare definition.

23. Comment: Proposed Rule 0800-02-06-.01(12) Definition of "Medically necessary" or "medical necessity" - Recommend that this definition be amended to refer to the treatment guidelines adopted by the Bureau. For instance, subsection (12)(a) could be redrafted to read: "In accordance with generally accepted standards of medical practice, including Treatment Guidelines as defined in Rule 0800-02-06-.01(19)."

Response: The bureau agrees and the recommended change has been made.

We have previously dealt with the issue of using the adopted guidelines in Comment #5.

24. Comment: Proposed Rule 0800-02-06-.01(15) Definition of "Preauthorization" – Recommend clarifying that authorized medical benefits will be paid at the rates set forth in the workers' compensation fee schedule and cost containment program.

Response: We disagree with the comment. This definition is not about payment levels, only authorizations.

25. Comment: Proposed Rule 0800-02-06-.01(20) Definition of "Utilization review" – This definition provides that UR does not include (among other things) "an initial evaluation of an injured or disabled employee by a physician specializing in pain management." We request clarification as to whether employers may subject initial evaluations by any or all other specialists to UR. More generally, we recommend that the entire definition be redrafted for greater clarity.

Response: This definition comes directly from TCA §50-6-102. The bureau agrees in part with the comment and has amended the first sentence of Rule 0800-02-06-.01(20) by deleting the phrase "specializing in pain management" at the end of the sentence, after the word "physician" and before the punctuation period (".").

26. Comment: Proposed Rule 0800-02-06-.03(4) Utilization Review Requirements – Recommend deleting or amending the proposed language, since T.C.A. §50-6-124 does not stand for the proposition that "Any procedure or treatment, including medications, which follow the treatment guidelines approved by the Bureau is not subject to utilization review." Rather, the statute provides that any treatment that explicitly follows the guidelines or is reasonably derived therefrom shall have a presumption of medical necessity for UR purposes, though that presumption is rebuttable by clear and convincing evidence "that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker."

Response: This is answered in Response to Comment #4 above.

27. Comment: Proposed Rule 0800-02-06-.04(2) Contents of Utilization Review Report – This subsection

provides that "Any modification in the recommended treatment request, including medications, shall be considered to be a denial of the entirety of the treatment for the purposes of utilization review reports, appeals and determinations." While we assume that this does not prohibit modifications that do not constitute complete denials, we believe some clarification to that effect would be helpful.

Response: The bureau agrees and this has been clarified by the Response to Comment #2.

28. Comment: Proposed Rule 0800-02-06-.06(6)(b) Employer's obligations upon receipt of UR determination – The proposed amendments would require employers to forward UR determinations to the Bureau, as opposed to the Workers' Compensation Specialist. We request clarification as to how this is to be accomplished, e.g., who the recipient should be.

Response: The bureau agrees with the comment and has amended Rule 0800-02-06-.06(6)(b) by adding the phrase "If requested by the Bureau..." at the beginning of the sentence. See Response to Comment #15.

29. Comment: Proposed Rule 0800-02-06-.07(4) Appeals of UR Decisions – We recommend converting the notification requirement of "seven calendar days" to business days to conform to the other time periods in the rule.

Response: The bureau agrees and the recommended change has been made.

30. Comment: Proposed Rule 0800-02-06-.01(16) Definition of Preauthorization – What does the Bureau believe Preauthorization to be? Employers' approvals of treatment requests without the involvement of a Utilization Review Organization (URO)?

Response: Rule 0800-02-06-.01(16) states: "Preauthorization" for workers' compensation claims means that the employer, prospectively or concurrently, authorizes the payment of medical benefits. Preauthorization for workers' compensation claims does not mean that the employer accepts the claim or has made a final determination on the compensability of the claim. Preauthorization for workers' compensation claims does not include utilization review.

The Bureau believes this definition is sufficient to explain what "Preauthorization" is in the context of workers' compensation claims. See also response to Comment #7,

31. Comment: Proposed Rule 0800-02-06-.04(2) Contents of a Utilization Review Report - What does the language "Any modification in the recommended treatment requests, including medications shall be considered to be a denial of the entirety of the treatment for the purposes of utilization review reports, appeals and determinations" mean? Does it mean that a UR determination of modified is not allowed? If an Advisory Medical Practitioner wanted to approve, for example, 6 PT visits of 12, would it have to result in a total denial of all 12 because a modification is considered a denial of the entirety of the treatment?

Response: The Bureau has answered this Comment with the change in the language of Rule 0800-02-06-.04(2) "considered a denial" only "If a Utilization Review appeal is filed." See Response to Comment #2.

32. Comment: Concerning Proposed Rule 0800-02-06-.08 Utilization Review Forms:
(a.) Proposed Rule 0800-02-06-.08(1) - This provision says that all UROS must file Form C-35 electronically w/in three business days and that only one form should be filed for each date of a utilization review referral even if more than one treatment is reviewed on the same date. Does this mean that the Bureau will expect UROs to file a C-35 for every UR request that they review?

Response: If the UR request were sent on a different date (or to a different vendor or company) then yes.

(b.) Proposed Rule 0800-02-06-.08(2) - This provision says that all UROs must file Form C-36/C-37 electronically w/in three business days following the conclusion of UR services. Does this mean that the Bureau will expect UROs to file a C-36/C-37 for every UR request that they review and complete?

Response: They would have to file the closing forms for each opening within the three days after the UR has been completed.

33. Comment: All timeframes in Rules should be consistent, either business days or calendar days.

Response: The bureau agrees with the comment and has made the requested change.

34. Comment: The visit maximums (12 for Physical Therapy, Occupational Therapy and 18 for Psychiatry) may conflict with the fee schedule - Who makes the determination as to whether a recommended treatment follows the guidelines and how is the decision communicated? Is UR required for areas approved by ODG?
Fee schedule changes are being addressed in separate rules. Agree. See Responses to Comments #4, #5, and #6 above. UR is not required (mandated) very often.

Response: The Bureau agrees and has tried to clarify the issue of "dispute" by saying "disagrees with a recommended treatment."

35. Comment: The phrase about "not subject to Utilization Review (UR)" is not accurate. How is "explicitly" determined? The rationale for a determination should be included in the Medical Director's decision. Recommend clarifying the next step after an appeal.

Response: See Responses to Comments #3, #4 and #5 above.

36. Comment: Recommend including an explanation of the Medical Director's opinion in appeal decisions. Need to clarify whether the decision of the Medical Director on an appeal should have any sort of "presumption"? The Appeal of a Petition for Benefit Determination (PBD) within 30 days does not allow the injured worker enough time to arrange for representation and to put together a case. Recommend that this time period be extended to 90 days – Concerning the Medical Director's decision being final "for administrative purposes," need to clarify the phrase "for administrative purposes" since it may be viewed to include the Court.

Response: The bureau agrees in part and changes have been made as deemed appropriate by the bureau. See Responses to Comments #3, #4, and #5 above. The 30-day period is deemed adequate by the bureau for appeal purposes.

37. Comment: Regarding the appeal to the bureau in 0800-02-06-.07, it is suggested that the medical director should have discretion to allow more than 30 days to receive a request for an appeal if there is good cause.

Response: The bureau agrees with the comment and has made the recommended change.

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

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.

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

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

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

Impact on Local Governments

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

These proposed rules will have little, if any, impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The Rules established by 0800-02-06 are updates to utilization review rules necessitated by the 2013 reform act. The amendments to the rules will expand and clarify the definitions of utilization review, medical necessity, and preauthorization.

(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. §50-6-124, the administrator "shall establish a system of utilization review of selected outpatient and inpatient healthcare providers" for employees claiming benefits under the Workers' Compensation Law.

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

All parties to a workers' compensation claim will be affected by the adoption or rejection of these rules.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

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

The overall effect will have little fiscal impact upon state or local government.

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

(G) 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 Bureau of Workers' Compensation
220 French Landing Drive
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(615) 532-0179
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(H) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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For Department of State Use Only

Sequence Number: 10-25-16
Rule ID(s): 6355
File Date: 10/31/16
Effective Date: 1/29/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B
Zip:	
Phone:	615-532-0179
Email:	troy.haley@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**
0800-02-06	General Rules of the Workers' Compensation Program – Utilization Review
Rule Number	**Rule Title**
0800-02-06-.01	Definitions
0800-02-06-.02	Utilization Review System
0800-02-06-.03	Utilization Review Requirements
0800-02-06-.04	Contents of Utilization Review Report
0800-02-06-.05	Mandatory Utilization Review
0800-02-06-.06	Time Requirements
0800-02-06-.07	Appeals of Utilization Review Decisions
0800-02-06-.08	Utilization Review Forms
0800-02-06-.09	Subcontractors
0800-02-06-.10	Sanctions and Civil Penalties
0800-02-06-.11	Issuance and Appeal of Sanctions and Civil Penalty Assessments

0800-02-06-.09	Subcontractors
0800-02-06-.10	Sanctions and Civil Penalties
0800-02-06-.11	Issuance and Appeal of Sanctions and Civil Penalty Assessments

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

0800-02-06-.01 DEFINITIONS.

The following definitions are for the purpose of these Utilization Review Rules, Chapter 0800-02-06:

~~(1) "Act" means the Tennessee Workers' Compensation Act, T.C.A. §§ 50-6-101, et seq., as amended.~~

~~(2)~~(1) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation ~~Division~~ of the Tennessee Department of Labor and Workforce Development, or the Administrator's designee.

~~(3)~~(2) "Advisory Medical Practitioner" means an actively Tennessee-licensed practitioner, who is board certified, who is in good standing, who is in the same or similar general specialty as the recommending authorized treating physician, and who makes utilization review determinations for the utilization review organization~~agent~~ or the Bureau~~Department~~.

~~(4)~~(3) "Authorized Treating Physician" means the practitioner chosen from the panel required by T.C.A. § 50-6-204 or a practitioner referred to by the practitioner chosen from the panel required by T.C.A. § 50-6-204, as appropriate. Authorized Treating Physician shall also include any other medical professional recognized and authorized by the employer or designated by the Bureau~~Division~~ to treat any injured employee for a work-related injury or condition.

(4) "Bureau" means the Tennessee Bureau of Workers' Compensation.

(5) "Business day" means any day upon which the Tennessee Bureau of Workers' Compensation ~~Division~~ is open for business.

~~(6) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development, the Commissioner's Designee, or an agency member appointed by the Commissioner.~~

(6) ~~(7)~~"Contractor" means an independent utilization review organization not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state of Tennessee with which the Administrator has contracted to provide utilization review, including peer review, for the ~~Division~~Bureau, as referred to in T.C.A. § 50-6-124.

~~(8)"Department" means the Tennessee Department of Labor and Workforce Development."~~Bureau

~~(9)"Division" means the~~ Bureau of Workers' Compensation ~~Division of the Tennessee Department of Labor and Workforce Development.~~

(7) ~~(10)~~"Employee" means an employee as defined in T.C.A. § 50-6-102, but also includes the employee's legally authorized representative or legal counsel.

(8) ~~(11)~~"Employer" means an employer as defined in T.C.A. § 50-6-102, but also includes an employer's insurer, third party administrator, self-insured employers, self-insured pools and trusts, as well as the employer's legally authorized representative or legal counsel, as applicable.

(9) ~~(12)~~"Health care provider" includes, but is not limited to, the following: licensed individual, chiropractor, dentist, occupational therapist, physical therapist, physician, surgeon, optometrist, podiatrist, pharmacist, group of practitioners, hospital, free standing surgical outpatient facility, health maintenance organization, industrial or other clinic, occupational healthcare center, home health agency, visiting nursing association, laboratory, medical supply company, community mental health center, and any other facility or entity providing treatment or health care services for a work-related injury within the scope of their license.

(10) ~~(13)~~"Inpatient services" means services rendered to a person who is formally admitted to a hospital and whose length of stay ~~exceeds twenty-three (23) hours~~.is in accordance with the Medicare rules for "inpatient status."

(11) ~~(14)~~"Medical Director" means the Medical Director of the Bureau~~Division~~ appointed by the Administrator pursuant to T.C.A. § 50-6-126, or the Medical Director's designee chosen by the Administrator to act on behalf of the Medical Director.

(12) ~~(15)"Medical necessity" means health care services that a practitioner, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are in accordance with generally accepted standards of medical practice.~~"Medically necessary" or "medical necessity" means healthcare services that a physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice, including Treatment Guidelines as defined in Rule 0800-02-06-.01(19);

(b) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; ~~and~~

(c) Not primarily for the convenience of the patient, physician, or other healthcare provider; and

(d) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease;

(13) ~~(16)~~"Outpatient services" means a service provided by the following, but not limited to, types of facilities: physicians' offices and clinics, hospital emergency rooms, hospital outpatient facilities, community mental health centers, outpatient psychiatric hospitals, outpatient psychiatric units, and freestanding surgical outpatient facilities also known as ambulatory surgical centers. Outpatient services may also include hospital admissions that do not qualify as "inpatient admissions" under Medicare regulations appropriate for the date of discharge. ~~for a patient whose length of stay does not exceed twenty-three (23) hours.~~

(14) ~~(17)~~"Parties" means the employee, authorized treating physician, ~~and~~ employer, and their legal representatives ~~as~~ as those terms are defined herein.

(15) ~~(18)~~"Practitioner" means a person currently licensed in good standing to practice as a doctor of medicine, doctor of osteopathy, doctor of chiropractic, or doctor of dental medicine or dental surgery.

~~(15)~~(16) "Preauthorization" for workers' compensation claims means that the employer, prospectively or concurrently, authorizes the payment of medical benefits. Preauthorization for workers' compensation claims does not mean that the employer accepts the claim or has made a final determination on the compensability of the claim. Preauthorization for workers' compensation claims shall not mean ~~does not include~~ utilization review as defined by Rule 0800-02-06-.01(20).

~~(16)~~(17) ~~(19)~~"Recommended treatment" means the recommendation of the authorized treating physician to perform or refer treatments, procedures, surgeries, including medications but not limited to Schedule II, III, or IV controlled substances after 90 days, and/or admissions in either an inpatient or outpatient setting. Recommended treatment shall also mean emergency treatments, procedures, surgeries, and/or admissions when retrospective review is performed.

(18) ~~(20)~~"Records" means medical records and reports regarding an employee's claim for workers' compensation benefits. Records include electronic imaging of such documents.

(19) "Treatment Guidelines" means statements that include recommendations intended to optimize patient care that are informed by a systematic review of the evidence and an assessment of the benefit and harms of alternative care options. The statements and other documents that accompany the guidelines are those that are adopted by the Bureau ~~Division~~ effective on January 1, 2016, and periodically updated

as new information warrants.

~~(21)~~(20) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical services, including the prescribing of one (1) or more Schedule II, III or IV controlled substances for pain management for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances, provided to an injured or disabled employee based upon medically accepted standards and an objective evaluation of the medical care services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician ~~specializing in pain management~~. "Utilization review," also known as "Utilization management," does not include the evaluation or determination of causation or the compensability of a claim. For workers' compensation claims, "utilization review" ~~is not a component of~~ does not include preauthorization as defined in Rule 0800-02-06-.01(16). ~~evaluating the quality and appropriateness of health care or health care services in workers' compensation cases pursuant to the timeframes, procedures, and requirements of this Chapter, 0800-02-06, and as defined in T.C.A. § 50-6-102.~~ The employer shall be responsible for all costs associated with utilization review and shall in no event obligate the employee, health care provider or Bureau ~~Department~~ to pay for such services.

~~(Rule~~

(213) ~~(22)~~"Utilization review agent/organization" means an individual or entity authorized to do business and provide utilization review services in Tennessee., ~~having~~ All Utilization review agents/organizations are required to be certified ~~to~~by the Commissioner of Commerce and Insurance pursuant to T.C.A. §§ 56-6-701, et seq., and registered with the Bureau~~Division~~, complying with the accreditation requirement in T.C.A. § 50-6-124(a).

Authority: *T.C.A. §§ 50-6-102, 50-6-124, 50-6-126, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-06-.02 UTILIZATION REVIEW SYSTEM.

(1) This Chapter shall apply to all recommended treatments as defined above for work-related injuries or conditions whenever the recommendation is made after this Chapter, as amended, becomes effective.

(2) Employers shall establish and maintain a system of utilization review. An employer may choose to provide utilization review services itself, through its insurer or through a third party administrator. Whenever utilization review is conducted, whether mandatory under this Chapter, 0800-02-06, or not, such utilization review shall be conducted in complete conformity with this Chapter. Failure to comply with this Chapter in any way may subject the employer and utilization review organization~~agent~~ to sanctions and/or civil penalties as set forth in Rule 0800-02-06-.10. The Administrator, the Medical Director or the Court of Workers' Compensation Claims ~~a workers' compensation specialist~~ may determine whether a utilization review was conducted in conformity with this Chapter and may determine that a utilization review is void.

(3) The Administrator may provide or contract for certain utilization review services with a Contractor. The Contractor may provide any service allowed by T.C.A. § 50-6-124, including, but not limited to, reviewing utilization review services and providing peer review. The parties shall cooperate and provide any necessary medical information to the Contractor when requested, which shall not constitute a waiver of any applicable privilege or confidentiality.

(4) Any organization conducting utilization review for workers' compensation cases pursuant to this Chapter shall provide to the Administrator copies of any information provided to the Commissioner of Commerce and Insurance pursuant to T.C.A. § 56-6-704. Any organization conducting utilization review for workers' compensation cases must also register with the ~~Division~~ Bureau on a form prescribed by the Administrator. Failure to certify to the Commissioner of Commerce and Insurance and be registered with the Bureau~~Division~~ prior to performing utilization review services may result in sanctions and/or civil penalties pursuant to Rule 0800-02-06-

.10 of this Chapter.

(5) Subject to any applicable requirements of law concerning confidentiality of records, a utilization review organizationagent shall provide the DivisionBureau, including the Medical Director, with any appropriate utilization review records or permit the DivisionBureau to inspect, review, or copy such records in a reasonable manner. The Division Bureau will maintain any required confidentiality of any personally identifying information concerning employees claiming workers' compensation benefits. Provision of these records pursuant to this rule shall not constitute a waiver of any applicable privilege or confidentiality.

(6) In no event shall an individual concurrently perform case management services, as set forth in Chapter 0800-02-07, and utilization review with regard to a single claim of a work-related injury.

(7) Billing and payment for any medical services provided in conjunction with this Chapter shall be subject, as applicable, to the DivisionBureau's Medical Cost Containment Program, Medical Fee Schedule, or In-Patient Hospital Fee Schedule rules contained in Chapters 0800-02-17, 0800-02-18, and 0800-02-19, respectively.

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, 50-6-233, and Public Chapters 282 & 289 (2013).* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-06-.03 UTILIZATION REVIEW REQUIREMENTS.

(1) In any case in which utilization review is undertaken, the utilization review organization agent shall make an objective evaluation of the recommended treatment as it relates to the employee's condition and render a determination concerning the medical necessity of the recommended treatment. A utilization review agent may shall contact the authorized treating physician regarding the recommended treatment pursuant to applicable law and Rule 0800-02-06-.06; provided that such contact shall not constitute a waiver of any other applicable privilege or confidentiality.

(2) Upon initiation of utilization review, the authorized treating physician shall submit all necessary information to the utilization review organization agent and shall certify that the information is a complete copy of the health care provider's records and reports that are necessary for utilization review. The authorized treating physician shall also include the reason(s) for the necessity of the recommended treatment in such records and reports. The employer, or other payer, shall reimburse the authorized treating physician for the costs of copying and transmitting such records; provided that the costs do not exceed the amounts prescribed by T.C.A. § 50-6-204. If a dispute arises as to the completeness or necessity of information, then the parties shall proceed as set forth in Rule 0800-02-06-.06(5).

(3) Upon receipt of all necessary information, the initial utilization review decision may be determined by a licensed registered nurse whenever the recommended treatment is being approved. For all denials, the utilization review decision shall be determined by an advisory medical practitioner and communicated to the parties in a written utilization review report.

(4) Any treatment that explicitly follows the treatment guidelines, including medications, adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker.

(5) If a question arises in a Utilization Review denial, as to whether a recommended treatment follows the guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, or that the treatment erroneously applies the guidelines, or that the treatment presents an unwarranted risk to the injured worker, then the employee or authorized treating physician may appeal the Utilization Review denial, and the Medical Director will make a written determination and communicate that determination in accordance with the provisions in 0800-02-06-.07.

~~(4)~~

Authority: *T.C.A. §§ 50-6-102, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

0800-02-06-.04 CONTENTS OF UTILIZATION REVIEW REPORT.

(1) The utilization review organization~~agent~~ shall communicate its determination to the parties within the timeframe established in Rule 0800-02-06-.06.

(2) ~~Any modification in the recommended treatment request, including medications shall be considered to be a denial of the entirety of the treatment for the purposes of utilization review reports, appeals and determinations.~~ If a Utilization Review appeal is filed, any recommended modification in a Utilization Review Report will be considered a denial for the purpose of evaluating the appeal by the Bureau.

~~(1)~~(3) If the utilization review determination is a denial of a recommended treatment, then the utilization review ~~agent~~organization shall submit a written utilization review report in conformity with the requirements of subsection (~~4~~2) of this Rule. If the utilization review determination is an approval of a recommended treatment, then the utilization review organization~~agent~~ shall submit written documentation of the determination; provided that the written documentation is not required to be a utilization review report in conformity with the requirements of subsection (~~4~~2) of this Rule. A utilization review report and other written documentation may be communicated through electronic means when available and appropriate.

~~(2)~~(4) The utilization review report shall adhere to the following requirements:

(a) The utilization review organization~~agent~~ shall ~~only~~ consider only the medical necessity, appropriateness, efficiency, and quality of the recommended treatment for the employee's condition. The consideration under quality may include factors such as timeliness, effectiveness, efficacy, conformity to the Bureau's adopted Treatment Guidelines, and ~~any~~ other evidence based treatment guidelines (including the comments and observations) approved by the Administrator. Treatment recommendations shall not be denied if they follow the Bureau's adopted Treatment Guidelines.

(b) Whenever a utilization review organization~~agent~~ determines that the recommended treatment will be denied, the utilization review report must contain specific and detailed reasons for the denial, a listing of all the documents used to make the determination, and a record of any other communication between the advisory medical practitioner and the requesting provider.

(c) The utilization review organization ~~agent~~ shall also include the name, address, phone number and qualifications of the advisory medical practitioner making a denial determination.

(d) All utilization review reports that deny or modify any portion of a recommended treatment, including medications, shall include an appeal form prescribed by the ~~Division~~Bureau. The utilization review organization~~agent~~ shall transmit a copy of the utilization review report and appeal form to the authorized treating physician, employee, and employer. Upon request, the utilization review ~~agent~~organization shall transmit any utilization review report to the Bureau~~Division~~. Failure to include the appeal form in the utilization review report and transmit such to all parties may result in sanctions and/or civil penalties pursuant to Rule 0800-02-06-.10 of this Chapter.

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

0800-02-06-.05 MANDATORY UTILIZATION REVIEW.

(1) ~~The parties are required to participate in utilization review under this Chapter whenever a dispute arises as to the medical necessity of a recommended treatment.~~If the employer as defined in 0800-02-06-.01 disagrees with the Authorized Treating Physician about the medical necessity of a recommended treatment, then the employer must participate in Utilization Review as defined in 0800-02-06-.01.

(2) Utilization review is required to be performed pursuant to the requirements of this Chapter whenever it is mandated by T.C.A. § 50-6-124 or the Bureau~~Division~~'s ~~Rules for Medical Payment Medical Cost Containment Program~~, Medical Fee Schedule, or In-Patient Hospital Fee Schedule rules contained in Chapters 0800-02-17, 0800-02-18, and 0800-02-19, respectively.

Authority: *T.C.A. §§ 50-6-102, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

0800-02-06-.06 TIME REQUIREMENTS.

(1) If a recommended treatment requires utilization review, then an employer shall submit the case to its utilization review ~~agent~~organization within three (3) business days of the authorized treating physician's notification of the recommended treatment, subject to subsection (5) of this Rule. The authorized treating physician's notification of the recommended treatment to the employer shall, at a minimum, be in a form that confirms transmission by showing the time and date of receipt (e.g., facsimile). The employer shall notify all parties upon submitting the case to its utilization review organization~~agent,~~ and shall also, if requested, notify the bureau~~any workers' compensation specialist assigned to the claim~~. If the employer fails to comply with this subsection, then the employer may be subject to sanctions and/or civil penalties pursuant to Rule 0800-02-06-.10 of this Chapter.

(2) The utilization review organization ~~agent~~ shall render the determination and communicate the determination in writing to the authorized treating physician, employee and employer within seven (7) business days of receipt of the case from the employer, subject to subsection (5) of this Rule. If the determination is~~f~~ a denial, the utilization review report shall list all records and supplemental material reviewed by the utilization review organization~~agent~~. Upon request, the authorized treating physician or employee may obtain copies of any such records and supplemental material reviewed by the utilization review organization~~agent~~. The utilization review report shall also include an appeal form prescribed by the Bureau~~Division~~ on which the utilization review organization~~agent~~ shall identify the state file number associated with the claim for which treatment is being recommended, if any, and shall identify the utilization review organization~~agent~~'s certification number issued by the Bureau~~Division~~. If the utilization review organization~~agent~~ fails to comply with this subsection, then the utilization review organization~~agent~~ may be subject to sanctions and/or civil penalties pursuant to Rule 0800-02-06-.10 of this Chapter.

(3) If a denial of the recommended treatment is appealed to the Bureau, then the employer as defined in Rule 0800-02-06-.01(8) ~~utilization review agent~~ shall send a copy of the utilization review report and all records reviewed by the utilization review organization~~agent~~ to the Bureau~~Division upon request~~ within five (5) business days of a ~~the~~ request from the Bureau.

(4) An approval of a recommended treatment by the employer's utilization review organization~~agent~~ shall be final and binding on the parties for administrative purposes.

(5) When there is a dispute over a request for information, the following timeframes shall apply:

(a) If the employer or utilization review organization~~agent~~ does not possess all necessary information in order to evaluate ~~dispute~~ the recommended treatment and ~~or~~ render the utilization review determination, then it shall immediately make a written request for such information to the authorized treating physician, who shall comply with the written request within five business days of receipt of the written request. The time requirements in subsections (1)-(2) of this Rule shall be tolled until the employer or utilization review organization~~agent~~ receives the necessary information or until the timeframe set forth in the preceding sentence expires, whichever occurs

first.

(b) Denials by a utilization review organization for inadequate information may be appealed pursuant to Rule 0800-02-06-.07, at which time the authorized treating physician shall submit all information deemed to be necessary by the BureauDivision. If the BureauDivision finds that the employer's or utilization review organizationagent's request did not pertain to necessary information, then the employer or utilization review organization agent may be subject to sanctions and/or civil penalties as set forth in Rule 0800-02-06-.10, at the discretion of the Administrator. In addition, if an authorized treating physician fails to cooperate and timely furnish all necessary information, records and documentation to an employer or utilization review organizationagent, then the authorized treating physician may be subject to sanctions and/or civil penalties as set forth in Rule 0800-02-06-.10, at the discretion of the Administrator.

(6) Employer's obligations upon receipt of utilization review determination:

(a) Within three (3) business days of receiving a utilization review determination that denies the recommended treatment, the employer as defined in Rule 0800-02-06-.02(8) shall give written notification to the employee and authorized treating physician as to whether the employer will authorize any of the recommended treatments that were denied by the utilization review organizationagent and what, if any, conditions shall apply to such authorization.

(b) If requested by the bureau, wWithin three (3) business days of receiving a utilization review determination that is either an approval or denial, the employer as defined in Rule 0800-02-06-.01 shall forward such determination to the bureauany workers' compensation specialist assigned to the claim. The employer shall also forward the notification described in subsection (6)(a) above, if applicable.

~~(a)~~

~~(b)~~ (7) (a) The utilization review decision to deny a recommended treatment shall remain effective for a period of 6 months from the date of the decision without further action by the employer as defined in Rule 0800-02-06-.01(8) if the request is for the same treatment, unless there is a material change documented by the treating physician that supports a new review or other pertinent information that was not used by the utilization review organization in making the initial decision. This provision also applies to medication denials, or modifications.

~~(c)~~ (b) This same 6-month provision applies to the determinations, including medications upheld by the Medical Director on appeal.

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed March 15, 1995; effective July 28, 1995. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-06-.07 APPEALS OF UTILIZATION REVIEW DECISIONS.

(1) Every denial of a recommended treatment shall be accompanied by a form prescribed by the BureauDivision that informs the employee and authorized treating physician how to request an appeal with the BureauDivision. The employee or authorized treating physician shall have thirty (30) calendar days from receipt of a denial by an employer as defined in Rule 0800-02-06-.01(8) to request an appeal with the BureauDivision. The form and accompanying instructions provided shall be the current form and instructions adopted by the Bureau and posted on the Bureau's website. The Medical Director may extend the time to appeal for good cause.

(2) Upon receipt of an appeal request by an employee or authorized treating physician:

(a) The BureauDivision or its designated contractor shall conduct the utilization review appeal. The BureauDivision or its designated contractor may contact the authorized treating physician for the peer review purpose s.of obtaining any necessary missing information. The BureauDivision or its designated contractor shall determine the medical necessity of the recommended treatment

as soon as practicable after receipt of all necessary information. The BureauDivision or its designated contractor shall then transmit such determination to the authorized treating physician, employee, and employer. The determination of the BureauDivision or its designated contractor is final for administrative purposes, subject to the provisions of subsections (3)-(5) of this Rule.

(b) If any information necessary for the determination of the appeal is not within the possession of the BureauDivision, then any party not providingwithholding such information when requested by the Bureau may be subject to sanctions and/or civil penalties as set forth in Rule 0800-02-06-.10, at the discretion of the Administrator.

(c) The BureauDivision shall charge fees, as posted on its website, pursuant to Public Chapter 289 (2013) and T.C.A. §50-6-204(j) for each utilization review appeal that it completes. The fee shall be paid by the employer within thirty (30) calendar days of the Bureau's completion of the appeal. Failure to comply with this requirement may result in a civil penalty of not less than $50 nor greater than $5000 per violation. If there is a pattern of violations, the Administrator may consider suspension of participation in the Bureau's utilization review program. If the fee and/or penalty remain unpaid for a further 30 days, the Administrator may impose further civil penalties or sanctions, or request that the Department of Commerce and Insurance apply penalties/sanctions in accordance with their policies. The appeal of any fee or civil penalty assessed pursuant to this section shall be made in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., and the most current procedural rules of Chapter 0800-02-13, as may be amended periodically in the future, which are incorporated as if set forth fully herein.

(a)

(3) If the determination of the BureauDivision is an approval of part or all of the recommended treatment, then the Medical Director shall issue a determination that specifies the treatment(s) that is/are medically necessary. a workers' compensation specialist shall issue an order for medical benefits. The penalty provisions of T.C.A. §§ 50-6-238(d) and 50-6-118 shall apply to orders these determinations issued pursuant to this subsection (3).

(4) For dates of injury on or after July 1, 2014, if the determination decision of the Medical Director is to approve part or all of the recommended treatment, then is final for administrative purposes. Wwithin seven (7) calendar days of the receipt of the determination letter from the Medical Director, referenced in subsection (3) above, the insurance carrier is required to inform the provider that the procedure and /or treatment, including medications, has been approved and request that the procedure or treatment be scheduled. The penalties for noncompliance with under this subsection are those set forth in T.C.A §50-6-118.

(5) A determination of denial is effective for a period of 6 months from the date of the determination as set forth in rule 0800-02-06-.06(7).

(6) (4)If theNotwithstanding the provisions of subsection (4), if any party, including an employee, employer, or a carrier, If a party disagrees with a determination of the Medical Director's recommended or denied treatment, then the aggrievedBureauDivision is a denial of for the recommended treatment, then the partiesy may file a Petition for Benefits Determination (PBD) with the Court Of Workers' Compensation Claims. Request for Benefit Review Conference or may request a waiver of the benefit review conference requirement, as applicable. within seven (7) business30 days of the receipt of the determination to request a hearing of the dispute in accordance with applicable statutory provisions.

(7) (5)Notwithstanding any other provision to the contrary, if the parties agree on a recommended treatment after the employer's utilization review organization agent has denied such, then the parties may, by joint agreement, override the determination of the employer's utilization review organizationagent or the Bureau and approve the recommended treatment. Such approval by agreement shall terminate any appeal to the BureauDivision and no fee shall be required of the employer for any such appeal that has yet to be determined by the BureauDivision.

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, 50-6-204, 50-6-233, 50-6-238, and Public Chapters 282 & 289 (2013).* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed March 15, 1995; effective July 28, 1995. Amendment filed October 12, 2007; withdrawn December*

12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-06-.08 UTILIZATION REVIEW FORMS.

(1) All utilization review organizations~~agents~~ must file with the Bureau the Utilization Review Notification form (Form C-35) electronically within three (3) business days ~~immediately~~ upon initiation of utilization review services on an employee's workers' compensation claim. Only one form should be filed for each date of a utilization review referral even if more than one treatment is reviewed on that same date. ~~Only one form is necessary for each claim.~~

(2) All utilization review organizations~~agents~~ must file with the Bureau the Utilization Review Closure form (Form C-36/C-37) electronically for each C-35 filed within three(3) business days~~immediately~~ following the conclusion of utilization review services on an employee's workers' compensation claim. ~~Only one form is necessary for each claim.~~

~~(3) All utilization review organizationsagents must file an annual report with the Medical Director of the Bureauon a form prescribed by the Division and accessible through the Division's website.~~ If requested by the Bureau, a utilization review organization shall be required to file an annual report with the Bureau detailing the utilization review organization's activities.
~~(3)~~

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

0800-02-06-.09 SUBCONTRACTORS.

(1) A utilization review organization~~agent~~ shall be responsible for any advisory medical practitioner(s), ~~and~~ registered nurse(s), or other utilization review organization(s) with whom the utilization review organization~~agent~~ subcontracts to perform utilization reviews. If a subcontractor performs a utilization review in accordance with the requirements of this Chapter, then the utilization review shall be treated as if performed by the contracting utilization review organization~~agent~~. A utilization review organization~~agent~~ shall be liable for all sanctions and/or civil penalties contained in this Chapter whenever its subcontractor violates any provision contained herein.

~~(2) A utilization review organizationagent may only subcontract with an advisory medical practitioner as defined in Rule 0800-02-06-.01(3) or registered nurse. All other subcontracting for utilization review services is prohibited and will result in the invalidity of such utilization review determination.~~

Authority: *T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

0800-02-06-.10 SANCTIONS AND CIVIL PENALTIES.

(1) Failure by an employer, insurer, third party administrator, or utilization review organization~~agent~~ to comply with any requirement in this Chapter, 0800-02-06, including but not limited to applying utilization review when required, proper inclusion of the forms with notification of a denial, and complying with the timeframes and registration for utilization review, shall subject such party to a penalty of not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000.00) ~~one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00)~~ per violation at the discretion of the Administrator. The Bureau~~Division~~ may also institute a temporary or permanent suspension of the right to perform utilization review services for workers' compensation claims, if the utilization review organizationagent has established a pattern of violations. This includes licensing and specialty requirements for an Advisory Medical Practitioner as defined in 0800-02-06-.01(3) and timeframes for the provision of medical records and other required documentation in 0800-02-06-.06(5)(b).
~~(1)(2)A health care provider is subject to the penalties enumerated in T.C.A. § 50-6-124(e) as if set forth fully herein.~~

(2) ~~(3)~~The penalty for failure to timely file the Form C-35 or Form C-36/C-37 in accordance with Rule 0800-02-06-.08 is twenty-five dollars ($25) for each fifteen (15) calendar days past the initiation deadlines listed above or conclusion of utilization review services, as applicable, per violation. The penalty for failure to file the annual report in accordance with Rule 0800-02-06-.08 is twenty-five dollars ($25) for each fifteen (15) calendar days past the final date for filing the annual report.

Authority: *T.C.A. §§ 4-5-314, 50-6-102, 50-6-118, 50-6-124, 50-6-126, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-06-.11 ISSUANCE AND APPEAL OF SANCTIONS AND CIVIL PENALTY ASSESSMENTS.

(1) An agency decision assessing sanctions and/or civil penalties shall be communicated to the party to whom the decision is issued, and the party to whom it is issued shall have fifteen (15) calendar days from the date of issuance to either appeal the decision pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., or to pay the assessed penalties to the Bureau ~~Department~~ or otherwise comply with the decision.

~~(1)~~(2)

~~(2)~~ In order for a party to appeal an agency decision assessing sanctions and/or civil penalties, the party must file a petition with the ~~Commissioner~~Administrator within fifteen (15) calendar days of the issuance of the decision. This petition shall be considered a request for a contested case hearing within the ~~Department~~Bureau pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., and the procedural rules of Chapter 0800-02-13, as amended periodically in the future, are incorporated as if set forth fully herein. The Bureau ~~Department~~ is authorized to conduct the hearing pursuant to T.C.A. § 50-6-118.

(3) If the agency decision assessing sanctions and/or civil penalties is not appealed within fifteen (15) calendar days of its issuance, the decision shall become a final order of the ~~Department~~ Bureau and is not subject to further review.

Authority: *T.C.A. §§ 4-5-314, 50-6-102, 50-6-118, 50-6-124, 50-6-126, and 50-6-233.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed October 12, 2007; withdrawn December 12, 2007. Repeal and new rule filed August 14, 2009; effective November 12, 2009.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on _____ 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 June 29, 2016.

Rulemaking Hearing Conducted on August 31, 2016.

Date:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on _____ 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 June 29, 2016.

Rulemaking Hearing Conducted on August 31, 2016.

Date: 10-26-16

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

SHARA HAMLETT
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

Subscribed and sworn to before me on: October 26, 2016

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20

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

Herbert H. Slatery III
Attorney General and Reporter

10/31/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/31/16

Effective on: 1/29/17

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY:	State Board of Accountancy
SUBJECT:	Licensing and Registration Requirements; Continuing Education; Fees
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 62-1-105(e)
EFFECTIVE DATES:	January 26, 2017 through June 30, 2017
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	Rule 0020-01-.04(1) is amended to replace the $50 fee for filing a notification of intent to practice with a $25 fee for transfer of grades or letter of good standing. According to the Board, the new fee applies to individuals seeking grades or other information in order to obtain a CPA license from another state. Rule 0020-01-.06 presently generally requires candidates for CPA licensure to complete all four test sections of the Uniform CPA Examination within the next six three-month cycles. The rule is amended to specify that a candidate who is ordered to military service will receive an automatic extension of exam credits for the length of time that the candidate was ordered to military service. Rule 0020-01-.08 presently requires payment of a $100 late fee for renewal of a license that has been expired for 31 days to one year. Licenses that are more than one year past the expiration date are subject to a reinstatement process. The rule is amended to apply the $100 late fee to renewals made between 31 days and six months after license expiration. A license that has been expired for six months or longer will be subject to the reinstatement process. Rule 0020-01-.13 is amended to delete the $120 biennial renewal fee for reciprocal certificates. It appears that reciprocal certificates will now be subject to the same $110 biennial renewal fee as applies to certificates that originated in Tennessee.

Rule 0020-05-.04 is amended to specify that a licensee who presents a continuing education course cannot "double dip" by crediting himself/herself with credit as both an instructor and an attendee at the same or substantially same course within a 12-month period.

Rule 0020-05-.04 also presently includes a general requirement that all continuing education for CPAs must meet the Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. The rule is amended to authorize a licensee, once per reporting period, to submit for approval up to 16 hours of continuing education from courses sponsored by organizations that are not registered with NASBA, and are either offered on a limited basis or industry specific.

Regulatory Flexibility Addendum

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

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

   The proposed amendments would affect any small business providing public accounting services. There are currently 2,035 licensed CPA and PA firms, 10,679 active licensed CPAs and 4,221 inactive licensed CPAs 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:

   The proposed amendments clarify existing rules and improve their compliance with the relevant statutes. The amendments do not impose a new requirement for professional skill necessary for the preparation of a report or record for compliance. However, the amendments create a cost to a licensee for the transfer of grades or a letter of good standing in order to obtain an out-of-state licensure. The cost for such services ($25.00) is less than the neighboring states that offer the same or similar services.

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

   Consumers and small businesses will likely benefit from the clarification of these rules which will prevent those ordered to military service from losing any credits obtained from the CPA examinations needed for licensure. In addition, charging a small fee for the transfer of grades or letter of good standing will permit the Board to automate and move those services online, thus improving access to such services for licensees.

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 amendments are not burdensome or intrusive to small businesses. There are no known less intrusive or less costly alternative methods. Rather, the amendments seek to expedite the process for licensees and small businesses, and thus are less burdensome than the existing rules

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:

   The amendments do not impose any new requirements on small businesses. Rather, the amendments will reduce the current administrative requirements by allowing for up to 16 hours of CPE from sources that are currently not sanctioned by the Board.

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 amendments are not expected 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 amendments allow for extension of time for examination credit to be given to applicants who are ordered to military service; impose a fee to individuals seeking grades or other information in order to obtain a CPA license from another state; and expand the category of CPE sponsors for the biennial requirements.

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

There are no federal laws or regulations mandating such a rule. T.C.A. § 62-1-105(e) authorizes the Board 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;

Applicants called to military service and existing licensees are the persons most affected by 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 or the necessity to promulgate 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;

Benjamin Glover & Wendy Garvin 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;

Benjamin Glover & Wendy Garvin 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

Benjamin Glover
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-770-0085
benjamin.glover@tn.gov

Wendy Garvin
Executive Director
500 James Robertson Parkway
Nashville, TN 37243
615-532-7397
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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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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-22-16
Rule ID(s): 6348-6349
File Date: 10/28/16
Effective Date: 1/26/17

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:	Division of Regulatory Boards, Tennessee Department of Commerce and Insurance
Contact Person:	Benjamin Glover
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	615-770-0085
Email:	Benjamin.Glover@tn.gov

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

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

Chapter Number	**Chapter Title**
0020-01	Board of Accountancy, Licensing and Registration Requirements
Rule Number	**Rule Title**
0020-01-.04	Fees
0020-01-.06	Examinations
0020-01-.08	Renewal of Licenses
0020-01-.13	Interstate Practice

Chapter Number	**Chapter Title**
0020-05	Continuing Education
Rule Number	**Rule Title**
0020-05-.04	Qualifying Programs

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0020-01
Board of Accountancy, Licensing and Registration Requirements

Amendments

Rule 0020-01-.04(1) Fees is amended by deleting subparagraph (h) in its entirety and substituting, instead, the following language so that, as amended, the subparagraph shall read:

(h) ~~Notification of intent to practice fee, sent to the Board and not the Board's designee under Rule 0020-01-.13(a)~~Transfer of grades or letter of good standing	~~Fifty dollars ($50.00) per year or part year~~Twenty-five dollars ($25.00) per request

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Rule 0020-01-.06 Examinations is amended by inserting a new paragraph after paragraph (11) consisting of the following language and numbering the new paragraph consistent with the existing ordering:

(12) Candidates who have been ordered to military service shall receive an automatic extension on any CPA examination credits, in order to complete the examination requirements of paragraph (6) of this rule, for the length of time that the candidate was ordered to military service.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Rule 0020-01-.08 Renewal of Licenses is amended by deleting paragraphs (6) and (7) in their entirety and substituting, instead, the following language so that, as amended, the paragraphs shall read:

(6) Licenses which are between one day and ~~one year~~six (6) months past the expiration date shall be considered delinquent. Licenses which are renewed between thirty-one (31) days and ~~one (1) year~~six (6) months following their expiration date will be assessed a late fee in the amount of one-hundred dollars ($100.00).

(7) Licenses which are more than ~~one (1) year~~six (6) months past the expiration date shall be deemed to have expired. Any individual wishing to reinstate an expired license shall comply with paragraph (4) of this rule and paragraph (6) of rule 0020-5-.03. The CPE hours required to be completed to reinstate an expired license are considered penalty hours and may not be used to offset the CPE hours required for the renewal of a license.

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-.13 Interstate Practice is amended by deleting paragraph (2) in its entirety and substituting, instead, the following language so that, as amended, the paragraph shall read:

(2) Fees

(a) An application for a reciprocal certificate shall be accompanied by a fee of one hundred dollars ($100.00).

(b) The fee for issuance of an initial reciprocal certificate shall be one hundred dollars ($100.00).

~~(c) The fee for biennial renewal of a reciprocal certificate shall be one hundred twenty dollars ($120.00).~~

Authority: T.C.A. §§ 62-1-105, 62-1-107, 62-1-110, 62-1-111, 62-1-113, 62-1-114, and 62-1-117.

Chapter 0020-05
Continuing Education
Amendments

Rule 0020-05-.04 Qualifying Programs is amended by deleting paragraph (5) in its entirety and substituting, instead, the following language so that, as amended, the paragraph shall read:

(5) Continuing education credit will be allowed for service as an instructor, discussion leader or speaker at any program for which participants are eligible to receive continuing education credit. Credit for such service will be awarded on the first presentation only, unless a program has been substantially revised. The amount of credit awarded shall not exceed three times the number of class hours; provided however, credit hours awarded under this paragraph shall not exceed fifty percent (50%) of the total number of credit hours required by this chapter within any two-year period. A licensee who receives credit for services as an instructor, discussion leader, or speaker of a CPE course cannot also receive credit for attendance at the same or substantially same course that the licensee served as an instructor, discussion leader, or speaker within the preceding twelve month period.

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Rule 0020-05-.04 Qualifying Programs is amended by inserting a new paragraph after paragraph (10) consisting of the following language and numbering the new paragraph consistent with the existing ordering:

(11) A licensee, once per reporting period, may submit for approval up to sixteen (16) hours of CPE from courses that are sponsored by organizations that are not registered with NASBA, and are either offered on a limited basis or industry specific.

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

* 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)
Janet Booker Davis	X				
Pamela Church	X				
Stephen Eldridge	X				
Larry Elmore	X				
Kevin Monroe	X				
Gay Moon	X				
Gabe Roberts	X				
Don Royston	X				
Casey Stuart	X				
Trey Watkins	X				
Judy Wetherbee	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy on 07/15/2016 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 10/05/2016

Signature:

Name of Officer: Benjamin Paul Glover

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: 10/05/2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

Rule of the Tennessee State Board of Accountancy
Chapter 0020-01 Board of Accountancy, Licensing and Registration Requirements
Rule 0020-01-.04 Fees
Rule 0020-01-.06 Examinations
Rule 0020-01-.08 Renewal of Licenses
Rule 0020-01-.13 Intestate Practice

Chapter 0020-05 Continuing Education
Rule 0020-05-.04 Qualifying Programs

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

10/19/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/28/16

Effective on: 1/26/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Commerce and Insurance, Insurance and Securities Division
SUBJECT:	Use of Senior-Specific Designations in Life Insurance and Annuities; Post Registration
STATUTORY AUTHORITY:	Tenn. Code Ann.§§ 56-8-101, et seq., 56-8-108, 48-1-102, 48-1-107, 48-1-109, 48-1-110 through 113, 48-1-115, 48-1-116, 48-1-121 (a)(2), Chapter 61 of the Public Acts of 2001, Section 222 of the Investment Advisors Act of 1940 as amended by Section 304(a) of the National Securities Markets Improvement Act of 1996, Sections 203A, 205, and 215 of the Investment Advisors Act of 1940, Section 17(f)(2) of the Securities Exchange Act of 1934, 17 CFR 240.1Ob-10, 17 CFR Section 240.17a-3 through 17 CFR Section 240.17a-5, 17 CFR Section 240.17a-11, 17 CFR Section 240.17f-2, 17 CFR 275.204-2, and the FINRA Rules of Fair Conduct authorize the Commissioner to promulgate rules in order to establish and set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made in connection with, life insurance, annuities, or securities in the State of Tennessee.
EFFECTIVE DATES:	January 9, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Department, the rulemaking hearing rule prohibits the use of false or misleading senior-specific certifications or designations in the sale of insurance and securities products in the State of Tennessee, based on a model regulation promulgated by the NAIC. Generally, the rule designates the use of senior-specific certifications or professional designations that either (1) have not been earned; (2) are nonexistent or self-conferred; (3) imply a level of qualification through education, experience or training that has not been achieved; or (4) are

conferred by an unqualified organization as an "unfair and deceptive act or practice in the business of insurance" for purposes of the Tennessee Unfair Trade Practices and Unfair Claims Settlement Act of 2009 and as a "dishonest or unethical business practice" for purposes of the Tennessee Securities Act of 1980. The rule creates a rebuttable presumption as to when a conferring organization is qualified and lists factors for consideration in determining whether a certification or professional designation is senior-specific.

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 1

One commenter submitted a comment in support of these rules which seek to regulate the use of senior-specific certifications and designations. The commenter indicated that obtaining such a certification or designation requires extensive training and testing, and further indicated her support by expressing that producers and agents who falsely claim to hold such certifications or designations create many problems for their elderly clients in the State of Tennessee.

Response to Comment 1

The Department agrees with this comment in support of these rules.

Comment 2

One commenter submitted a comment in support of these rules which seek to protect elderly consumers in the State of Tennessee by prohibiting the use of false or misleading senior-specific certifications or designations in the State of Tennessee.

Response to Comment 2

The Department agrees with this comment in support of these rules.

Comment 3

One commenter submitted a comment in support of these rules which seek to protect elderly consumers in the State of Tennessee by prohibiting the use of false or misleading senior-specific certifications or designations in the State of Tennessee. The commenter additionally proposed suggested language for 0780-01-94-.05(a), which differs from that of the model regulation, but indicated his support of the rules was not contingent upon adoption of the suggested language.

Response to Comment 3

The Department agreed with the comment in support of these rules. The Department does not agree that alternative language should be adopted in the insurance regulation. The language included in the Department's rulemaking hearing rules reflects that of the most current National Association of Insurance Commissioners ("NAIC") model regulation for the use of senior-specific designations and certifications. Furthermore, the language in this insurance rulemaking hearing rule mirrors that which is included in the securities rulemaking hearing rules also included herein. For consistency with the model and the related securities regulation, the Department believes it is important to adopt regulation language which is substantially similar to that which is contemplated in the model law.

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 Department of Commerce and Insurance has considered whether the rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-8-101, et seq., 56-8-108, 48-1-102, 48-1-107, 48-1-109, 48-1-110 through 113, 48-1-115, 48-1-116, 48-1-121(a)(2), Chapter 61 of the Public Acts of 2001, Section 222 of the Investment Advisors Act of 1940 as amended by Section 304(a) of the National Securities Markets Improvement Act of 1996, Sections 203A, 205, and 215 of the Investment Advisors Act of 1940, Section 17(f)(2) of the Securities Exchange Act of 1934, 17 CFR 240.10b-10, 17 CFR Section 240.17a-3 through 17 CFR Section 240.17a-5, 17 CFR Section 240.17a-11, 17 CFR Section 240.17f-2, 17 CFR 275.204-2, and the FINRA Rules of Fair Conduct authorize the Commissioner to promulgate rules in order to establish and set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made in connection with, life insurance, annuities, or securities in the State of Tennessee. The proposed rules prohibit the use of senior-specific certifications and professional designations in the sale of life insurance, annuities, and securities that is in any way misleading.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(1) The proposed rules will only apply to licensed insurance producers, broker-dealers, agents of broker-dealers, investment advisers, and investment adviser representatives seeking to use a senior-specific certification or designation in the sale of insurance or securities products to elderly consumers. While there may be some small business affected by these rules, it is anticipated that these rules will not have a measurable effect on those small businesses, as such businesses should not be misrepresenting their credentials to their clients in order to effectuate sales at the present time.

(2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule are anticipated to be minimal. Insurance producers, broker-dealers, agents of broker-dealers, investment advisers, or investment adviser representatives may have fees associated with obtaining a senior-specific certification or designation, but the maintenance required for tracking and reporting compliance is anticipated to be minimal.

(3) The effect on small businesses is minimal. The proposed amendment will have a positive effect on consumers as they will receive greater protection from false or misleading insurance and security sale practices, and will only affect those insurance producers, broker-dealers, agents of broker-dealers, investment advisers, and investment adviser representatives seeking to use a senior-specific certification or designation in the sale of insurance or securities products.

(4) It would be possible to create rules which require an insurance producer, broker-dealer, agent of a broker-dealer, investment adviser, and investment adviser representative seeking to use a senior-specific certification or designation in the sale of insurance or securities products to disclose when such a certification or designation was not obtained from an accredited agency. However, such a disclosure requirement would provide less protection to the public as it is possible consumers may be unaware of the distinction between accrediting bodies. Presumably, such a disclosure requirement would impose the same burden on an insurance producer, broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative as the requirements for obtaining a senior-specific certification or designation would remain the same.

(5) These proposed rules reflect the most recent model laws for use of senior-specific designations created by the National Association of Insurance Commissioners ("NAIC") and the North American Securities Administrators Association ("NASAA").

(6) These rules do not contemplate an exemption from the prohibition on use of false or misleading senior-specific designations or certifications in the sale of insurance or securities products. However, any insurance producer, broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative may avoid conflict with these rules by not indicating they hold any such designation or certification. These rules only apply when such a designation or certification is claimed.

Impact on Local Governments

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

These rules will not have an impact on local 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 prohibit the use of false or misleading senior-specific certifications or designations in the sale of insurance and securities products in the State of Tennessee, based on a model regulation promulgated by the NAIC.

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

Tenn. Code Ann. §§ 56-8-101, et seq., 56-8-108, 48-1-102, 48-1-107, 48-1-109, 48-1-110 through 113, 48-1-115, 48-1-116, 48-1-121(a)(2), Chapter 61 of the Public Acts of 2001, Section 222 of the Investment Advisors Act of 1940 as amended by Section 304(a) of the National Securities Markets Improvement Act of 1996, Sections 203A, 205, and 215 of the Investment Advisors Act of 1940, Section 17(f)(2) of the Securities Exchange Act of 1934, 17 CFR 240.10b-10, 17 CFR Section 240.17a-3 through 17 CFR Section 240.17a-5, 17 CFR Section 240.17a-11, 17 CFR Section 240.17f-2, 17 CFR 275.204-2, and the FINRA Rules of Fair Conduct authorize the Commissioner to promulgate rules in order to establish and set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made in connection with, life insurance, annuities, or securities in the State of Tennessee.

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

These rules will affect insurance producers, broker-dealers, agents of broker-dealers, investment advisers, and investment adviser representatives seeking to use senior-specific certifications or designations in the sale of insurance or securities in the State of Tennessee.

(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 attorney general opinions or any judicial rulings directly related 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;

None.

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

Michael Humphreys, Assistant Commissioner for Insurance; Frank Borger-Gilligan, Assistant Commissioner for Securities; Kaycee Wolf, Chief Counsel for Securities, Insurance, and TennCare Oversight.

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

Kathleen Dixon, Assistant General Counsel and Supervising Attorney for Insurance and TennCare Oversight.

(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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-532-6830; kathleen.dixon@tn.gov.

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

None.

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For Department of State Use Only

Sequence Number: 10-07-16
Rule ID(s): 6333-6334
File Date: 10/11/16
Effective Date: 1/9/17

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance and Securities
Contact Person:	Kathleen Dixon, Assistant General Counsel and Supervising Attorney for Insurance and TennCare Oversight
Address:	The Davy Crockett Tower 500 James Robertson Parkway, 8th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-6830
Email:	kathleen.dixon@tn.gov

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

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

Chapter Number	**Chapter Title**
0780-01-94	Use of Senior-Specific Designations in Life Insurance and Annuities
Rule Number	**Rule Title**
0780-01-94-.01	Purpose
0780-01-94-.02	Scope
0780-01-94-.03	Authority
0780-01-94-.04	Definitions
0780-01-94-.05	Prohibited Uses of Senior-Specific Certifications and Professional Designations

Chapter Number	**Chapter Title**
0780-04-03	Industry Regulation
Rule Number	**Rule Title**
0780-04-03-.02	Post Registration

New

Chapter 0780-01-94
Use of Senior-Specific Designations in Life Insurance and Annuities

Table of Contents

0780-01-94-.01 Purpose.

The purpose of this Chapter is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

Authority: T.C.A. §§ 56-8-101, et seq., and 56-8-108.

0780-01-94-.02 Scope.

This Chapter shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer.

Authority: T.C.A. §§ 56-8-101, et seq., and 56-8-108.

0780-01-94-.03 Authority.

(1) This Chapter is issued under the authority of T.C.A. §§ 56-8-101, et seq.

(2) Nothing in this Chapter shall limit the commissioner's authority to enforce existing provisions of law.

Authority: T.C.A. §§ 56-8-101, et seq., and 56-8-108.

0780-01-94-.04 Definitions.

For purposes of this Chapter,

(1) "Commissioner" means the commissioner of commerce and insurance; and

(2) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

Authority: T.C.A. §§ 56-8-101, et seq., and 56-8-108.

0780-01-94-.05 Use of Senior-specific Certifications and Professional Designations.

(1) (a) It is an unfair and deceptive act or practice in the business of insurance within the meaning of T.C.A. § 56-8-103 for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to

the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

(b) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

1. Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

2. Use of a nonexistent or self-conferred certification or professional designation;

3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:

(i) Is primarily engaged in the business of or instruction in sales or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(2) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of part 4. of subparagraph (1)(b) of this rule when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(a) The American National Standards Institute (ANSI);

(b) The National Commission for Certifying Agencies; or

(c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(3) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a senior-specific certification or professional designation indicating or implying that a person has a special certification or training in advising or servicing senior citizens or retirees the following factors to be considered shall include:

(a) Use of one or more words such as "senior", "retirement", "elder", or like words combined with one or more words such as "certified", "registered", "chartered", "adviser", "specialist", "consultant", "planner", or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(4) (a) For purposes of this chapter, a senior-specific certification or professional designation does not include a job title within an organization that is licensed or registered by a state, federal, or self-regulatory financial services regulatory agency, unless it is used in a manner that would confuse or mislead a reasonable consumer, when that job title:

1. Indicates seniority or standing within the organization; or

2. Specifies an individual's area of specialization within the organization; unless

3. Such job title is used in a way that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees.

(b) For purposes of this paragraph (4), financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, broker-dealer agents, investment adviser representatives, or investment companies as defined under the Investment Company Act of 1940.

Authority: T.C.A. §§ 56-8-101, et seq., and 56-8-108.

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-04-03
INDUSTRY REGULATION

TABLE OF CONTENTS

0780-04-03-.01 REGISTRATION.

(1) Broker-Dealer Registration.

(a) CRD System Eligible Broker-Dealer Applicants.

1. All broker-dealer applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following, unless waived by order of the commissioner.

(i) A Form BD and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score on an appropriate principal's examination taken by the executive officers or principals of the applicant.

2. Broker-dealers applying through the CRD System shall also, concurrently with the filing of an application through the CRD System, file with the Division, unless waived by the commissioner:

(i) (I) A copy of the applicant's most recent annual audited report filed pursuant to SEC Rule 17a-5 (17 C.F.R. §240.17a-5), plus all quarterly FOCUS Reports filed pursuant to that Rule since the most recent annual audited report; or

(II) If the applicant has not yet had an audit performed pursuant to its first fiscal year of existence, in lieu of complying with item (1)(a)2.(i)(I) of this Rule it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant. Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation

(Rule 0780-04-03-.01, continued)

of Accountant form to be executed by the accountant designated on such form; or

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

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

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

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

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

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

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

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

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

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

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all of the information requested by the Division pursuant to subparagraph (1)(a) or parts (1)(b)1.-5. of this Rule is received by the Division.

(d) All broker-dealers who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System.

(Rule 0780-04-03-.01, continued)

Applications for renewal of other broker-dealers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

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

(e) A person who acts as a "clearing broker-dealer" with respect to any securities transaction in Tennessee must register as a broker-dealer in Tennessee.

(f) A registered broker-dealer shall not conduct business in this state through an agent unless and until the broker-dealer has registered that agent in this state.

(g) The registration of a broker-dealer shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as a broker-dealer shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to withdraw on Form BDW by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form BDW filed on behalf of a registrant or a written request filed on behalf of an applicant is actually received by the Division through the CRD System or through a direct filing with the Division, whichever is appropriate for the applicant.

(h) Abandonment.

1. The Division may determine that an application to register a broker-dealer has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Agent Registration.

(a) CRD System Eligible Agent Applicants.

1. All agent applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following:

(Rule 0780-04-03-.01, continued)

(i) A Form U4 and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Agents applying for registration through the CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Agent Applicants. All applications for registration as an agent other than those specified in subparagraph (2)(a) of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such Form;

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

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

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

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (2)(a) or parts (2)(b)1.- 4. of this Rule is received by the Division.

(d) All agents who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of all other agents must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

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

(e) The registration of an agent shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an agent shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is received directly by the Division.

(f) There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his relationship with a broker-dealer with whom he is registered and commences a new relationship with another broker-dealer, a termination of

(Rule 0780-04-03-.01, continued)

registration shall be effected by the broker-dealer with which the individual agent had the prior relationship and an application for initial registration shall be filed by the broker-dealer with which the individual agent proposes to have the new relationship. The termination of registration shall be effected by the broker-dealer by submitting a Form U5 through the CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (2)(f) are not required in the event of a mass transfer of agent registrations pursuant to CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).

(g) All agent applicants who have voluntarily terminated registration with a broker-dealer and who are eligible under the rules established by the CRD System may apply for temporary registration with another broker-dealer through the CRD System by complying with the procedure required by the CRD System. In the case of all other voluntary terminations of a non-CRD agent's registration with a particular broker-dealer pursuant to subparagraph (2)(f) of this Rule, the Division may, in its discretion, allow the agent to be temporarily registered with the broker-dealer with whom the agent is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other broker-dealer. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an agent has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the CRD System has been abandoned, the Division shall, as provided through the routine operation of the CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall. by Order of Abandonment. cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(3) Investment Adviser Registration.

(a) IARD Eligible Investment Advisers.

1. All investment advisers who are eligible must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, unless waived by order of the commissioner:

(Rule 0780-04-03-.01, continued)

(i) A Form ADV and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfaction of the investment adviser representative examination requirements under paragraph (10) of this Rule by appropriate executive officers or principals of the applicant.

2. Investment advisers applying through the IARD shall also, concurrently with the filing of an application to the IARD, file with the Division, unless waived by order of the commissioner:

(i) (I) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its bylaws certified by the secretary of the corporation;

(II) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or

(III) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement, if any, certified by a managing member;

(ii) (I) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this item (3)(a)2.(ii)(I), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

(II) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit; and

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

(b) Other Investment Adviser Applicants. All applications for initial registration as an investment adviser other than those specified in subparagraph (3)(a) of this Rule shall

(Rule 0780-04-03-.01, continued)

be submitted in paper format directly to the Division and shall contain the following information, unless waived by order of the commissioner:

1. A Form ADV and all information and exhibits required by such Form;

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

3. (i) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its bylaws certified by the secretary of the corporation;

   (ii) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or

   (iii) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement certified by a managing member;

4. (i) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subpart (3)(b)4.(i), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

   (ii) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit;

5. Satisfaction of the investment adviser representative examination requirements under paragraph (10) of Rule 0780-04-03-.01 by appropriate executive officers or principals of the applicant;

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

7. Evidence of a temporary exemption or, prior to December 31, 2003, evidence of a continuing hardship exemption as issued by the Division or another state securities administrator, which exempts the applicant from the requirements to make electronic filings through the IARD as required by subparagraphs (3)(a) and (3)(e) of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.

(Rule 0780-04-03-.01, continued)

(c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through the IARD as required by the subparagraphs (3)(a) and (3)(e) of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.

1. Temporary Hardship Exemption.

(i) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the state securities administrator where the investment adviser's principal place of business is located, or the Division if appropriate, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and

(II) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven (7) business days after the filing was due.

(iii) Effective Date Upon Filing. The temporary hardship exemption will be deemed effective by the commissioner upon receipt of the complete Form ADV-H by the state securities administrator where the investment adviser's principal place of business is located or with the Division if such other state securities administrator does not routinely process applications for temporary hardship exemptions. Multiple temporary hardship exemption requests within the same calendar year may be allowed or disallowed at the discretion of the commissioner.

2. Continuing Hardship Exemption.

(i) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate to the satisfaction of the commissioner that the electronic filing requirements of these Rules are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the appropriate state securities administrator, or the Division if appropriate, at least twenty (20) business days before a filing is due; and

(II) If a filing is due to more than one (1) state securities administrator, the Form ADV-H must be filed with the state securities administrator where the investment adviser's principal place of business is located or with the Division if such state securities administrator does not routinely process applications for continuing hardship exemptions. If the Division is the state securities administrator which receives the application for a continuing hardship exemption, the commissioner will grant or deny the application within ten (10) business days after the filing of Form ADV-H or within ten (10) business days after the receipt of further information or materials requested from the

(Rule 0780-04-03-.01, continued)

investment adviser by the Division to determine eligibility for such exemption.

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

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

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

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

1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and

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

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

(g) Abandonment.

1. The Division may determine that an application to register an investment adviser has been abandoned if:

(Rule 0780-04-03-.01, continued)

(i) The application has been on file with the Division for more than one hundred eighty (180) days without the applicant becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the commissioner shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

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

(a) Agents. Each applicant for initial registration as an agent shall receive a passing grade on:

1. An examination administered by the FINRA, the New York Stock Exchange, or the SEC which tests the applicant's general knowledge of securities principles; and

2. The Uniform Securities Agent State Law Examination (USASLE/Series 63) or the Uniform Combined State Law Examination (UCSLE/Series 66) as either is administered by the FINRA.

(b) Principals. Each applicant for initial registration as a principal or supervisory officer of a broker-dealer must receive a passing grade on an appropriate securities examination for principals administered by the FINRA, the New York Stock Exchange, or the SEC.

(c) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (4), a duly granted examination waiver by the FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the examination requirements of part (4)(a)1. and subparagraphs (4)(b) and (4)(d) of this Rule.

(d) Each applicant for initial registration:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity for which the applicant is currently seeking registration within the preceding twenty-four (24) months.

(5) Registered Broker-Dealer Net Capital Requirements.

(a) FINRA Broker-Dealers and Exchange Members.

All broker-dealers, except government securities broker-dealers, who are members of the FINRA or a national exchange, shall have and maintain net capital in such minimum amounts as are prescribed for their activities under SEC Rule 15c3-1 (17 C.F.R. §240.15c3-1).

2. The aggregate indebtedness of each broker-dealer described in part (5)(a)1. of this Rule to all persons shall not exceed the levels prescribed under SEC Rule 15c3-1 (17 C.F.R. §240.15c3-1).

3. For purposes of this subparagraph (5)(a), the term "net capital" shall have the same meaning as in SEC Rule 15c3-1 (17 C.F.R. §240.15c3-1).

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

(c) Other Broker-Dealers.

1. Each registered broker-dealer that does not fall within subparagraphs (5)(a) and (5)(b) of this Rule shall have and maintain a minimum net capital of twenty-five thousand dollars ($25,000). If such broker-dealer has a net capital of less than one hundred thousand dollars ($100,000), it shall post a surety bond of ten thousand dollars ($10,000).

2. For purposes of this subparagraph (5)(c), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

(6) Investment Adviser Net Capital Requirements.

(a) Except as provided under subparagraph (6)(d) of this Rule, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars ($15,000).

(b) For purposes of this paragraph (6), "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied minus the following non-allowable assets:

1. In the case of an individual: home equity, home furnishings, automobiles, goodwill, and any other personal item not readily marketable;

2. In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates;

3. In the case of a partnership: advances or loans to partners or affiliates, and uncollateralized receivables from partners or affiliates; and

4. In the case of a limited liability company: advances or loans to members or affiliates, and uncollateralized receivables from members or affiliates.

(c) The Division may require that a current appraisal be submitted in order to establish the value of any asset.

(d) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of this paragraph (6) if:

1. The investment adviser is registered as an investment adviser in the state in which it maintains its principal place of business;

2. The investment adviser is in compliance with the applicable net capital requirement in the state in which it maintains its principal place of business; and

3. The investment adviser is in compliance with any bonding requirement in the state in which it maintains its principal place of business.

(e) For purposes of this paragraph (6), "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(7) Branch Offices and Other Business Locations of Broker-Dealers.

(a) Every broker-dealer registered in Tennessee shall notify the Division of the establishment of any branch office or other business location in Tennessee, as well as its current address and the name or names of the agent or agents currently in charge.

(b) Such notification of establishment, change in address, or change in identity of any agent or agents in charge thereof must be filed with the Division through the CRD System or through a direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.

(8) Withdrawal of Applications. An application for registration as a broker-dealer or investment adviser may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System and the IARD or, for other broker-dealers and other investment advisers, by filing a written request for withdrawal directly with the Division. An application for registration as an agent or investment adviser representative may be withdrawn prior to the effectiveness of the registration by following the procedures established by the CRD System or IARD or, for other agents and other investment adviser representatives, by filing a written request for withdrawal directly with the Division.

(9) Investment Adviser Representative Registration.

(a) IARD and CRD System Eligible Investment Adviser Representative Applicants.

1. All investment adviser representative applicants who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the application procedures required by the IARD and CRD System. The application filed through the IARD and CRD System shall contain the following:

(i) A Form U4 and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Investment adviser representatives applying for registration through the IARD and CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Representative Applicants. All applications for registration as an investment adviser representative other than those specified in subparagraph

(Rule 0780-04-03-.01, continued)

(9)(a) of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such Form;

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

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

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

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (9)(a) and parts (9)(b)1.-4. of this Rule is received by the Division.

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

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

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

(e) The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the IARD and CRD System, or for non-IARD and CRD System investment adviser representatives, the date upon which the Form U5 is received directly by the Division.

(f) There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates his relationship with an investment adviser with whom he is registered and commences a new relationship with another investment adviser, a termination of registration shall be effected by the investment adviser with which the individual investment adviser representative had the prior relationship and an application for initial registration shall be filed by the investment adviser with which the individual investment adviser representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 through the IARD and CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (9)(f) are not required in the event of a mass transfer of investment adviser representative

(Rule 0780-04-03-.01, continued)

registrations pursuant to IARD and CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).

(g) All investment adviser representative applicants who have voluntarily terminated registration with an investment adviser and who are eligible under the rules established by the IARD and CRD System may apply for temporary registration with another investment adviser through the IARD and CRD System by complying with the procedure required by the IARD and CRD System. In the case of all other voluntary terminations of a non-IARD and CRD System eligible investment adviser representative's registration with a particular investment adviser pursuant to subparagraph (9)(f) of this Rule, the Division may, in its discretion, allow the investment adviser representative to be temporarily registered with the investment adviser with whom the investment adviser representative is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other investment adviser. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an investment adviser representative has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the IARD and CRD System has been abandoned, the Division shall, as provided through the routine operation of the IARD and CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(i) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), and who has no place of business located within this state, is not required to register as an investment adviser representative of such investment adviser in this state.

(j) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule 203A-3 (17 C.F.R. §275.203A-3), is not required to register as an investment adviser representative of such investment adviser in this state.

(Rule 0780-04-03-.01, continued)

(k) An individual who solicits, offers, or negotiates for sale of or sells investment advisory services, but who is not compensated directly or indirectly for such activities, is not required to register as an investment adviser representative in this state.

(10) Examination of Investment Adviser Representatives.

(a) Each applicant for initial registration as an investment adviser representative:

1. Shall receive a passing grade on the Uniform Investment Adviser Law Examination (UIALE/Series 65) as administered by the FINRA;

2. Shall receive passing grades on the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (UCSLE/Series 66) as administered by the FINRA;

3. Shall have been registered as an investment adviser representative in any state within the preceding twenty-four (24) months; or

4. Shall currently hold one (1) of the following professional designations:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;

(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or

(v) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association, Inc.

(b) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (10), a duly granted examination waiver by the FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (10)(a)2. and subparagraph (10)(c) of this Rule.

(c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (10)(a)1.-2. of this Rule:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity appropriate to the required examination within the preceding twenty-four (24) months.

(Rule 0780-04-03-.01, continued)

(d) The requirements of this paragraph (10) shall apply to all applications for investment adviser registration and investment adviser representative registration filed with the Division on or after April 1, 2004.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, Public Acts of 2001, Chapter 61, §222 of the Investment Advisers Act of 1940, as amended by §304(c) of the National Securities Markets Improvement Act of 1996, 17 C.F.R. §240.15c3-1, 17 C.F.R. §240.15Ca2-2, 17 C.F.R. §240.17a-5, 17 C.F.R. §275.203A-3, and 17 C.F.R. §402.2.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.02 POST REGISTRATION.

(1) Broker-Dealer Required Records.

(a) Every broker-dealer registered in this state shall make and keep current the following books and records relating to its business, unless waived by order of the commissioner:

1. Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities (including certificate number), all receipts and disbursements of cash, and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, the settlement date, the name or other designation of the person from whom purchased or received or to whom sold or delivered, and some identification of the agent effecting the transaction;

2. Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;

3. Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or principals thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts, and all other debits and credits to such accounts.

4. Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and securities loaned;

(iv) Monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);

(v) Securities failed to receive and failed to deliver; and

(vi) A record of all puts, calls, spreads, and straddles and other options in which the broker-dealer has any direct or indirect interest or which it has

(Rule 0780-04-03-.02, continued)

granted or guaranteed, containing at least identification of the security and the number of units involved;

5. A memorandum of each order (order ticket) and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order instructions for execution, or, if it is not so transmitted, the time when it is received;

6. A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution;

7. Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or principals of the broker-dealer;

8. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers, partners, or principals showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried;

9. Copies of all communications, correspondence, and other records relating to securities transactions with customers;

10. A separate file containing all written complaints made or submitted by customers to the broker-dealer or agents relating to securities transactions;

11. A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability;

12. For each cash or margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority with respect to the account, the name and address of the beneficial owner of each account, and all margin and lending agreements; provided that in the case of a joint account, or of an account of a corporation, the records are required only as to persons authorized to transact business for the account;

13. A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month;

14. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, bylaws, minute books, and stock certificate books of the broker-dealer;

(Rule 0780-04-03-.02, continued)

15. A separate file containing copies of all advertising circulated by the broker-dealer in the conduct of its securities business;

16. A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form C-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in subparagraph (5)(a) of Rule 0780-04-03-.01. Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed paragraph (5) of Rule 0780-04-03-.01;

17. All records required under SEC Rule 17a-3 (17 C.F.R. §240.17a-3) not otherwise delineated in this paragraph (1); and

18. All records made and kept pursuant to Section 17(f)(2) of the 1934 Act and SEC Rule 17f-2 (17 C.F.R. §240.17f-2).

(b) All records required to be kept by subparagraph (1)(a) of this Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 17a-4 (17 C.F.R. §240.17a-4), whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) All broker-dealers who act as investment advisers shall maintain the records required by subparagraph (3)(a) of this Rule.

(2) Broker-Dealer Reporting Requirements.

(a) Financial Reports.

1. Upon request by the Division, each registered broker-dealer shall immediately file with the Division a report of its financial condition as of and for each requested fiscal year, including a balance sheet and income statement for such period. Such annual report shall be prepared and filed in accordance with the following requirements:

(i) The report shall be certified by an independent certified public accountant or independent public accountant;

(ii) The audit shall be made in accordance with generally accepted auditing standards. The examination shall include a review of the accounting system and the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;

(iii) The report shall be accompanied by an opinion of the accountant as to the broker-dealer's financial condition which is unqualified except as to matters which would not have a substantial effect on the financial condition of the broker-dealer. In addition, the accountant shall submit, as a supplementary opinion, any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed; and

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

(Rule 0780-04-03-.02, continued)

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

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

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

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

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

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

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

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

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

(c) Transfer of Control or Change of Name.

1. Each broker-dealer registered in this state shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

2. Such notice of transfer of control or change of name shall be submitted through the CRD System or directly to the Division, whichever is appropriate.

(Rule 0780-04-03-.02, continued)

3. Such notice of transfer of control or change of name shall be filed as an amendment to a broker-dealer's existing Form BD or as a complete new Form BD from the successor to a registered broker-dealer as provided under T.C.A. §48-1-110(c).

4. Each broker-dealer that files a notice of transfer of control or change of name shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

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

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

1. Immediate telegraphic, facsimile, or written notice whenever the net capital or liquid capital of the broker-dealer is less than that which is required by these Rules, specifying the respective amounts of its net capital, liquid capital, and aggregate indebtedness on the date of notice; and

2. A copy of every report or notice required to be filed by the broker-dealer pursuant to SEC Rule 17a-11 (17 C.F.R. §240.17a-11), contemporaneously with the date of filing with the SEC.

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

(3) Investment Adviser Required Records.

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

1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;

2. A record showing all payments received, including date of receipt, purpose, and from whom received, and all disbursements, including date paid, purpose, and to whom made;

3. A record showing all receivables and payables;

4. Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date on which, amount of, and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;

5. (i) Records showing separately all securities bought or sold by clients insofar as known to the investment adviser and indicating thereon:

(Rule 0780-04-03-.02, continued)

(I) Proper identification of the individual account;

(II) The date on which such securities were purchased or sold;

(III) The amount of securities purchased or sold; and

(IV) The price at which such securities were purchased or sold; or

(ii) A record showing:

(I) All securities bought or sold by or for the accounts of all clients of the investment adviser in each month;

(II) The total number of shares bought or sold; and

(III) The lowest and highest price at which such purchases or sales were made during the month;

6. Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer;

7. Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of discretionary authority;

8. Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions;

9. All partnership certificates and agreements, or all articles of incorporation, bylaws, minute books, and stock certificate books of the investment adviser;

10. A computation made monthly of the investment adviser's net capital; and

11. Copies of all written agreements, acknowledgements, and solicitor disclosure statements required by paragraphs (5-6) of Rule 0780-04-03-.13.

(b) All records required by subparagraph (3)(a) of this Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 204-2 (17 C.F.R. §275.204-2), whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

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

1. The investment adviser is registered as an investment adviser in the state in which it maintains its principal place of business;

2. The investment adviser is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business; and

(Rule 0780-04-03-.02, continued)

3. The provisions of this paragraph (3) would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

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

(4) Investment Adviser Reporting Requirements.

(a) 1. Each investment adviser registered in this state shall file with the Division, within ninety (90) days after the end of its fiscal year, a copy of its annual statement of financial condition (balance sheet) and thereafter, any other related financial statements which the Division may request.

2. For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

(i) Certified by an independent certified public accountant or independent public accountant;

(ii) Prepared in accordance with generally accepted accounting principles consistently applied; and

(iii) Accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

3. Such annual financial statements shall be sent to the Division by certified mail return receipt requested.

(b) 1. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of:

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

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

(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the

(Rule 0780-04-03-.02, continued)

investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, related to the investment adviser's securities or investment-related business.

2. Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (4)(b)1.(i-iii) of this Rule.

3. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in subparts (4)(b)1.(i-iii) of this Rule.

4. Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(c) 1. Each investment adviser, registered in this state, shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

2. Such notice of transfer of control or change of name shall be submitted directly to the Division or through a central registration depository designated by the Division, whichever is appropriate.

3. Such notice of transfer of control or change of name shall be filed as an amendment to an investment adviser's existing Form ADV or as a complete new Form ADV from the successor to a registered investment adviser as provided under T.C.A. §48-1-110(c).

4. Each investment adviser, which files a notice of transfer of control or change of name, shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

5. An investment adviser, which has made a notice filing with the Division pursuant to T.C.A. §48-1-109(c)(2), shall notify the Division of a transfer of control or a change of name by filing an amended Form ADV with the Division within thirty (30) days after the date on which the transfer of control or change of name becomes effective.

(d) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent application for registration shall be set forth in an amendment to Form ADV, pursuant to the updating instructions on Form ADV, and filed promptly through the IARD or directly with the Division, whichever is appropriate.

(e) Each investment adviser registered in this state shall file with the Division within ninety (90) days after the end of the registrant's fiscal year, an annual updated Form ADV prepared pursuant to the updating instructions on Form ADV. Such annual updating amendment to Form ADV shall be filed through the IARD or directly with the Division, whichever is appropriate.

(Rule 0780-04-03-.02, continued)

(5) Agent Reporting Requirements.

(a) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the agent and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the agent and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the agent and related to the agent's securities or investment-related business.

(b) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (5)(a)1.-3. of this Rule.

(c) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (5)(a)1.-3. of this Rule.

(d) Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(6) Prohibited Business Practices.

(a) The following shall be deemed "dishonest or unethical business practices" by a broker-dealer under T.C.A. §48-1-112(a)(2)(G), without limiting that term to the practices specified herein:

1. Causing any unreasonable delay in the delivery of securities purchased by any of its customers;

2. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer;

4. Executing a transaction on behalf of a customer without authority to do so;

5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer

(Rule 0780-04-03-.02, continued)

unless the discretionary power relates solely to the time and/or price for the execution of orders;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Executing any transaction in a margin account without obtaining from its customers a written margin agreement prior to settlement date for the initial transaction in the account;

8. Failing to segregate customers' free securities or securities in safekeeping;

9. Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

10. Charging its customers an unreasonable commission or service charge in any transaction executed as agent for the customer;

11. Entering into a transaction for its own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

12. Entering into a transaction for its own account with a customer in which a commission is charged;

13. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

14. Executing orders for the purchase or sale of securities which the broker-dealer knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

15. Violating any rule of a national securities exchange or national securities dealers association of which it is a member with respect to any customer, transaction, or business in this state;

16. Requiring investment advisory clients of a broker-dealer or an affiliated investment adviser to use the broker-dealer to execute trades for such client, and failing to disclose to such clients their rights to use any broker-dealer for trade execution;

17. For a registered broker-dealer which shares office space with, or occupies the same business premises as, a person not so registered, failing to disclose clearly, conspicuously, and continuously the relationship, or lack thereof, between it and such other person;

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; and

19. Failing to provide information requested by the Division pursuant to the Act or these Rules promulgated thereunder.

(Rule 0780-04-03-.02, continued)

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

1. Borrowing money or securities from a customer;

2. Acting as a custodian for money, securities, or an executed stock power of a customer;

3. Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

4. Operating an account under a fictitious name, unless disclosed to the broker-dealer that the agent represents;

5. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

6. Dividing or otherwise splitting commissions, profits, or other compensation receivable in connection with the purchase or sale of securities in this state with any person not registered as an agent for the same broker-dealer, or for an affiliate of the same broker-dealer;

7. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

8. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer or agent;

9. Executing a transaction on behalf of a customer without authority to do so;

10. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders;

11. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

12. Executing any transaction in a margin account without obtaining from his or her customers a written margin agreement prior to settlement date for the initial transaction in the account;

13. Charging a customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

14. Entering into a transaction for his or her broker-dealer's account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable

(Rule 0780-04-03-.02, continued)

presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

15. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

16. Executing orders for the purchase or sale of securities which the agent knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

17. Violating any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction, or business in this state;

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; and

19. Failing to provide information requested by the Division pursuant to the Act or these Rules.

(c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. §48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:

1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;

2. Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of the Act or these Rules;

3. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

4. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the investment adviser;

5. Executing a transaction on behalf of a customer without authority to do so;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Failing to segregate customers' free securities or securities in safekeeping;

8. Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

9. Entering into a transaction for the investment adviser's own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

(Rule 0780-04-03-.02, continued)

10. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client;

11. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;

12. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);

13. Charging a client an unreasonable advisory fee;

14. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

    (i) Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and

    (ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions, pursuant to such advice, will be received by the adviser or its employees;

15. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

16. Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-03-.09 under the Act;

17. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

18. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 0780-04-03-.07 under the Act;

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

    (i) The services to be provided;

    (ii) The term of the contract;

    (iii) The advisory fee;

(iv) The formula for computing the fee;

(v) The amount of prepaid fee to be returned in the event of contract termination or non-performance;

(vi) Whether the contract grants discretionary power to the adviser; and

(vii) That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;

20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public information by such investment adviser or any person associated with such investment adviser;

21. Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act;

22. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act, or any other practice that would violate Section 215 of the Investment Advisers Act;

23. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or these Rules;

24. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

25. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser; and

26. Failing to provide information requested by the Division pursuant to the Act or these Rules.

(d) Use of Senior-Specific Certifications and Professional Designations

1. The following shall be deemed "dishonest or unethical business practices" by a broker-dealer, agent of a broker-dealer, an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G):

(i) The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of T.C.A. § 48-1-112(a)(2)(G). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(I) Use of a certification or professional designation by a person who has not actually earned, or is otherwise ineligible to use, such

certification or designation;

(II) Use of a nonexistent or self-conferred certification or professional designation;

(III) Use of a certification or professional designation that indicates or implies a level of occupational qualifications, obtained through education, training, or experience, that the person using the certification or professional designation does not have; and

(IV) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

A. Is primarily engaged in the business of instruction in sales and/or marketing;

B. Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

C. Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

D. Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph i(IV) above when the organization has been accredited by:

(i) The American National Standards Institute; or

(ii) The National Commission for Certifying Agencies; or

(iii) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(i) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(ii) The manner in which those words are combined.

4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or

(Rule 0780-04-03-.02, continued)

federal financial services regulatory agency, when that job title:

(i) Indicates seniority or standing within the organization; or

(ii) Specifies an individual's area of specialization within the organization; unless

(iii) Such job title is used in a way that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this rule shall limit the Commissioner's authority to enforce existing provisions of law.

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

(7) Rules of Conduct - Broker-Dealers.

(a) Confirmations.

1. Every broker-dealer shall give or send to the customer a written confirmation, promptly after execution of and before completion of, each transaction. The confirmation shall set forth:

(i) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold, and any commission charged;

(ii) Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

(iii) When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer;

(iv) Whether the transaction was unsolicited; and

(v) The name of the agent that effected the transaction.

2. Compliance with SEC Rule 10b-10 (17 C.F.R. §240.10b-10) or with Article III, Section 12 of the FINRA Rules of Fair Practice shall be deemed compliance with this Rule.

(b) Every broker-dealer shall establish and keep current a set of written supervisory

(Rule 0780-04-03-.02, continued)

procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the Act, these Rules, and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its registered agents, offices, and transactions in this state. A complete set of the procedures and systems for applying them shall be kept and maintained at every branch office.

(c) A broker-dealer shall not enter into any contract with a customer if the contract contains any conditions, stipulations, or provisions binding the customer to waive any rights under the Act, these Rules, or order thereunder. Any such condition, stipulation, or provision is void.

(d) Any person receiving a commission, fee, or other remuneration directly or indirectly for soliciting prospective purchasers in this state in connection with any offering for which an exemption is claimed pursuant to Rule 0780-04-02-.08, the Tennessee Uniform Limited Offering Exemption, must be appropriately registered in this state pursuant to the Act and these Rules.

(8) Investment Adviser Representative Reporting Requirements.

(a) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the investment adviser representative and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the investment adviser representative and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser representative and related to the investment adviser representative's securities or investment-related business.

(Rule 0780-04-03-.02, continued)

(b) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (8)(a)1.-3. of this Rule.

(c) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (8)(a)1.-3. of this Rule.

(d) Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-107, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-113, 48-1-115, 48-1-116, 48-1-118, 48-1-121(a)(2), Public Acts of 2001, Chapter 61, §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, §§203A, 205, and 215 of the Investment Advisers Act of 1940, §17(f)(2) of the Securities Exchange Act of 1934, 17 C.F.R. §240.10b-10, 17 C.F.R. §240.17a-3 through 17 C.F.R. §240.17a-5, 17 C.F.R. §240.17a-11, 17 C.F.R. §240.17f-2, 17 C.F.R. §275.204-2, and the FINRA Rules of Fair Conduct.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1984. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Amendment filed December 31, 2008; effective March 16, 2009. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) Oil and Gas Issuer Dealer Registration.

(a) All applications for initial registration as an oil and gas issuer-dealer shall contain the following unless waived by order of the commissioner:

1. Form IN-0911, Application for Registration as an Oil and Gas Issuer-Dealer, containing all information and exhibits required by that Form;

2. A Consent to Service of Process and, if applicable, a Uniform Form of Corporate Resolution. Forms U-2 and U-2A are acceptable;

3. A nonrefundable filing fee of one hundred dollars ($100) by check made payable to the Tennessee Department of Commerce and Insurance; and

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

(b) All applications for registration must be filed with the Division at its current published address.

(c) All applications become effective by operation of law thirty (30) days after the date stamped on the Form IN-0911 by the Division or, in the event the application is incomplete, thirty (30) days after the date the application becomes complete, unless a

(Rule 0780-04-03-.03, continued)

proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A §48-1-110(f)(4) or the thirty (30) day period is waived in writing by the applicant.

(d) Abandonment.

1. The Division may determine that an application to register an oil and gas issuer-dealer has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Renewal of Registration.

(a) All registrations expire at midnight on December 31 of each year and must be renewed no later than ten (10) days prior to that date.

(b) All renewals shall contain the following:

1. The renewal form provided by the Division with all information and exhibits required by the form; and

2. A nonrefundable renewal fee of fifty dollars ($50) by check to the Tennessee Department of Commerce and Insurance.

(3) Amendments.

(a) The applicant shall notify the Division in writing of any changes in the information provided in the application within ten (10) days of occurrence.

Authority: *T.C.A. §§ 48-1-102, 48-1-107, 48-1-110, 48-1-111, 48-1-112, 48-1-113, 48-1-115, 48-1-116, 48-1-118, Public Acts of 2001, Chapter 61, §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, and §§201A, 205, and 215 of the Investment Advisers Act of 1940.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Amendment filed July 5, 1983; effective August 4, 1983. Amendment filed January 12, 1989; effective February 26, 1989. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) Associated Persons of an Issuer.

(Rule 0780-04-03-.04, continued)

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

1. Is not subject to a statutory disqualification, as the term is defined in Section 3(a)(39) of the 1934 Act, at the time of his participation;

2. Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities;

3. Is not at the time of his participation an associated person of a broker-dealer; and

4. Meets the conditions of any one of the following subparts (1)(a)4.(i), (1)(a)4.(ii), or (1)(a)4.(iii) of this Rule:

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

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

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

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

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

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

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

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

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

(I) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; provided, however, that the content of such

(Rule 0780-04-03-.04, continued)

communication is approved by a partner, officer, or director of the issuer;

(II) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses are limited to information contained in a registration statement filed under the Act or other offering document; or

(III) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated T.C.A. §48-1-109 solely by reason of his participation in the offer, sale, or transfer of securities of the issuer if he does not meet the conditions specified in this Rule.

(c) Definitions. When used in this Rule:

1. The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:

(i) The issuer;

(ii) A corporate general partner of a limited partnership that is the issuer;

(iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

(iv) An investment adviser, registered under the Investment Advisers Act to an investment company registered under the Investment Company Act, which is the issuer.

2. The term "associated person of a broker-dealer" means any partner, officer, director, or branch manager of such broker-dealer (or the person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer, any agent of such broker-dealer, or any employee of such broker-dealer, except that any person associated with a broker-dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker-dealer in that state solely because such person is an issuer of securities or an associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this Rule.

(2) A retail or financing institution whose dealings in securities are limited to transactions for its own account with institutional investors or other retail or financing institutions in notes or other evidences of indebtedness secured by mortgages, deeds of trust, or agreements for the sale of real estate or personality, will not be deemed a broker-dealer if the entire mortgage, deed of trust, or agreement, together with all notes or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(3) The exclusions set forth herein shall not exempt any person from the operation of the antifraud provisions of the Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-103, 48-1-109, 48-1-110(f), 48-1-115, 48-1-116, 48-1-121, §3(a)(39) of the Securities Act of 1933, and 17 C.F.R. §230.415.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective*

(Rule 0780-04-03-.04, continued)
February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.

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

(1) The following persons shall be exempted from the registration requirements for investment advisers set forth in T.C.A. §48-1-109:

(a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or

(b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.

(2) (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this Rule.

(b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this Rule.

(3) This Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) A person who is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act and who is an investment adviser as defined by T.C.A. §48-1-102(10) shall make the following filings with the Division through the IARD by complying with the filing procedures of the IARD:

(a) An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser and shall contain the following:

1. A Form ADV, and all information and exhibits required by such Form, as submitted to the SEC; and

2. The appropriate notice filing fee as set forth in the Act unless the investment adviser has previously paid the appropriate investment adviser registration filing fee for the current registration period.

(b) A renewal investment adviser notice filing and the appropriate renewal fee as set forth in the Act shall be filed pursuant to the renewal procedures of the IARD for each successive calendar year as is necessary in order to sustain compliance with T.C.A. §48-1-109(c)(2).

Rule 0780-04-03-.06, continued)

(c) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent notice filing shall be set forth in an amendment to Form ADV and filed promptly with the Division through the IARD.

(2) The filings herein required shall constitute filings with the commissioner pursuant to T.C.A. §48-1-121(c) and shall be submitted to the Division through the IARD or submitted to the Division in a manner consistent with the transmittal of such filings to the SEC pursuant to a temporary or continuing hardship exemption as granted by the SEC.

(3) The filings required in subparagraphs (1)(a) and (1)(b) of this Rule are deemed filed for purposes of T.C.A. §48-1-109(c)(2) and this Rule when they are complete. These filings are deemed to be complete when all required information and fees have been received by the Division.

(4) A complete or incomplete investment adviser notice filing may be withdrawn by the investment adviser by submission of a withdrawal filing through the IARD.

(5) Abandonment of Incomplete Investment Adviser Notice Filings.

(a) The Division may determine that an incomplete notice filing by an investment adviser has been abandoned if:

1. The incomplete notice filing has been on file with the Division for more than one hundred eighty (180) days without becoming complete and no written communication has been received by the Division in connection with the notice filing during such time period; or

2. A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the investment adviser.

(b) Upon the determination that an incomplete notice filing has been abandoned, the Division shall, by Order of Abandonment, cancel the incomplete notice filing manually or in the IARD without prejudice and, within thirty (30) days of such Order of Abandonment, send notice of such cancellation to the last known business address of the investment adviser.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, 48-1-121, Public Acts of 2001, Chapter 61, and §203 of the Investment Advisers Act of 1940, as amended by §307(a) of the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule filed January 13, 1983; effective February 14, 1983. Amendment filed May 6, 1987; effective June 20, 1987. Amendment filed September 18, 1987; effective November 2, 1987. Amendment filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person, within the meaning of T.C.A. §48-1-121(b)(3) of the Act, for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to commit an act or take any action, directly or indirectly, with respect to any funds or securities, unless:

(Rule 0780-04-03-.07, continued)

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;

(b) 1. All such funds of such clients are deposited in one (1) or more bank accounts which contain only clients' funds;

2. Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

3. The investment adviser maintains a separate record for each such account which shows:

(i) The name and address of the bank where such account is maintained;

(ii) The dates and amounts of deposits in and withdrawals from such account; and

(iii) The exact amount of each client's beneficial interest in such account;

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof;

(d) Such investment adviser sends to each client, not less frequently than once every three (3) months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period;

(e) Such investment adviser complies with the reporting requirements set forth under part (4)(a)2. of Rule 0780-04-03-.02; and

(f) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T.C.A. §48-1-109(c)(2).

(2) This Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the 1934 Act if (a) such broker-dealer is subject to and in compliance with SEC Rule 15c3-1 (17 C.F.R. §240.15c3-1) or (b) such broker-dealer is a member of an exchange whose members are exempt from SEC Rule 15c3-1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settlement practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(3) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirement of part (1)(b)3. of this Rule if such investment adviser:

(Rule 0780-04-03-.07, continued)

(a) Is registered as an investment adviser in the state in which the principal place of business of the investment adviser is located;

(b) Is in compliance with the books and records requirements of the state in which the investment adviser maintains its principal place of business; and

(c) The provisions of part (1)(b)3. of this Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

(4) An investment adviser in this state that fully complies with the conditions set forth under subparagraphs (1)(a-f) of this Rule may take or have custody of any funds or securities of any client.

(5) Any investment adviser that is not registered with the Division under T.C.A. §48-1-109(c)(2) that fully complies with SEC Rule 206(4)-2 (17 C.F.R. §275.206(4)-2) may take or have custody of any funds or securities of any client.

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

Authority: *T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, 48-1-121, Public Acts 1997, Chapter 164, §7, §222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996, §15 of the Securities Exchange Act of 1934, 17 C.F.R. §240.15c3-1, and 17 C.F.R. §275.206(4)-2.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(a) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred ($500) from such client, six (6) months or more in advance; or

(b) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(2) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph (1)(b) of this Rule for a period of ten (10) years from the time of the event.

(a) A criminal or civil action in a court of competent jurisdiction in which the person:

1. Was convicted, pleaded guilty, or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action") and such action involved: an

(Rule 0780-04-03-.08, continued)

investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

2. Was found to have been involved in a violation of an investment-related statute or regulation; or

3. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(b) Administrative proceedings before the SEC, any other federal regulatory agency, or any state agency (any of the foregoing being referred to hereafter as "Agency") in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities.

(c) Self-Regulatory Organization (SRO) proceedings in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars ($2,500); or otherwise significantly limiting the person's investment-related activities.

(3) The information required to be disclosed by paragraph (1) of this Rule shall be disclosed to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract.

(4) For purposes of this Rule:

(a) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(b) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(c) "Investment related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. §1 et seq.) or fiduciary.)

(Rule 0780-04-03-.08, continued)

(d) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.

(e) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(5) For purposes of calculating the ten (10) year period during which events are presumed to be material under paragraph (2) of this Rule, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

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

Authority: *T.C.A. §§ 48-1-115, 48-1-116, 48-1-121, §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §275.206(4)-4.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser;

(b) Which refers, directly or indirectly, to past specific recommendations of such investment adviser, which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one (1) year, if such advertisement and such list, if it is furnished separately:

1. States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

2. Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof; "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list";

(c) Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his own decisions as to which securities to buy and sell, or when to buy and sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

(Rule 0780-04-03-.09, continued)

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

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

Authority: *T.C.A. §§ 48-1-115, 48-1-116, 48-1-121, Public Acts of 1997, Chapter 164, §222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §275.206(4)-1.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) General requirement. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109(c) shall, in accordance with the provisions of this Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part 2 of its Form ADV or a written document containing at least the information then so required by Part 2 of Form ADV.

(2) Delivery.

(a) An investment adviser, except as provided in subparagraph (2)(b) of this Rule shall deliver the statement required by this subparagraph (2)(a) to an advisory client or prospective advisory client:

1. Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client; or

2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(b) Delivery of the statement required by subparagraph (2)(a) of this Rule need not be made in connection with entering into a contract for impersonal advisory services as defined in the Rule.

(3) Offer to deliver.

(a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.

(Rule 0780-04-03-.10, continued)

(b) The delivery or offer required by subparagraph (3)(a) of this Rule need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars ($200).

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of two hundred dollars ($200) or more, an offer of the type specified in subparagraph (3)(a) of this Rule shall also be made at the time of entering into an advisory contract.

(d) Any statement requested in writing by an advisory client pursuant to an offer required by paragraph (3) of this Rule must be mailed or delivered within seven (7) days of the receipt of the request.

(4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5) Other disclosures. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or these Rules or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

(6) Sponsors of wrap fee programs.

(a) An investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109(c) of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program, shall in lieu of the written disclosure statement required by paragraph (1) of this Rule and in accordance with other provisions of this Rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Part 2A Appendix 1 of Form ADV. Any additional information included in such disclosure should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(b) If the investment adviser is required under this paragraph (6) to furnish disclosure statements to clients or prospective clients of more than one (1) wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Form ADV Part 2A Appendix 1 that is not applicable to clients or prospective clients of that wrap fee program or programs.

(c) An investment adviser need not furnish the written disclosure statement required by subparagraph (6)(a) of this Rule to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(7) Definitions. For purposes of this Rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(Rule 0780-04-03-.10, continued)

1. By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

2. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

3. Any combination of the foregoing services.

(b) "Entering into", in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(c) "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(8) An investment adviser that fails to make written disclosure statements as required by this Rule shall be deemed to have engaged in a dishonest and unethical practice in the securities business as provided under T.C.A. §48-1-112(a)(2)(G).

Authority: *T.C.A. §§ 48-1-109, 48-1-112, 48-1-115, 48-1-116, §222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act, and 17 C.F.R. §275.204-4.* ***Administrative History:*** *Original Rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

(1) An individual associated person of a broker-dealer shall be exempt from the definition of "agent" as defined under T.C.A. §48-1-102(3) if such individual associated person effects any of the two (2) types of transactions in securities described in paragraph (2) of this Rule for a customer in this state and satisfies the following conditions:

(a) Such individual associated person is not ineligible to register in this state for any reason other than such a transaction in securities;

(b) Such individual associated person is registered with a securities association registered under the 1934 Act and is also registered in at least one (1) state; and

(c) The broker-dealer with which such individual person is associated is appropriately registered in this state.

(2) For purposes of this Rule, the following are the two (2) types of transactions referred to in paragraph (1):

(a) A transaction that is effected on behalf of a customer who:

1. Maintained an account with the broker-dealer employing the associated person for thirty (30) days prior to the date of the transaction; and

2. Was assigned to such individual associated person for fourteen (14) days prior to the day of the transaction and such individual associated person is registered with the state in which the customer was resident or was present for at least thirty (30) consecutive days during the one (1) year period prior to the day of the securities transaction; or

(Rule 0780-04-03-.11, continued)

(b) A transaction that is:

1. Effected on behalf of a customer who maintains an account with the broker-dealer for thirty (30) days prior to the date of the securities transactions; and

2. Effected during the period, beginning on the date on which such individual associated person of a broker-dealer files an application for agent registration in this state and ending on the earlier of:

(i) Sixty (60) days after the date on which the application is filed; or

(ii) The date on which this state notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

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

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

(a) The date of the transaction;

(b) The date of discovery of the customer's presence in this state for thirty (30) or more consecutive days; or

(c) The change in the customer's residence.

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

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-115, 48-1-116, 48-1-121, and §15 of the Securities and Exchange Act of 1934, as amended by §103(a) of the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.12 DEFINITION OF "CLIENT OF AN INVESTMENT ADVISER".

(1) Preliminary note. This Rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of T.C.A. §48-1-102(10)(E)(ii) and 48-1-102(10)(F) of the Act.

(2) General. For purposes of T.C.A. §§48-1-102(10)(E)(ii) and 48-1-102(10)(F), the following are deemed a single client:

(a) A natural person, and:

1. Any minor child of the natural person;

(Rule 0780-04-03-.12, continued)

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries; or

4. All trusts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries;

(b) 1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in part (2)(a)4. of this Rule), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partner, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

2. Two or more legal organizations referred to in part (2)(b)1. of this Rule that have identical owners.

(3) Special Rules. For purposes of this Rule:

(a) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this subparagraph (3)(a) with regard to any other owner;

(b) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(d) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(e) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are residents in this state; an investment adviser that has its principal office and place of business in this state must count all clients.

(4) Holding Out. Any investment adviser relying on this Rule shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of subparagraph (1)(b) of Rule 0780-04-03-.05, solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the 1933 Act.

Authority: *T.C.A §§ 48-1-102, 48-1-115, 48-1-116, §222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §275.203(b)(3)-1.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.13 CASH PAYMENTS FOR CLIENT SOLICITATIONS.

(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under T.C.A. §48-1-121(b)(2), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(a) The solicitor is not a person:

1. Subject to an order issued by the commissioner under T.C.A. §48-1-112(a) of the Act;

2. Convicted of any felony or any misdemeanor within the previous ten (10) years involving conduct described in T.C.A. §48-1-112(a)(2)(C);

3. Who has been found by the commissioner to have engaged, or has been convicted of engaging, in any of the conduct specified in T.C.A. §§48-1-121, 48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or has materially aided in the action in violation of T.C.A. §§48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or 48-1-121;

4. Subject to an order, judgment, or decree described in T.C.A. §48-1-112(a)(2)(D) of the Act; or

5. Described in SEC Rule 206(4)-3(a)(1)(ii) (17, C.F.R. §275.206(4)-3(a)(1)(ii));

(b) Such cash fee is paid pursuant to a written agreement to which the adviser is a party;

(c) Such cash fee is paid to a solicitor:

1. With respect to solicitation activities for the provision of impersonal advisory services only;

2. Who is:

(i) A partner, officer, director, or employee of such investment adviser; or

(ii) A partner, officer, director, or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

3. Other than a solicitor specified in parts (1)(c)1. or (1)(c)2. of this Rule if all of the following conditions are met:

(i) The written agreement required by subparagraph (1)(b) of this Rule:

(I) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received thereof;

(II) Contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these Rules or of the Investment Advisers Act and the rules promulgated thereunder, whichever is applicable; and

(III) Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule 0780-04-03-.10 or SEC Rule 204-3 (17 C.F.R. §275.204-3) as applicable, and a separate written disclosure statement described in paragraph (2) of this Rule;

(ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document; and

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subpart (1)(c)3.(ii) of this Rule shall contain the following information:

(a) The name of the solicitor;

(b) The name of the investment adviser;

(c) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(d) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(e) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(f) 1. The amount, if any, the client will be charged for the cost of obtaining his account in addition to the advisory fee; and

2. The differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(3) Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(4) For purposes of this Rule:

(a) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(b) "Client" includes any prospective client.

(c) "Impersonal advisory services" means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the

(Rule 0780-04-03-.13, continued)

objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

(5) The investment adviser shall retain a copy of each written agreement required by subparagraph (1)(b) of this Rule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02.

(6) The investment adviser shall retain a copy of each acknowledgement and solicitor disclosure document referred to in subpart (1)(c)3.(ii) of this Rule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02.

(7) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of paragraphs (5) or (6) of this Rule if such investment adviser:

(a) Is registered as an investment adviser in the state in which it maintains its principal place of business;

(b) Is in compliance with applicable books and records requirements of the state in which it maintains its principal place of business; and

(c) The provisions of paragraphs (5) or (6) of this Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

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

Authority: *T.C.A. §§ 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-121, Public Acts of 1997, Chapter 164, 17 C.F.R. §275.204-3, and 17 C.F.R. §275.206(4)-3.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.14 AGENCY CROSS TRANSACTIONS FOR INVESTMENT ADVISORY CLIENTS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment adviser acting as principal for his own account to:

(a) Knowingly sell any security to or to purchase any security from a client without:

1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and

2. Obtaining the consent of the client to such transaction; or

(b) Knowingly effect any sale or purchase of any security for the account of such client, while acting as broker-dealer for a person other than such client, without:

1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and

2. Obtaining the consent of the client to such transaction.

(Rule 0780-04-03-.14, continued)

The prohibitions of this paragraph (1) shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

(2) An investment adviser registered under T.C.A. §48-1-109, or a person registered as a broker-dealer under T.C.A. §48-1-109 and controlling, controlled by, or under common control with an investment adviser registered under T.C.A. §48-1-109 shall be deemed not to be in violation of the provisions of this Rule and T.C.A. §48-1-121(b)(2) in effecting an agency cross transaction for an advisory client, if:

(a) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this Rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure with respect to agency cross transactions for which the investment adviser or such other person will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(b) The investment adviser, or any other person relying on this Rule, sends to each client a written confirmation at or before the completion of each such transaction, which confirmation includes:

1. A statement of the nature of such transaction;

2. The date such transaction took place;

3. An offer to furnish upon request, the time when such transaction took place; and

4. The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this paragraph (2) in connection with the transaction;

(c) The investment adviser, or any other person relying on this Rule, sends to each client, at least annually, and with or as part of any written statement or summary of such account form the investment adviser of such other person:

1. A written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary; and

2. The total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this Rule in connection with such transactions during such period;

(d) Each written disclosure and confirmation required by this Rule includes a conspicuous statement that the written consent referred to in subparagraph (2)(a) of this Rule may be revoked at any time by written notice to the investment adviser, or any other person relying on this paragraph, from the advisory client; and

(e) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

(3) For purposes of this Rule, the term "agency cross transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or

(Rule 0780-04-03-.14, continued)

under common control with such investment adviser, acts as broker-dealer for both such advisory client and for another person on the other side of the transaction.

(4) For purposes of part (2)(b)4. of this Rule, the written confirmation referred to in such Rule may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer if:

(a) In the case of a purchase, neither the investment adviser nor any other person relying on paragraph (2) was participating in a distribution; or

(b) In the case of a sale, neither the investment adviser nor any other person relying on this paragraph was participating in a tender offer.

(5) This Rule shall not be construed as relieving in any way the investment adviser or another person relying on this Rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may imposed by T.C.A. §48-1-121(b)(2) or by other applicable provisions of the Act.

Authority: *T.C.A. §§ 48-1-109, 48-1-115, 48-1-116, 48-1-121, Public Acts of 1997, Chapter 164, §7, §222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §275.206(3)-2.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.15 EXEMPTION FROM BROKER-DEALER REGISTRATION FOR CERTAIN CANADIAN BROKER-DEALERS.

(1) Prior to effecting any securities transaction pursuant to the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g), a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:

(a) Initial exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;

3. Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

4. Copy of the disclosure which will be made to customers that the Canadian broker-dealer is not subject to the full regulatory requirements of the Act;

5. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

(Rule 0780-04-03-.15, continued)

6. Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to part (1)(a)5. of this Rule;

7. Form U-2 Uniform Consent to Service of Process;

8. The appropriate fee as set forth in the Act; and

9. Such other information as the Division may request from a particular Canadian broker-dealer to determine eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).

(2) Each exemption notice filing expires each December 31 unless timely renewed. An exemption notice filing is timely renewed for the next successive calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and on or before the immediately following December 31:

(a) Renewal exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

3. The appropriate fee as set forth in the Act; and

4. Such other information as the Division may request from a particular Canadian broker-dealer to determine continuing eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).

(b) Exemption notice filings for which incomplete renewal exemption notice filings have been submitted will expire at the relevant December 31 unless completed by the filer on or before that December 31.

(3) Abandonment.

(a) The Division may determine that an incomplete initial exemption notice filing has been abandoned if:

1. An incomplete filing has been on file with the Division for more than one hundred eighty (180) days without becoming completed and no written communication has been received by the Division from the filer in connection with the filing during such period; or

2. A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the filer.

(b) Upon the determination that an incomplete initial exemption notice filing has been abandoned, the Division may, by Order of Abandonment, cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail the Order of Abandonment to the last known business address of the filer.

(Rule 0780-04-03-.15, continued)

(4) Termination and Withdrawal.

(a) A Canadian broker-dealer may terminate its initial exemption notice filing or renewal exemption notice filing by filing a written request for termination directly with the Division. Annual fees previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.

(b) An incomplete initial exemption notice filing, a renewal exemption notice filing, or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.

(c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g) shall immediately notify the Division in writing of the cause of such ineligibility and shall simultaneously, as is appropriate, request a termination or withdrawal pursuant to subparagraphs (4)(a) or (4)(b) of this Rule.

(5) The filings herein required shall constitute filings with the commissioner pursuant to T.C.A. §48-1-121(c).

Authority: *T.C.A. §§ 48-1-102, 48-1-109(g), 48-1-112, 48-1-115, 48-1-116, 48-1-121, and 48-1-124(e).* ***Administrative History:*** *Original rule filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 8/16/2016 (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: December 16, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). February 17, 2016

Date: 8/16/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

DENISE M. LEWIS NOTARY PUBLIC STATE OF TENNESSEE WILSON COUNTY, TENN. My Commission Expires

Subscribed and sworn to before me on: 8/16/16

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/6/2016
Date

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Filed with the Department of State on: 10/11/16

Effective on: 1/9/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Commerce and Insurance, Division of Regulatory Boards
SUBJECT:	Debt Management Services
STATUTORY AUTHORITY:	Tenn. Code Ann., Section 47-18-5532
EFFECTIVE DATES:	January 26, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Department, the proposed rule sets out the requirements for the registration, operation and potential discipline for debt management services businesses in Tennessee. In addition, the rule sets forth the requirements for the submissions of fingerprints that are required as a part of the application process for registered companies. The rule only allows electronic fingerprints to be submitted and those must no longer be submitted to the commission but either directly to the TBI or to an approved vendor to provide to the TBI. The rule was made necessary due to the TBI recently stating that it will no longer accept physical fingerprint cards from the commission. Further, the rule establishes guidelines for the commissioner to approve of different accreditation and certification vendors. The Department further states that the rule was promulgated due to a legislative change from Tenn. Code Ann., Section 47-18-5542 (effective May 4, 2015 for rulemaking purposes) which moved the debt management services program from the Division of Consumer Affairs to the Division of Regulatory Boards. The purpose of the rule 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. Among the more significant differences between the current rules and this rule are:

1. This rule changes the duration of registrations and renewals from 12 months to 24 months and changes the fee for a registration or renewal from $2,000 to $4,000;

2. This rule adds the aforementioned electronic fingerprinting requirement;

3. This rule adds provisions concerning inflationary adjustment for purposes of calculating base year;

4. Under present law, one of the requirements for registration as a debt management service provider is accreditation by an independent accrediting organization approved by the Commissioner. This rule specifies that accreditation by the Council on Accreditation meets the present law requirement. This rule also provides a process for the Director of the Division to approve independent accrediting organizations; and

5. Under present law, another of the requirements for registration as a debt management service provider is providing evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist. This rule specifies that accreditation by the National Foundation for Credit Counseling or the Financial Counseling Association of America meets the present law requirement. This rule also provides a process for the Director of the Division to approve a different training program or certifying organization.

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 affect any small business that qualifies as a Debt-Management Service business. There are currently 30 Debt Management 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:

   The majority of the rules are being moved from the Consumer Affairs chapter to the Division of Regulatory Boards.

   This new fingerprinting rule could create a cost to travel to a location to obtain an electronic fingerprint. However, some licensees may be able to provide fingerprints to an electronic fingerprinting vendor electronically without the need to travel to a location.

   The new accreditation and certification rule would only create a cost of submitting materials for evaluation for those businesses relying on accreditations or certifications from entities not yet approved by the commissioner. This could be done electronically at a negligible cost.

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

   The moved rules will have no effect on small businesses or consumers.

   The new fingerprinting rule: Small businesses would potentially decrease their costs in processing fingerprints by $12 but would have to do such through a private designated vendor. These rules will have no effect on consumers.

   The accreditation and certification rules: These new rules ease the requirements to ensure that the accreditations and certifications debt-management servicers need are easier to obtain by opening the competitive field for more entities to offer the accreditations and certifications.

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. Mississippi and Pennsylvania have statutory schemes similar to the Tennessee Uniform Debt-Management Services Act and Pennsylvania seems to have similar rules as counterparts at 10 Pa. Code § 57.1 through 57.33.

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, operation and potential discipline for debt-management services businesses in Tennessee. In addition, these rules set forth the requirements for the submissions of fingerprints that are required as a part of the application process for registered companies. This new rule only allows electronic fingerprints to be submitted and those must no longer be submitted to the commission but either directly to the TBI or to an approved vendor to provide to the TBI. This rule was made necessary due to the TBI recently stating that it will no longer accept physical fingerprint cards from the commission. Further, the new rules establish guidelines for the commissioner to approve of different accreditation and certification vendors.

(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 debt-management 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 or the necessity to promulgate 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

(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

(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

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

These rules are being promulgated due to a legislative change from T.C.A. § 47-18-5542 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. The new rules added to those that are moving are to ensure fingerprinting that is required and to expand the approved vendors of certification and accreditation for debt-management services businesses.

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For Department of State Use Only

Sequence Number: 10-23-16
Rule ID(s): 6350-6351
File Date: 10/28/16
Effective Date: 1/26/17

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: Debt-Management Services
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
X Repeal

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

Chapter Number	**Chapter Title**
0780-05-18	Debt Management Services
Rule Number	**Rule Title**
0780-05-18-.01	Purpose of Rules
0780-05-18-.02	Short Title
0780-05-18-.03	Retained Powers
0780-05-18-.04	Definitions
0780-05-18-.05	Administration of Act
0780-05-18-.06	Applicability
0780-05-18-.07	Registration Application
0780-05-18-.08	Renewal of Registration
0780-05-18-.09	Fees

0780-05-18-.10	Submission of Information
0780-05-18-.11	Standards of Practice
0780-05-18-.12	Examinations, Records, and Reports
0780-05-18-.13	Fingerprinting
0780-05-18-.14	Inflationary Adjustment
0780-05-18-.15	Accreditation
0780-05-18-.16	Certification
0780-05-18-.17	Severability

Chapter Number	**Chapter Title**
0780-08-01	Debt Management Services
Rule Number	**Rule Title**
0780-08-01-.01	Purpose of Rules
0780-08-01-.02	Short Title
0780-08-01-.03	Retained Powers
0780-08-01-.04	Definitions
0780-08-01-.05	Administration of Act
0780-08-01-.06	Applicability
0780-08-01-.07	Registration Application
0780-08-01-.08	Renewal of Registration
0780-08-01-.09	Fees
0780-08-01-.10	Submission of Information
0780-08-01-.11	Standards of Practice
0780-08-01-.12	Examinations, Records, and Reports
0780-08-01-.13	Severability

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Debt-Management Services

New Rules

0780-05-18

0780-05-18

Rules
Of
Tennessee Department Of Commerce And Insurance
Division Of Consumer Affairs
0780-05-18
Rules And Regulations For Debt Management Services
Table Of Contents

0780-05-18-.01 Purpose of Rules.

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

Authority: T.C.A. §§ 47-18-5501 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.02 Short Title.

These rules may be cited as the Tennessee Debt-Management Services Rules.

Authority: T.C.A. § 47-18-5501. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.03 Retained Powers.

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

Authority: T.C.A. § 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.04 Definitions.

(1) When used in these rules and in the Uniform Debt-Management Services Act, unless the context otherwise requires:

(a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, and its codification in Tennessee Code Annotated.

(b) "Branch office" means any office of a provider within this state other than its principal place of business within this state.

(c) "Director" shall mean the Director of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee.

(d) "Division" shall mean the Director, staff, employees, and agents of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act.

(e) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated pursuant thereto to the extent such rules are not inconsistent with the Act or these rules.

(2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

Authority: T.C.A. §§ 47-18-5502 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.05 Administration of Act.

(1) General

(a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:

1. to issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5533 (a)(1),(2),(3) and (b), or 47-18-5534(b) and (c) in any contested case, as such term is defined in the UAPA; and

2. to adopt any rule as such term is defined in the UAPA.

(b) Without limiting the foregoing delegation, the Director is expressly empowered to:

1. conduct examinations and investigations as provided by T.C.A. § 47-18-5532(b);

2. issue registrations; and

3. accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.

(c) Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation, or rule.

(2) Filing Requirements

(a) Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8½ by 11 or 8½ by 14 inches in size.

(b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.

(c) Exhibits may be attached or filed separately and shall be properly marked or identified.

(d) Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.

(e) All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and other information required or requested pursuant to the Act or these rules may be submitted to the Division in the paper format prescribed in this subpart (e) or through electronic data-gathering, access, retrieval, and storage methods acceptable to the Division.

(f) Unless expressly required or requested, only the original executed copy of each form is required.

(3) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for copying and associated labor.

Authority: T.C.A. §§ 47-18-5501, 47-18-5505, 47-18-5506, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.06 Applicability.

(1) A person forming an agreement to provide debt-management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.

(2) Any person conducting business in this state as a provider must apply to the Division to become registered.

(3) Debt-management services do not include:

(a) legal services provided by an attorney licensed and in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship;

(b) accounting services provided by a certified public accountant licensed and in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship;

(c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider and in good standing or registered as an investment adviser representative and in good standing in this state and who holds one of the following professional designations during the entire time services are provided:

1. Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC), awarded by the American College of Financial Services, Bryn Mawr, PA;

3. Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; or

5. Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association of America, Inc.

(d) services provided within the scope of the business or profession of:

1. a judicial officer or person acting under court order or administrative order;

2. an assignee for the benefit of creditors;

3. a bank or government regulated bank affiliate;

4. a title insurer, escrow company, or person providing bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Authority: T.C.A. §§ 47-18-5502, 47-18-5503 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.07 Registration Application.

(1) Applications for registration shall be submitted on forms approved by the Director.

(2) Any application submitted without required information or failing to meet any requirement for registration will be held by the program office, and written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration will be sent to the applicant. The application will be held in "pending" status for a reasonable period of time, but such period is not to exceed one hundred eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification, the application will be closed.

(3) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Any application once submitted may be withdrawn, provided, however, that the application fee shall not be refunded.

(5) Applications must be complete before they are submitted for consideration. Applications shall at a minimum include:

(a) a complete and properly executed application form signed under penalty of perjury and before a notary by the person applying;

(b) a non-refundable application fee;

(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;

(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars ($250,000).

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.

2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

(e) the charter or articles of organization of the applicant;

(f) a description of any ownership interest of greater than ten percent (10%) by a director, owner, or employee of the applicant in:

1. any affiliate of the applicant; or

2. any entity that provides products or services to the applicant or any individual related to the applicant's debt-management services.

(g) the name and address of each entity that owns an interest in or is otherwise affiliated with or controls, directs, or influences the operations of the applicant;

(h) the name and address of each entity in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant;

(i) the names and addresses of all employers of each of the applicant's directors during the immediately preceding ten (10) years;

(j) the names, addresses, and amounts of compensation for the five (5) most highly compensated employees of the applicant for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in T.C.A. § 47-18-5506(17);

(k) the identity of each director who is an affiliate as defined by T.C.A. § 47-18-5502(2);

(l) evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. §501, if applicant is a not-for-profit corporation and exempt from taxation;

(m) consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee;

(n) disclosure of and identification information for all trust accounts;

(o) irrevocable consent to the authority of the Administrator to review and examine all trust accounts;

(p) applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);

(q) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;

(r) evidence of certification by an independent certifying program approved by the Director of all counselors and debt specialists conducting business in this state on behalf of the applicant;

(s) detailed descriptions of the three most common education programs provided by the applicant to Tennessee consumers and copies of all materials associated with the education programs;

(t) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model used by the applicant to evaluate the financial conditions of Tennessee consumers;

(u) copies of each agreement form provided by the applicant to Tennessee consumers and any other documents or information required to be signed by or provided to a Tennessee consumer;

(v) a schedule of all fees and charges, including any recommended donations, provided by the applicant to Tennessee consumers;

(w) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The sworn criminal history records check must be submitted directly by the criminal history records check provider to the Division. Applicants who have had these sworn criminal history records checks performed for the purpose of providing debt-management services in another state within twelve (12) months prior to submitting the application may have

the results of those records checks submitted directly by the other state to the Division as certified business records of the other state.

(x) disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and

(y) any other information required to determine whether the application should be approved or denied.

(6) An applicant shall notify the Division within ten (10) days after a change occurs in any information originally reported in the initial registration application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.08 Renewal of Registration.

(1) Registrations shall expire on the last day of the twenty-fourth (24^{th}) month following their issuance or renewal and shall become invalid on such date unless renewed prior to their expiration date.

(2) Renewal applications must be received by the Division not less than thirty (30) days or more than sixty (60) days prior to the expiration of a registration.

(3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration and shall surrender the registration certificate to the Division immediately upon its expiration.

(4) Applications for the renewal of registrations shall be made on forms provided by the Director.

(5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and these rules are received.

(6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.

(7) A provider's application for renewal of its registration shall include at a minimum:

(a) a complete and properly executed renewal application form signed by the provider's representative under penalty of perjury before a notary;

(b) the applicable non-refundable renewal application fee as provided in Rule 0780-05-18-.09, below;

(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;

(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars ($250,000);

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.

2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

(e) disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable;

(f) the applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);

(g) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;

(h) evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant;

(i) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The criminal history records check must be submitted directly to the Division by the criminal history check provider. Applicants that have had a criminal records check performed for the purpose of registration as a provider in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as a certified business record of the other state;

(j) disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period;

(k) disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and

(l) any other information required to determine whether the application should be approved or denied.

(8) An applicant shall notify the Division within ten (10) days after a change occurs in any of the information originally reported in the renewal application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.09 Fees.

(1) Nonrefundable debt-management services registration.....$4,000.00

(2) Nonrefundable renewal fee for debt-management services.....$4,000.00

Authority: T.C.A. §§ 47-18-5505, 47-18-5511, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.10 Submission of Information.

(1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure at least ten (10) days before the change occurs. Registrations are non-transferable.

(2) An applicant or registrant shall inform the Division in writing within thirty (30) days of receipt of notice and provide a copy of:

(a) any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent of the applicant or registrant, or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt-management services business;

(b) any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business;

(c) any complaint or order filed by a federal or state regulatory agency or the United States Postal Service naming the applicant or registrant, any affiliate, partner, officer, director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt-management services business.

(3) Within ten (10) days of filing, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(a) through (2)(c) above.

(4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(a) through (2)(c) above.

(5) Nothing in paragraphs (2), (3), or (4) is intended to relieve the applicant or registrant from any duty to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.

(6) Trust Accounts

(a) An applicant or registrant shall file with the Division a notice of any relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.

(b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers.

(c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft.

Authority: T.C.A. §§ 47-18-5507, 47-18-5522, 47-18-5529, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.11 Standards of Practice.

(1) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, the provider shall, within ten (10) business days, file with the Division a written answer to the request for additional information or to the complaint.

(2) A provider shall immediately determine the state of residence of a potential client during the first contact with the potential client. If the potential client is a resident of the state of Tennessee, the provider shall notify the potential client in writing of its current registration status in the state of Tennessee.

(3) No later than thirty (30) days prior to the opening of a branch office, a provider shall notify the Division in writing of the opening of the branch office as well as the name of the person responsible for the branch office and the certified counselor(s) and certified debt specialist(s) working in the branch office.

(4) A provider shall comply with all applicable federal and state laws and rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to the provider.

(5) A provider shall keep each client reasonably informed about the status of the debt-management services being performed for the client and shall promptly comply with the client's reasonable requests for information.

(6) A provider shall not use improper or questionable methods of soliciting clients, including but not limited to misleading or deceiving clients or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in improper methods.

(7) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts in its dealings with clients.

(8) Unless responding to a request for information, subpoena, or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any client information obtained relative to a debt-management services agreement or plan to someone other than the client unless the disclosure is expressly authorized in writing by the client.

(9) A provider shall not misrepresent its debt-management services or the features of any service or make unwarranted claims about the merits of a service that the provider offers.

(10) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the provider is responsible.

(11) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the client any interest the provider has in a business that may affect the client. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.

(12) A provider shall fully comply with all Federal Trade Commission rules, regulations, and guidelines, including but not limited to the Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255.

(13) A provider shall not engage in false or misleading advertising.

(14) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.

(15) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:

(a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a client or a client's creditor without first receiving explicit written instructions from the client directing the provider to make a specific alteration;

(b) expressly or impliedly representing that any of its goods or services are "free" if the client will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the client's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided with no obligation on the part of the client to make any payment in connection with the consultation or contact;

(c) expressly or impliedly representing that any payments made by clients in connection with providers are voluntary contributions or are payments to support a non-profit organization, unless more than fifty percent (50%) of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay the provider for services rendered to a non-profit organization;

(d) expressly or impliedly misrepresenting the effects of a debt-management plan on a client's ability to obtain credit;

(e) enrolling a debtor in a debt-management plan unless, prior to enrollment, the debtor has received credit counseling from a credit counselor who has sufficient experience and training to counsel in financial literacy, money management, budgeting, and responsible use of credit and is advised of the various options available to the debtor for addressing the debtor's financial problems;

(f) enrolling a debtor in a debt-management plan if the debtor's estimated monthly living expenses and estimated monthly provider payments exceed his or her income. A debtor in this situation may be enrolled in a debt-management plan if the debtor is specifically advised not to enroll in a debt-management plan because the debtor cannot afford the debt-management plan payment and the debtor independently states that he or she believes that he or she can afford the debt-management plan payment by reducing expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt-management plan affordable;

(g) disclosing or using any individual's private financial and personal information that the provider receives in connection with providing debt-management services except in accordance with and as permitted by applicable law, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C.A. § 6801, et seq.;

(h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll debtors into a debt-management plan;

(i) entering into any agreement with any person that sets any minimum enrollment rate or other standard mandating the number of individuals who must be enrolled in debt-management plans or an amount that the person must collect from clients;

(j) entering into any agreement with any person that sets any minimum revenues or other standards mandating the amount of revenue that must be generated through a debt-management plan;

(k) using the name or mark of a person other than the provider when communicating with debtors or creditors in connection with the performance of debt-management services;

(l) entering into any agreement with a third party that limits the use of any data reflecting either the provider's or the third party's performance of any debt-management services, including data reflecting the payments that either the provider or the third party has processed or is processing in connection with a debt-management plan;

(m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by clients;

(n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services;

(o) debiting, cashing, depositing, or otherwise collecting or attempting to collect monies from a client after a client has asserted a violation of state law, regulation, or rule in connection with the debt-management plan;

(p) using logos, symbols, business names, or the like that might represent or imply to consumers an affiliation or association with any government entity;

(q) failing to maintain and make available upon request to the Division full and complete substantiation for any and all claims and representations made to debtors and in any advertising or promotional materials;

(r) submitting any false, misleading, or deceptive information to the Division relating to a registration application or renewal application; or

(s) failing to comply with all of the prerequisites for providing debt-management services outlined in T.C.A. § 47-18-5517 and any applicable federal laws, regulations, or rules.

Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5517, 47-18-5528, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.12 Examinations, Records, and Reports.

(1) Recordkeeping Requirements

(a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis, or debt-management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.

(b) Every debt-management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum:

1. ledgers reflecting all assets and liabilities, income and expense, and capital accounts;

2. a record or ledger reflecting separately for each client the clearance dates of all money received from each client and all payments made on behalf of each client and in all cases the name of the client in which the money has been received or paid;

3. copies of all communications, correspondence, and other records relating to debt-management services agreements and plans with, about, or on behalf of clients;

4. a separate file containing all written complaints made or submitted by clients to the provider, counselors, or debt specialists relating directly or indirectly to debt-management services and any records received or produced in the course of investigating and resolving complaints;

5. the personnel or contractor records for any employee, agent, or contractor of the provider about whom the provider has received complaints from clients regarding any conduct relative to the provider's services;

6. a client information form for each client. If recommendations are to be made to the client, the form shall include such information as is necessary to determine suitability;

7. a record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month;

8. all partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the provider; and

9. a separate file containing copies of all advertising circulated by the provider in the conduct of its business.

(2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.

(3) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of clients or to ensure compliance with the Act. The cost of such examination shall be borne by the person examined in the same manner as is provided for insurance companies, except that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

Authority: T.C.A. §§ 47-18-5506, 47-18-5512, 47-18-5522, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.13 Fingerprinting.

(1) Any person required to submit electronically scanned fingerprints pursuant to the Uniform Debt-Management Services Act shall be deemed to have supplied the required sets of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI, which then forward an electronic report based on that applicant's fingerprints to the commissioner.

(2) Any person required to submit fingerprints by the Uniform Debt-Management Services Act shall make arrangements for the processing of his or her fingerprints with a company contracted by the State to provide electronic fingerprinting services and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI. Provided, however, that the Commissioner or the Commissioner's designee may authorize the submission of three (3) sets of classifiable physical fingerprint cards, at the expense of the applicant and rolled by a qualified person acceptable to the Commissioner or the Commissioner's designee, for good cause.

(3) In the event an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable by nature, the applicant shall submit new electronic fingerprints to a company contracted by the State to provide electronic fingerprinting services, together with any additional fee(s) charged by the TBI and/or FBI for processing the new fingerprints. For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.

(4) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards with his or her application and shall pay the Division all processing fees established by the TBI and FBI.

(5) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.

(6) Applicants shall in all cases be responsible for paying application fees as established by the Commissioner regardless of the manner of fingerprinting.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.14 Inflationary Adjustment.

(1) The dollar amounts in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be those specified in those sections, subject to adjustments made pursuant to this rule.

(2) Pursuant to T.C.A. § 47-18-5532(f), 2014 is adopted as the base year for the purposes of adjusting the dollar amounts to reflect inflation, as measured by the United States Bureau of Labor and Statistics consumer price index for all urban consumers.

(3) The Administrator shall on a yearly basis determine the change in the index from the base year as of December 31 of the preceding year. If such change is at least 10 percent, whether positive or negative, the dollar amounts of those specified in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be adjusted to reflect the change in index from the base year, rounded to the nearest one hundred dollars ($100.00), to be effective on July 1 of that year, except that the amounts in § 47-18-5523 shall be rounded to the nearest dollar.

(4) The year in which such adjustment takes place shall become the new base year for the purposes of adjusting the dollar amounts according to T.C.A. § 47-18-5532(f).

(5) The Administrator shall notify registered providers of any change in dollar amounts made pursuant to this rule, shall make that information available to the public, and shall update that information on all forms. The current base year and all fees, as adjusted, shall be listed on a web site chosen by the Administrator.

Authority: T.C.A. §§ 47-18-5532.

0780-05-18-.15 Accreditation.

(1) An accreditation from the Council on Accreditation shall meet the requirements of T.C.A. § 47-18-5506(8).

(2) Notwithstanding the previous paragraph, the Director may approve an independent accrediting organization if the Director finds, based on the totality of the information provided, that the independent accrediting organization provides accreditation that is substantially equivalent to the accreditation provided by the Council on Accreditation. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the independent accrediting organization shall make a new request for approval. An independent accrediting organization shall provide the following information on a form approved by the Director in its request for approval:

(a) The name of the independent accrediting organization;

(b) The phone number, mailing address and e-mail address—if applicable—of the independent accrediting organization;

(c) A list of other states that have approved the independent accrediting organization to provide accreditation of debt management companies or similar organizations;

(d) The number of years that the independent accrediting organization has offered accreditation for debt management companies or similar organizations;

(e) A complete list of the standards that accredited companies must meet; and

(f) Such other information as the Director may request in order to determine that the independent accrediting organization is substantially equivalent to the accreditation provided by the Council on Accreditation.

(3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, shall have until January 1, 2018, to become accredited in compliance with this rule.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.16 Certification.

(1) Certification by the National Foundation for Credit Counseling or the Financial Counseling Association of America shall meet the requirements of T.C.A. § 47-18-5506(9).

(2) Notwithstanding the previous paragraph, the Director may approve a training program or certifying organization providing certification to be a certified counselor and/or certified debt specialist if the Director finds, based on the totality of the information provided, that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the training program or certifying organization shall make a new request for approval. A training program of certifying organization shall provide the following information in its request for approval:

(a) The name of the certifying organization or entity providing the training program;

(b) The phone number, mailing address and e-mail address – if applicable – of the certifying organization or entity providing the training program;

(c) A list of other states that have approved the training program or certifying organizations to be approved;

(d) The number of years that the training program or certifying organization has offered certification for debt management counseling;

(e) A complete list of the curriculum required to be completed, the topics covered, the number of hours to complete the program, and the number of persons currently certified; and

(f) Such other information as the Director may request in order to determine that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act.

(3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, whose certified counselors or certified debt specialists are certified by a training program or certifying organization not approved under this rule shall have until January 1, 2018, for all employees to become certified by a company approved under this rule and for all future certifications to be done in compliance with such requirement.

Authority: T.C.A. §§ 47-18-5532.
0780-05-18-.17 Severability.

If any Rule, term, or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term, or provision of the Chapter, and the remaining Rules, terms, and provisions shall be and remain in full force and effect.

Authority: T.C.A. §§ 47-18-5532 and 47-18-5541. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

Repeal

0780-08-01

Chapter 0780-08-01 is hereby repealed in its entirety.

Authority: Public Chapter 339 (2015).

~~RULES~~
~~OF~~
~~TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE~~
~~DIVISION OF CONSUMER AFFAIRS~~
~~0780-08-01~~
~~RULES AND REGULATIONS FOR DEBT MANAGEMENT SERVICES~~
~~TABLE OF CONTENTS~~

~~0780-08-01-.01 PURPOSE OF RULES.~~

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

Authority: T.C.A. §§ 47-18-5501 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.02 SHORT TITLE.

These rules may be cited as the Tennessee Debt-Management Services Rules.

Authority: T.C.A. § 47-18-5501. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.03 RETAINED POWERS.

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

Authority: T.C.A. § 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.04 DEFINITIONS.

(1) When used in these rules and in the Uniform Debt-Management Services Act, unless the context otherwise requires:

(a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, and its codification in Tennessee Code Annotated.
(b) "Branch office" means any office of a provider within this state other than its principal place of business within this state.
(c) "Director" shall mean the Director of the Consumer Affairs Division of the Department of Commerce and Insurance of the State of Tennessee.
(d) "Division" shall mean the Director, staff, employees, and agents of the Consumer Affairs Division of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act.
(e) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, *et seq.*, and any rules promulgated pursuant thereto to the extent such rules are not inconsistent with the Act or these rules.

(2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

Authority: T.C.A. §§ 47-18-5502 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.05 ADMINISTRATION OF THE ACT.

(1) General

(a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:
1. to issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5533 (a)(1),(2),(3) and (b), or 47-18-5534(b) and (c) in any contested case, as such term is defined in the UAPA; and
2. to adopt any rule as such term is defined in the UAPA.
(b) Without limiting the foregoing delegation, the Director is expressly empowered to:
1. conduct examinations and investigations as provided by T.C.A. § 47-18-5532(b);
2. issue registrations; and

3. accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.

(c) Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation, or rule.

(2) Filing Requirements

(a) Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8½ by 11 or 8½ by 14 inches in size.

(b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.

(c) Exhibits may be attached or filed separately and shall be properly marked or identified.

(d) Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.

(e) All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and other information required or requested pursuant to the Act or these rules may be submitted to the Division in the paper format prescribed in this subpart (e) or through electronic data-gathering, access, retrieval, and storage methods acceptable to the Division.

(f) Unless expressly required or requested, only the original executed copy of each form is required.

(3) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 *et seq.*, the Division shall assess reasonable charges for copying and associated labor.

Authority: T.C.A. §§ 47-18-5501, 47-18-5505, 47-18-5506, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.06 APPLICABILITY.

(1) A person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.

(2) Any person conducting business in this state as a provider must apply to the Division to become registered.

(3) Debt management services do not include:

(a) legal services provided by an attorney licensed and in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship;

(b) accounting services provided by a certified public accountant licensed and in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship;

(c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider and in good standing or registered as an investment adviser representative and in good standing in this state and who holds one of the following professional designations during the entire time services are provided:

1. Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC), awarded by the American College, Bryn Mawr, PA;

3. Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; or

5. Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association of America, Inc.

(d) services provided within the scope of the business or profession of:

1. a judicial officer or person acting under court order or administrative order;

2. an assignee for the benefit of creditors;

3. a bank or government regulated bank affiliate;

4. a title insurer, escrow company, or person providing bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Authority: T.C.A. §§ 47-18-5502, 47-18-5503 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.07 REGISTRATION APPLICATION.

(1) Applications for registration shall be submitted on forms approved by the Director.

(2) Any application submitted without required information or failing to meet any requirement for registration will be held by the program office, and written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration will be sent to the applicant. The application will be held in "pending" status for a reasonable period of time, but such period is not to exceed one hundred eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification, the application will be closed.

(3) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Any application once submitted may be withdrawn, provided, however, that the application fee shall not be refunded.

(5) Applications must be complete before they are submitted for consideration. Applications shall at a minimum include:

(a) a complete and properly executed application form signed under penalty of perjury and before a notary by the person applying;
(b) a non-refundable application fee;
(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;
(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars ($250,000).
1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.
2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.
(e) the articles of incorporation and by-laws of the applicant;
(f) a description of any ownership interest of greater than ten percent (10%) by a Director, owner, or employee of the applicant in:
1. any affiliate of the applicant; or
2. any entity that provides products or services to the applicant or any individual related to the applicant's debt management services.
(g) the name and address of each corporate person that owns an interest in or is otherwise affiliated with or controls, directs, or influences the operations of the applicant;
(h) the name and address of each corporate person in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant;
(i) the names and addresses of all employers of each of the applicant's Directors during the immediately preceding ten (10) years;
(j) the names, addresses, and amounts of compensation for the five (5) most highly compensated employees of the applicant for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in T.C.A. § 47-18-5506(17);
(k) the identity of each Director who is an affiliate as defined by T.C.A. § 47-18-5502(2);
(l) evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. §501, if applicant is a not-for-profit corporation and exempt from taxation;

(m) consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee;
(n) disclosure of and identification information for all trust accounts;
(o) irrevocable consent to the authority of the Administrator to review and examine all trust accounts;
(p) applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);
(q) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;
(r) evidence of certification by an independent certifying program approved by the Director of all counselors and debt specialists conducting business in this state on behalf of the applicant;
(s) detailed descriptions of the three most common education programs provided by the applicant to Tennessee consumers and copies of all materials associated with the education programs;
(t) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model used by the applicant to evaluate the financial conditions of Tennessee consumers;
(u) copies of each agreement form provided by the applicant to Tennessee consumers and any other documents or information required to be signed by or provided to a Tennessee consumer;
(v) a schedule of all fees and charges, including any recommended donations, provided by the applicant to Tennessee consumers;
(w) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The sworn criminal history records check must be submitted directly by the criminal history records check provider to the Division. Applicants who have had these sworn criminal history records checks performed for the purpose of providing debt management services in another state within twelve (12) months prior to submitting the application may have the results of those records checks submitted directly by the other state to the Division as certified business records of the other state.
(x) disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and
(y) any other information required to determine whether the application should be approved or denied.

(6) An applicant shall notify the Division within ten (10) days after a change occurs in any information originally reported in the initial registration application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.08 RENEWAL OF REGISTRATION.

(1) Registrations shall expire on the last day of the twelfth (12^{th}) month following their issuance or renewal and shall become invalid on such date unless renewed prior to their expiration date.

(2) Renewal applications must be received by the Division not less than thirty (30) days or more than sixty (60) days prior to the expiration of a registration.

(3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration and shall surrender the registration certificate to the Division immediately upon its expiration.

(4) Applications for the renewal of registrations shall be made on forms provided by the Director.

(5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and these rules are received.

(6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.

(7) A provider's application for renewal of its registration shall include at a minimum:

(a) a complete and properly executed renewal application form signed by the provider's representative under penalty of perjury before a notary;
(b) the applicable non-refundable renewal application fee as provided in Rule 0780-05-18-.09, below;

(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;

(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars ($250,000).

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.

2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

(e) disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable;

(f) the applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);

(g) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;

(h) evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant;

(i) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The criminal history records check must be submitted directly to the Division by the criminal history check provider. Applicants that have had a criminal records check performed for the purpose of registration as a provider in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as a certified business record of the other state.

(j) disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period;

(k) disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and

(l) any other information required to determine whether the application should be approved or denied.

(8) An applicant shall notify the Division within ten (10) days after a change occurs in any of the information originally reported in the renewal application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.09 FEES.

(1) Nonrefundable debt-management services registration.....$2,000.00
(2) Nonrefundable renewal fee for debt-management services.....$2,000.00

Authority: T.C.A. §§ 47-18-5505, 47-18-5511, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.10 SUBMISSION OF INFORMATION.

(1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure at least ten (10) days before the change occurs. Registrations are non-transferable.

(2) An applicant or registrant shall inform the Division in writing within thirty (30) days of receipt of notice and provide a copy of:

(a) any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, Director, owner, or agent of the applicant or registrant, or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt management services business;
(b) any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, Director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business;
(c) any complaint or order filed by a federal or state regulatory agency or the United States Postal Service naming the applicant or registrant, any affiliate, partner, officer, Director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt management services business.

(3) Within ten (10) days of filing, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(a) through (2)(c) above.

(4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(a) through (2)(c) above.

(5) Nothing in paragraphs (2), (3), or (4) is intended to relieve the applicant or registrant from any duty to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.

(6) Trust Accounts

(a) An applicant or registrant shall file with the Division a notice of any relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.
(b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers.
(c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft.

Authority: T.C.A. §§ 47-18-5507, 47-18-5522, 47-18-5529, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.11 STANDARDS OF PRACTICE.

(1) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, the provider shall, within ten (10) business days, file with the Division a written answer to the request for additional information or to the complaint.

(2) A provider shall immediately determine the state of residence of a potential client during the first contact with the potential client. If the potential client is a resident of the state of Tennessee, the provider shall notify the potential client in writing of its current registration status in the state of Tennessee.

(3) No later than thirty (30) days prior to the opening of a branch office, a provider shall notify the Division in writing of the opening of the branch office as well as the name of the person responsible for the branch office and the certified counselor(s) and certified debt specialist(s) working in the branch office.

(4) A provider shall comply with all applicable federal and state laws and rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to the provider.

(5) A provider shall keep each client reasonably informed about the status of the debt-management services being performed for the client and shall promptly comply with the client's reasonable requests for information.

(6) A provider shall not use improper or questionable methods of soliciting clients, including but not limited to misleading or deceiving clients or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in improper methods.

(7) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts in its dealings with clients.

(8) Unless responding to a request for information, subpoena, or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any client information obtained relative to a debt-management services agreement or plan to someone other than the client unless the disclosure is expressly authorized in writing by the client.

(9) A provider shall not misrepresent its debt-management services or the features of any service or make unwarranted claims about the merits of a service that the provider offers.

(10) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the provider is responsible.

(11) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the client any interest the provider has in a business that may affect the client. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.

(12 A provider shall fully comply with all Federal Trade Commission rules, regulations, and guidelines, including but not limited to the Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255.
(13) A provider shall not engage in false or misleading advertising.

(14) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.

(15) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:

(a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a client or a client's creditor without first receiving explicit written instructions from the client directing the provider to make a specific alteration;
(b) expressly or impliedly representing that any of its goods or services are "free" if the client will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the client's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided with no obligation on the part of the client to make any payment in connection with the consultation or contact;
(c) expressly or impliedly representing that any payments made by clients in connection with providers are voluntary contributions or are payments to support a non-profit organization, unless more than fifty percent (50%) of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay the provider for services rendered to a non-profit organization;
(d) expressly or impliedly misrepresenting the effects of a debt-management plan on a client's ability to obtain credit;
(e) enrolling a debtor in a debt-management plan unless, prior to enrollment, the debtor has received credit counseling from a credit counselor who has sufficient experience and training to counsel in financial literacy, money management, budgeting, and responsible use of credit and is advised of the various options available to the debtor for addressing the debtor's financial problems;
(f) enrolling a debtor in a debt-management plan if the debtor's estimated monthly living expenses and estimated monthly provider payments exceed his or her income. A debtor in this situation may be enrolled in a debt-management plan if the debtor is specifically advised not to enroll in a debt-management plan because the debtor cannot afford the debt-management plan payment and the debtor independently states that he or she believes that he or she can afford the debt- management plan payment by reducing

expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt management plan affordable;

(g) disclosing or using any individual's private financial and personal information that the provider receives in connection with providing debt management services except in accordance with and as permitted by applicable law, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C.A. §6801, *et seq.*;

(h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll debtors into a debt management plan;

(i) entering into any agreement with any person that sets any minimum enrollment rate or other standard mandating the number of individuals who must be enrolled in debt management plans or an amount that the person must collect from clients;

(j) entering into any agreement with any person that sets any minimum revenues or other standards mandating the amount of revenue that must be generated through a debt management plan;

(k) using the name or mark of a person other than the provider when communicating with debtors or creditors in connection with the performance of debt management services;

(l) entering into any agreement with a third party that limits the use of any data reflecting either the provider's or the third party's performance of any debt management services, including data reflecting the payments that either the provider or the third party has processed or is processing in connection with a debt management plan;

(m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by clients;

(n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services;

(o) debiting, cashing, depositing, or otherwise collecting or attempting to collect monies from a client after a client has asserted a violation of state law, regulation, or rule in connection with the debt management plan;

(p) using logos, symbols, business names, or the like that might represent or imply to consumers an affiliation or association with any government entity;

(q) failing to maintain and make available upon request to the Division full and complete substantiation for any and all claims and representations made to debtors and in any advertising or promotional materials;

(r) submitting any false, misleading, or deceptive information to the Division relating to a registration application or renewal application; or

(s) failing to comply with all of the prerequisites for providing debt management services outlined in T.C.A. § 47-18-5517 and any applicable federal laws, regulations, or rules.

Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5517, 47-18-5528, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.12 EXAMINATIONS, RECORDS, AND REPORTS.

(1) Recordkeeping Requirements

(a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis, or debt management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.

(b) Every debt management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum:

1. ledgers reflecting all assets and liabilities, income and expense, and capital accounts.

2. a record or ledger reflecting separately for each client the clearance dates of all money received from each client and all payments made on behalf of each client and in all cases the name of the client in which the money has been received or paid.

3. copies of all communications, correspondence, and other records relating to debt management services agreements and plans with, about, or on behalf of clients.

4. a separate file containing all written complaints made or submitted by clients to the provider, counselors, or debt specialists relating directly or indirectly to debt management services and any records received or produced in the course of investigating and resolving complaints.

5. the personnel or contractor records for any employee, agent, or contractor of the provider about whom the provider has received complaints from clients regarding any conduct relative to the provider's services.

6. a client information form for each client. If recommendations are to be made to the client, the form shall include such information as is necessary to determine suitability.

7. a record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month.

8. all partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the provider.

9. a separate file containing copies of all advertising circulated by the provider in the conduct of its business.

(2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.

(3) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of clients or to ensure compliance with the Act. The cost of such examination shall be borne by the person examined in the same manner as is provided for insurance companies, except that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

Authority: T.C.A. §§ 47-18-5506, 47-18-5512, 47-18-5522, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-08-01-.13 SEVERABILITY.

If any Rule, term, or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term, or provision of the Chapter, and the remaining Rules, terms, and provisions shall be and remain in full force and effect.

Authority: T.C.A. §§ 47-18-5532 and 47-18-5541. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

Rules for the Tennessee Debt Management Services Registration Program
Chapter 0780-05-18 Debt Management Services
Rule 0780-05-18-.01 Purpose of Rules
Rule 0780-05-18-.02 Short Title
Rule 0780-05-18-.03 Retained Powers
Rule 0780-05-18-.04 Definitions
Rule 0780-05-18-.05 Administration of Act
Rule 0780-05-18-.06 Applicability
Rule 0780-05-18-.07 Registration Application
Rule 0780-05-18-.08 Renewal of Registration
Rule 0780-05-18-.09 Fees
Rule 0780-05-18-.10 Submission of Information
Rule 0780-05-18-.11 Standards of Practice
Rule 0780-05-18-.12 Examinations, Records, and Reports
Rule 0780-05-18-.13 Fingerprinting
Rule 0780-05-18-.14 Inflationary Adjustment
Rule 0780-05-18-.15 Accreditation
Rule 0780-05-18-.16 Certification
Rule 0780-05-18-.17 Severability

Chapter 0780-08-01 Debt Management Services
Rule 0780-08-01-.01 Purpose of Rules
Rule 0780-08-01-.02 Short Title
Rule 0780-08-01-.03 Retained Powers
Rule 0780-08-01-.04 Definitions
Rule 0780-08-01-.05 Administration of Act
Rule 0780-08-01-.06 Applicability
Rule 0780-08-01-.07 Registration Application
Rule 0780-08-01-.08 Renewal of Registration
Rule 0780-08-01-.09 Fees
Rule 0780-08-01-.10 Submission of Information
Rule 0780-08-01-.11 Standards of Practice
Rule 0780-08-01-.12 Examinations, Records, and Reports
Rule 0780-08-01-.13 Severability

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

10/20/2016
Date

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PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 10/28/16

Effective on: 1/26/17

Tre Hargett
Secretary of State

* 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 TN Debt-Management Services Registration Program on 06/17/2016 (*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
WILSON COUNTY, TENN.
My Commission Expires

Date: 8/22/16

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: 8/22/16

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Classification of Students as In-State or Out-of-State
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-9-105 and 49-9-209
EFFECTIVE DATES:	December 15, 2016 through June 30, 2017
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	In response to recent state legislation, Public Chapter 219 (2015), the University's rule on classifying students as in-state or out-of-state is to be amended by this proposed rule as follows: • Removes the language, "has not been dishonorably discharged from the U.S. Armed Forces or the national guard"; • Adds the language, "any individual entitled to the veteran's educational benefits," to the types of persons eligible for the waiver of out-of-state tuition and fees; • Increases the time for a veteran to enroll and qualify for in-state tuition from two (2) years to three (3); • Changes the grace period for a veteran to demonstrate objective evidence of residency to three (3) years from the date of discharge (previously, the veteran had one (1) year from the date of enrollment); and • Removes voter registration as a single method of demonstrating residency.

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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

In response to recent state legislation, Public Chapter 219 (2015), the University's rule on classifying students as state or out-of-state must be amended as follows:

- Remove the language, "has not been dishonorably discharged from the U.S. Armed Forces or the national guard;"
- Add the language, "any individual entitled to the veteran's educational benefits," to the types of persons eligible for the waiver of out-of-state tuition and fees;
- Increase the time for a veteran to enroll and qualify for in-state tuition from two (2) years to three (3);
- Change the grace period for a veteran to demonstrate objective evidence of residency to three (3) years from the date of discharge (previously, the veteran had one (1) year from the date of enrollment); and
- Remove voter registration as a single method of demonstrating residency.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

None.

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For Department of State Use Only

Sequence Number: 09-19-16
Rule ID(s): 6304
File Date: 9/16/16
Effective Date: 12/15/16

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

Revision Type (check all that apply):
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**
1720-01-01	Classifying Students In-State And Out-of-State
Rule Number	**Rule Title**
1720-01-01-.04	Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

RULES OF
THE UNIVERSITY OF TENNESSEE (ALL CAMPUSES)

CHAPTER 1720-01-01
CLASSIFYING STUDENTS
IN-STATE AND OUT-OF-STATE
TABLE OF CONTENTS

1720-01-01-.01 INTENT.

(1) It is the intent that the public institutions of higher education in the State of Tennessee shall apply uniform rules, as described in these regulations and not otherwise, in determining whether students shall be classified "in-state" or "out-of-state" for fees and tuition purposes and for admission purposes.

1720-01-01-.02 DEFINITIONS. Wherever used in these regulations.

(1) "Public higher education institution" shall mean a university or community college supported by appropriations made by the Legislature of this State.

(2) "Residence" shall mean continuous physical presence and maintenance of a dwelling place within this State, provided that absence from the State for short periods of time shall not affect the establishment of a residence.

(3) "Domicile" shall mean a person's true, fixed, and permanent home and place of habitation; it is the place where he or she intends to remain, and to which he or she expects to return when he or she leaves without intending to establish or having established a new domicile elsewhere. Undocumented aliens cannot establish domicile in Tennessee, regardless of length of residence in Tennessee.

(4) "Emancipated person" shall mean a person who has attained the age of eighteen (18) years and whose parents have entirely surrendered the right to the care, custody, and earnings of such person and are no longer under any legal obligation to support or maintain such person.

(5) "Parent" shall mean a person's father or mother. If there is a non-parental guardian or legal custodian of an unemancipated person, then " parent" shall mean such guardian or legal custodian; provided, that there are not circumstances indicating that such guardianship or custodianship was created primarily for the purpose of conferring the status of an in-state student on such emancipated person.

(6) "Continuous enrollment" or "continuously enrolled" shall mean enrollment at a public higher educational institution or institutions of this State as a full-time student, as such term is defined by the governing body of said public higher education institution or institutions, for a normal academic year or years or the appropriate portion or portions thereof since the beginning of the period for which continuous enrollment is claimed. Such person need not enroll in summer sessions or other such inter-sessions beyond the normal academic year in order that his or her enrollment be deemed continuous. Enrollment shall be deemed continuous notwithstanding lapses in enrollment occasioned solely by the scheduling of the commencement and/or termination of the academic years, or appropriate portion thereof, of the public higher educational institutions in which such person enrolls.

(7) "U.S. Armed Forces" shall mean the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.

(8) "Veteran" means:

(a) a former member of the U.S. Armed Forces; or

(b) a former or current member of a reserve or Tennessee national guard unit who was called into active military service of the United States, as defined in Tennessee Code Annotated § 58-1-102.

1720-01-01-.03 RULES FOR DETERMINATION OF STATUS.

(1) Every person having his or her domicile in this State shall be classified "in-state" for fee and tuition purposes and for admission purposes.

(2) Every person not having his or her domicile in this State shall be classified "out-of-state" for fee and tuition purposes and for admission purposes.

(3) The domicile of an unemancipated person is that of his or her parent, except as provided in paragraph (4) of this Section .03. Unemancipated students of divorced parents shall be classified "in-state" when one (1) parent, regardless of custodial status, is domiciled in Tennessee, except as provided in paragraph (4) of this Section .03.

(4) A student shall be classified as "in-state" for fee and tuition purposes if the student is a citizen of the United States, has resided in Tennessee for at least one (1) year immediately prior to admission, and has:

(a) Graduated from a Tennessee public secondary school;

(b) Graduated from a private secondary school that is located in Tennessee; or

(c) Earned a Tennessee high school equivalency diploma.

(5) The spouse of a student classified as "in-state" shall also be classified "in-state."

(6) All classifications shall be subject to the Eligibility Verification for Entitlements Act, Tennessee Code Annotated § 4-58-101 *et seq.*

1720-01-01-.04 OUT-OF-STATE STUDENTS WHO ARE NOT REQUIRED TO PAY OUT-OF-STATE TUITION.

(1) An unemancipated, currently enrolled student shall be reclassified out-of-state should his or her parent, having theretofore been domiciled in the State, remove from the State. However, such student shall not be required to pay out-of-state tuition nor be treated as an out-of-state student for admission purposes so long as his or her enrollment at a public higher educational institution or institutions shall be continuous.

(2) An unemancipated person whose parent is not domiciled in this State but is a member of the armed forces and stationed at Fort Campbell pursuant to military orders shall be classified out-of-state, but shall not be required to pay out-of-state tuition. Such a person, while in continuous attendance toward the degree for which he or she is currently enrolled, shall not be required to pay out-of-state tuition if his or her parent thereafter is transferred on military orders.

(3) Part-time students who are not domiciled in this State but who are employed full-time in the State shall be classified out-of-state but shall not be required to pay out-of-state tuition. This shall apply to part-time students who are employed in the State by more than one employer, resulting in the

equivalent of full-time employment.

(4) A member of the U.S. Armed Forces on active duty for more than thirty (30) days and who has a permanent duty station in the State of Tennessee (or the spouse or dependent child of such a member) who should be classified out-of-state in accordance with other provisions of these regulations will be classified out-of-state but shall not be required to pay out-of-state tuition. This provision shall continue to apply to such a member, spouse, or dependent child while continuously enrolled at that public higher education institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.

(5) A person who is domiciled in the Kentucky counties of Fulton, Hickman, or Graves shall be classified out-of-state and shall not be required to pay out-of-state tuition at The University of Tennessee at Martin if qualified for admission. This exemption is on condition that Murray State University in Murray, Kentucky, continues to admit Tennessee residents from selected Tennessee counties to enroll at that institution without payment of out-of-state tuition.

(6) Any dependent child not domiciled in Tennessee but who qualifies and is selected to receive a scholarship under the "Dependent Children Scholarship Act" (T.C.A. § 49-4-704) because his or her parent is a law enforcement officer, fireman, or emergency medical service technician who was killed or totally and permanently disabled while performing duties within the scope of employment, shall be classified out-of-state but shall not be required to pay out-of-state tuition.

(7) A veteran, or any individual entitled to the veteran's educational benefits, enrolled in any public institution of higher education in this State shall not be required to pay out-of-state tuition or any out-of-state fee, if the veteran or the eligible individual:

~~(a) Has not been dishonorably discharged from a branch of the U.S. Armed Forces or the national guard;~~

~~(b)~~(a) Is eligible for ~~P~~post-9/11 GI Bill benefits or Montgomery GI Bill benefits; and

~~(c)~~(b) Enrolls in a public institution of higher education, after satisfying all admission requirements, within three (3) years ~~twenty-four (24) months~~ after the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document.

To continue to qualify for in-state tuition and fees after three (3) years have passed from the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document, ~~under this subsection,~~ a veteran or eligible individual shall:

(a) Maintain continuous enrollment (as defined by the public institution of higher education in which the veteran is enrolled); and

(b) Demonstrate objective evidence of established residency in this State by presenting at least two (2) of the following:

(A) Proof of voter registration in this State;

(B) A Tennessee driver license;

(C) A Tennessee motor vehicle registration;

(D) Proof of established employment in this State; or

(E) Other documentation clearly evidencing domicile or residence in the state, as determined by THEC.

~~(c) Within one (1) year of enrolling in the public institution of higher education:~~

~~(1) Register to vote in the State of Tennessee; or~~

~~(2) Demonstrate by objective evidence intent to be a resident of the State of Tennessee by obtaining at least two (2) of the following:~~

~~( ) A Tennessee driver's license;~~

~~( ) A Tennessee motor vehicle registration;~~

~~( ) Proof of established employment in the State of Tennessee; or~~

~~( ) Other documentation clearly evidencing domicile or residence in this State, as determined by the Tennessee Higher Education Commission.~~

(8) Students not domiciled in Tennessee but who are selected to participate in institutional undergraduate honors programs specified by the public higher education institution in which the student is enrolled shall be classified out-of-state but shall not be required to pay out-of- state tuition.

(9) A "covered individual" under the federal Veterans Access, Choice, and Accountability Act of 2014, Public Law 113-146, who maintains continuous enrollment at the same public institution of higher education.

1720-01-01-.05 PRESUMPTION. Unless the contrary appears from clear and convincing evidence, it shall be presumed that an emancipated person does not acquire domicile in this State while enrolled as a full-time or part-time student at any public or private higher educational institution in this State, as such status is defined by such institution.

1720-01-01-.06 EVIDENCE TO BE CONSIDERED FOR ESTABLISHMENT OF DOMICILE. If a person asserts that he or she has established domicile in this State he or she has the burden of proving that he or she has done so. Such a person is entitled to provide to the public higher educational institution by which he seeks to be classified or reclassified in-state, any and all evidence which he or she believes will sustain his or her burden of proof. Said institution will consider any and all evidence provided to it concerning such claim of domicile but will not treat any particular type or item of such evidence as conclusive evidence that domicile has or has not been established.

1720-01-01-.07 APPEAL. The classification officer of each public higher educational institution shall be responsible for initially classifying students "in-state" or "out-of-state." Appropriate procedures shall be established by each such institution by which a student may appeal his or her initial classification.

1720-01-01-.08 EFFECTIVE DATE FOR RECLASSIFICATION. If a student classified out-of-state applies for in-state classification and is subsequently so classified his or her in-state classification shall be effective as of the date on which reclassification was sought. However, out-of-state tuition will be charged for any semester during which reclassification is sought and obtained unless application for reclassification is made to the classification officer on or before the last day of regular registration of that semester.

1720-01-01-.09 REPEALED.

University of Tennessee Rules
Chapter 1720-01-01-.04 Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

* 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)
Governor Bill Haslam				x	
Commissioner Julius Johnson	X				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Jalen Blue	X				
Shannon Brown	X				
George E. Cates				X	
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Dr. David Golden	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers (non-voting)					
Miranda N. Rutan (non-voting)					
Rhedona Rose	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-01-01-.04 Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 04/01/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 12/15/16

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Differentiated Housing, Judicial Proceedings, Safety Regulations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new 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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

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Sequence Number: 09-20-16
Rule ID(s): 6305
File Date: 9/16/16
Effective Date: 8/1/17

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:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
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Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ 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**
1720-05-04	Student Housing Regulations
Rule Number	**Rule Title**
1720-05-04-.01	Housing Requirement
1720-05-04-.02	Classification (For Housing Purposes Only)
1720-05-04-.03	Types of Differentiated Housing
1720-05-04-.04	Separate Accommodations By Sex
1720-05-04-.05	Judicial Proceedings
1720-05-04-.06	Room Painting
1720-05-04-.07	Period of Occupancy
1720-05-04-.08	Residence Hall Safety Regulations
1720-05-04-.09	Termination of Housing Contract
1720-05-04-.10	Pregnancy
1720-05-04-.11	Repealed

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE AT MARTIN~~

~~CHAPTER 1720-5-4~~
~~STUDENT HOUSING REGULATIONS~~

~~TABLE OF CONTENTS~~

~~1720-5-4-.01 HOUSING REQUIREMENT. In view of the educational advantages and academic needs on campus and the desire to provide campus housing at a minimum cost to students, The University of Tennessee at Martin requires all single freshmen and sophomores, except those living with their parents, to live on campus.~~

~~*Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*~~

~~1720-5-4-.02 CLASSIFICATION (FOR HOUSING PURPOSES ONLY). For housing policy purposes (but not for academic classification purposes), a freshman is defined as a student with less than two completed semesters~~ of work (fewer than 30 hours), a sophomore as one with two but less than four semesters (fewer than 60 hours), a ~~junior as one with four but less than six semesters, and a senior as one with six or more semesters completed. A graduate student is a student taking course work beyond the bachelor degree level. Summer semester work may be counted in computing the number of semesters.~~

~~*Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*~~

~~1720-5-4-.03 TYPES OF DIFFERENTIATED HOUSING.~~

~~Three types of on campus housing are available for single students.~~

~~(a) TYPE I: No Visitation. Available to all single students, with preference to freshmen, followed by sophomores, juniors, and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination week, quiet hours are in effect 24 hours daily. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.~~

~~(b) TYPE II: Limited Visitation. Available to all single students, with preference to freshmen, followed by sophomores, juniors and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination weeks, quiet hours are in effect 24 hours daily. Sunday through Thursday, visitation is permitted between 12:00 p.m. and 12:00 a.m. Friday and Saturday visitation is between 12:00 p.m. and 2:00 a.m. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.~~

(Rule 1720-5-4-.03, continued)

(c) TYPE III: Available to all single students living in apartments. Open visitation 24 hours daily. Minimal supervision and regulations. Students must conform to all Student Handbook policies.

Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.04 SEPARATE ACCOMMODATIONS BY SEX. Co-educational housing of single students in the same suites, rooms or apartments is not permitted at UTM.

Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.05 JUDICIAL PROCEEDINGS. Standards of conduct expected of students are published in the Student Handbook, and specific regulations pertaining to residence halls are posted on bulletin boards or announced in hall meetings. Students who are accused of violations may have their cases handled in either of two ways:

(1) Administratively by the Hall Director or Student Affairs staff; or

(2) By the student court.

After hearing a case, a judgment of guilt or innocence is made and a penalty is assessed where appropriate. The penalties that may be assessed are loss of privilege, disciplinary warning, disciplinary probation, and suspension. In addition, these penalties may include dismissal from the residence hall or apartment. The student has the option to appeal to the Disciplinary Hearing Board or the University Council.

Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.06 ROOM PAINTING. Interested residents should visit the Housing Facilities Office and discuss room painting with the Paint Supervisor.

Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.07 PERIOD OF OCCUPANCY. Students having assignments may occupy their rooms on the date specified by the Office of Housing. Normally the dates begin the day preceding registration period and end on the last day of the final examination period, except for certain university holidays such as Thanksgiving and Easter. If a student fails to occupy the assigned room by the date specified without giving the Office of Housing prior notification of delayed arrival, the room may be reassigned to another student. Delayed arrival does not relieve the student of the responsibility for accepting available accommodation.

(1) Soliciting is not permitted in the non-public areas of the residence halls. It may be permitted in the public areas by registered student organizations depending on space, circumstances and provisions of the Student Handbook.

(2) Windows and Screens: Window screens must not be unfastened or removed. In addition, the following rules also apply.

(a) Food may not be stored between windows and screens or outside of the windows at anytime.

(b) Displays in windows which are deemed inappropriate by the hall head staff and not removed by the resident(s), will be removed by the staff and the resident(s) billed for this service.

(Rule 1720-5-4-.07, continued)

(c) Under no circumstances will the throwing of objects from any windows in the residence halls be tolerated. Such conduct poses a danger to the health and safety of other residents. Residents assigned to a room from which an object is thrown will be subject to administrative eviction from the university residence halls in accordance with the terms and conditions of the Housing Contract.

(3) Business from Residents' Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms, inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises, or use their room phone numbers for business purposes.

(4) Open House and Visitation: At no time may a member of the opposite sex be in a non-public area unless the guest is in compliance with the open house or visitation policies of that unit. Resident Assistants are able to define these areas specifically for the hall, including but not limited to corridor of a living unit, resident's room, etc.

(5) Guests: Residents may have overnight guests of the same sex only; it is the host's responsibility to arrange for sleeping facilities, including linens, permission from another roommate for use of his/her bed, etc. Unless extraordinary arrangements have been made with the Hall Director or Assistant Hall Director, no keys will be issued to guests, and no resident may have a guest in the hall when the resident will not be present to act as his/her host.

(a) Guests are discouraged during weekday nights and during the last week of each semester when final exams are being given. The maximum length of any visit is 3 days and 3 nights, with extensions granted only by the Hall Director or Assistant Hall Director.

(b) University officials can require guests to produce proof that they are legitimate guests. Guests must complete a Guest Registration Card available at the main desk of each hall. The information on this card may aid in contacting the guest and/or his/her designee should the need arise. The guest's copy of the card will also serve as an identification card during his/her stay on campus.

(c) All guests are governed by university and residence hall rules and regulations. For a violation of rules by an off-campus guest, the host is responsible for any damages caused by the guest.

(d) No individual will be permitted to sleep in the main or floor lounges of university residence halls. Night clerks and hall staff will ask such persons to leave the hall or to return to their assigned rooms. If a non-resident does not comply with the request to leave, Campus Security will be called to remove them.

(6) Pets: For health reasons, pets are not permitted in the halls. Cats, dogs and other pets present a multitude of problems in a residence hall and are not permitted on the premises. (The only exceptions to this policy are (1) guide dogs accompanying blind persons and (2) fish which live completely submerged in water.)

(7) Attachments: Residents should not install any of the following in their rooms:

(a) Locks;

(b) Decals or transfer pictures;

(c) Outside antenna for radio or television;

(Rule 1720-5-4-.07, continued)

(d) Additional electrical wiring;

(e) Attachments to the telephone;

(f) Shades, blinds, awnings or window guards;

(g) Air-conditioning or heating units.

(8) Noise Level: Residents are expected to show consideration for others at all times and should avoid excessive noise. They are requested to refrain from: unnecessary noise; congregating in the hall, bath, or elevator areas; loud talking or laughing; and loud playing of electronic equipment. For obvious (audible) reasons, musical instruments may be played only in areas provided for this purpose. Abuse of these standards may result in the instrument or appliance being stored until it can be removed from the campus. Radios, stereos or other electronic equipment should not be placed in or near windows, as the noise may distract others whose windows may be open.

Beyond this, residence hall associations may establish specific quiet hours within their respective halls.

(9) Furniture: All university property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director. Removal of furniture from its assigned location, except with permission, is grounds for disciplinary action. Residents will also be charged for any furniture or facilities assigned to their rooms and found missing at the time of checkout.

(10) Water Furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.

(11) Bicycles: Racks are provided for bikes in front of each hall. Off-street parking is provided for motorized bikes in designated areas. Motorized bikes are not allowed inside residence halls. Although non-motorized bikes may be kept in residents' rooms, they are not to be left unattended, ridden, or chained in common areas of the halls such as hallways, stairwells, lobbies, study rooms, etc. Bikes found in such areas will be removed at the owner's expense, stored for a short time, and then disposed of. (Bikes may not be stored in luggage or other storage rooms due to lack of space.)

(12) Stairwells: Under no circumstances will the dropping of objects or fireworks down stairwells be tolerated. Such conduct poses obvious danger to the health and safety of other residents. Persons involved in such actions will be subject to eviction from university residence halls, in accordance with the terms and conditions of the Housing contract.

(13) The University Of Tennessee Reserves The Right To Make Other Policies From Time To Time Deemed Necessary And Appropriate For The Safety And Cleanliness Of The Premises, And For Securing The Comfort And Convenience Of All Residents.

Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule file November 10, 2005; effective March 30, 2006.

1720-5-4-.08 RESIDENCE HALL SAFETY REGULATIONS.

(1) Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.

(Rule 1720-5-4-.08, continued)

(2) Open Flames: Items which require an open flame to operate or which produce heat (i.e., Bunsen burners, lighted candles, alcohol burners) are not allowed in residents' rooms. Candles must have the wicks removed and may be used for decorative purposes.

(3) Decorations: Decorative items, such as fishnets, parachutes, and other such items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (U.L.) approved lights may be used to decorate rooms.

(4) Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking with open coil appliances is not permitted in student rooms.

(5) Electrical Appliances: In residence halls, U.L. approved microwaves, George Forman type grills, closed coil only popcorn poppers and coffee makers may be in student rooms.

(6) Fires And Fire Drills: Fire evacuation plans are posted in each resident's room. A resident will be subject to disciplinary action for tampering with or activating fire alarm or control equipment except in case of a fire or for failure to evacuate the building during an evacuation and safety drill. A safety exit drill will be conducted in each residence hall once per month in compliance with state law. A resident who sees or suspects a fire should immediately notify a staff member who will activate the fire alarm system if necessary.

(7) Fire Lanes: Several halls have nearby emergency lanes which are strictly reserved for use by emergency vehicles only. Unauthorized vehicles parked in these areas will be towed away by Public Safety at the owner's risk and expense.

(8) Safety Equipment: The University of Tennessee at Martin, through the Office of Housing, hereby advises all students that the University will not tolerate the irresponsible behavior of persons whose actions jeopardize the safety and welfare of others. Tampering with, vandalizing, or otherwise abusing elevator, fire, or safety equipment in the university residence halls will constitute reason for eviction from the residence halls and possible suspension from The University of Tennessee at Martin.

Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.09 TERMINATION OF HOUSING CONTRACT. When considered in the best interest of the university, a resident can be asked to move from the hall. An appeal can be made by the student through the established administrative and judicial procedures.

Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.

1720-5-4-.10 PREGNANCY. UTM Housing Office policies do not permit assignment of single student rooms to pregnant students during the third trimester of pregnancy. This policy does not prevent a pregnant woman from enrolling in the university provided off campus housing and medical arrangements can be made by the enrolling student and her family. The primary concern of this university policy is that the prospective mother be in an environment where the necessary service and care be provided for her and her baby. Alternative housing will be offered. Refund of the customary portion of rent paid would be made.

Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 10, 2005; effective March 30, 2006.

1720-5-4-.11 REPEALED.

~~(Rule 1720-5-4-.08, continued)~~

~~***Authority:*** *§49-9-209(c).* ~~***Administrative History:***~~ *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal filed November 10, 2005; effective March 30, 2006.*~~

The University of Tennessee at Martin
Chapter 1720-05-04
Student Housing Regulations

Repeal

Chapter 1720-05-04 Student Housing Regulations is repealed in its entirety.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-05-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: [signature]

My commission expires on: 12-4-18

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.

[signature]
Herbert H. Slatery III
Attorney General and Reporter
7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

[signature]
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Safety Inspections, Violations, Housing Contracts
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new 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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

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: 09-21-16
Rule ID(s): 6306
File Date: 9/16/16
Effective Date: 8/1/17

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

Revision Type (check all that apply):
___ Amendment
___ 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**
1720-03-06	Student Housing Regulations
Rule Number	**Rule Title**
1720-03-06-.01	General Rules and Regulations
1720-03-06-.02	Safety Inspection
1720-03-06-.03	Violations
1720-03-06-.04	Housing Contracts

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE, HEALTH SCIENCE CENTER~~

~~CHAPTER 1720-3-6~~
~~STUDENT HOUSING REGULATIONS~~

~~TABLE OF CONTENTS~~

~~**1720-3-6-.01 GENERAL RULES AND REGULATIONS.**~~

~~(1) Room Damages -- Student Housing recognizes the residents' desire to personalize their room with items such as pictures, lamps, etc. When the use or hanging of these items damages the walls, floors, ceilings or furnishings of a room or apartment, charges for repair or replacement will be the responsibility of the resident.~~

~~(2) Possession of alcohol and drugs in residence halls is prohibited.~~

~~(3) Possession of explosive or firearms in residence halls is prohibited.~~

~~(4) Pets are prohibited in the residence halls and on the premises. The only exception to this policy is trained guide dogs accompanying individuals with visual impairment.~~

~~(5) Cooking in the residence halls is allowed in designated kitchen areas. Appliances approved for use in student rooms are: Electric coffeepots, coffee warmer, electric hot pots and microwave ovens. All other appliances are prohibited. No appliances with an open flame or exposed heating element are allowed.~~

~~*Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.*~~

~~**1720-3-6-.02 SAFETY INSPECTION.**~~

~~(1) Fire drills are conducted a minimum on 4 times each year. All residents are required to participate. Persons in the hall who fail to exit the building when a fire alarm sounds, shall be subject to disciplinary action.~~

~~(2) Safety inspections are conducted monthly to check smoke detectors and check for other fire or safety violations. A notice of the scheduled inspection will be posted in visible areas of the residence halls 24 hours before the scheduled inspection. Residents violating safety rules and regulations are subject to disciplinary action.~~

~~(3) Smoke Detectors have been installed in each residence hall room according to Tennessee Fire Code. These detectors are placed in the room to alert the residents to the presence of smoke. UT, Health Science Center staff members inspect the smoke detectors monthly to assure that they are operating properly. Removal or tampering with smoke detectors or other fire safety equipment is prohibited.~~

~~*Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.*~~

(Rule 1720-3-6-.02, continued)

1720-3-6-.03 VIOLATIONS. Any violation of these regulations is punishable by those penalties set forth in the Student Rights and Responsibilities section of the UT Health Science Center Student Handbook.

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807 Chapter 64. Administrative History: New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.

1720-3-6-.04 HOUSING CONTRACT.

(1) The Housing Acceptance Agreement Form (Housing Contract) is a binding contract. Signing of the agreement constitutes a legal contract between The University of Tennessee, Health Science Center and the resident to fulfill the terms of the contract.

(2) Contract Period: The Housing Acceptance Agreement Form, unless otherwise stated on the agreement, is for the full academic year from July 1 through June 30.

(3) Release from Contract: Release from the contract will be granted for any of the following reasons. Marriage during a term, end of term, university assignment to an out of town rotation, withdrawal or suspension. Residents are required to submit a notice of cancellation to the Office of Student Housing thirty (30) days before the date they plan to cancel the contract. Providing the request for release meets the terms of the contract residents will be held responsible for 30 days rent from the date cancellation notice is received.

(a) New assignments - A contract may be cancelled with no penalty providing the Office of Student Housing is notified in writing by the cancellation date shown on the contract. A contract cancelled after the contract cancellation date through the first day of registration will be accepted providing the student has not checked in the residence hall. This cancellation will result in forfeiture of the $50.00 advance rent deposit.

(b) Current residents/End of term – A resident may cancel the upcoming portions of a contract by submitting a written notice of cancellation to the office of Student Housing 30 days before the end of any term. A resident who fails to check out at the end of the term may be held responsible for rent for the next term.

(c) Assignment to out-of-town rotation - A resident who receives an out-of-town assignment will be released by submitting a 30 day notice of cancellation.

(d) Marriage during Contract - A resident will be released with 30 day notice and proof of marriage.

(e) Withdrawal, Suspension or Dismissal – A resident who withdraws from the university or is suspended or dismissed from the University is expected to vacate the residence halls within 24 hours of completing university withdrawal or official notification of suspension or dismissal.

Authority: T.C.A. §4-9-209(c). Administrative History: Original rule filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.

The University of Tennessee, Health Science Center
Chapter 1720-03-06
Student Housing Regulations

Repeal

Chapter 1720-03-06 Student Housing Regulations is repealed in its entirety.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-03-06 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature:

My commission expires on: 12-4-18

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: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Residence Requirements, Contractual Arrangements, Room Changes
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new 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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

None.

Department of State
Division of Publications
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For Department of State Use Only

Sequence Number: 09-22-16
Rule ID(s): 6307
File Date: 9/16/16
Effective Date: 8/1/17

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

Revision Type (check all that apply):

___ Amendment
___ 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**
1720-02-02	Student Housing Regulations
Rule Number	**Rule Title**
1720-02-02-.01	Residence Requirements
1720-02-02-.02	Differentiated Housing
1720-02-02-.03	Contractual Arrangements
1720-02-02-.04	Damage
1720-02-02-.05	Room Changes
1720-02-02-.06	Check Out
1720-02-02-.07	Inspection and Search Policy
1720-02-02-.08	Residence Hall Regulations

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA~~

~~CHAPTER 1720-2-2~~
~~STUDENT HOUSING REGULATIONS~~

~~TABLE OF CONTENTS~~

~~1720-2-2-.01 RESIDENCE REQUIREMENTS.~~

~~(1) Single out-of-town students attending the University are expected to live in University housing when space is available unless they commute from their homes in nearby towns.~~

~~(2) They may not live off campus when residence hall space is available without permission from the Housing Office.~~

~~*Authority: TCA § 49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*~~

~~1720-2-2-.02 DIFFERENTIATED HOUSING.~~

~~(1) The concept of Differentiated Housing at The University of Tennessee at Chattanooga campus offers students, with parental involvement, the choice of the housing facility and living atmosphere in which he or she will live. The plans available are:~~

~~(a) TYPE A — Visitation privileges are allowed in the living dining area from 12:00 noon until 12:00 midnight.~~

~~(b) TYPE B — This plan involves minimal rules, regulations, and supervision. This option is available to upper class students only.~~

~~*Authority: TCA § 49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.*~~

~~1720-2-2-.03 CONTRACTUAL ARRANGEMENTS.~~

~~Contractual Arrangements. Each resident student signs an individual contract with the University for the premises he/she will occupy. This agreement covers occupancy for the entire academic year unless specifically indicated otherwise on the contract itself. Any student who for any reason wishes to alter the terms of his/her contract, must apply in writing to the University Housing Office at least thirty days prior to the anticipated change. If the contract is modified, notification will be sent in writing to all parties concerned prior to the effective date of action. Unless written exception is granted by the University, he/she is liable for the full extent of the original statement.~~

~~*Authority: TCA § 49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*~~

1720-2-2-.04 DAMAGE.

(1) The student is responsible for the condition and proper care of the accommodations assigned and shall reimburse the University for all damages done within or to said accommodations in which he/she is housed, for all damages to Resident Hall non-public areas, and all damage to, or loss of University fixtures, furnishings, or property furnished under the contract. Charges for damages and/or necessary cleaning will be assessed against the student, or students, by the University and must be paid promptly. Failure to pay assessment will result in a hold on a student's registration, graduation and/or transcript.

(2) Non-public areas refer to the studies, lounges and restroom facilities, hallways and other areas of a floor of the residence hall which are provided primarily for the use of students having accommodations on that floor.

Authority: TCA § 49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed July 9 1983; effective October 14, 1983. Repealed by Public Chapter 575, effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.

1720-2-2-.05 ROOM CHANGES.

(1) The University expects students to continue residency in the room to which they are assigned. However, it realizes that changes are sometimes mutually beneficial.

(2) Through regularly scheduled procedures, room changes may be made. With the prior written approval of the Resident Director and the Housing Office one change that is mutually agreeable may be made without charge during the semester. After the first change, a $5.00 fee will be assessed any time a student is allowed to move. Failure to obtain the written prior approval of both the Resident Director and the Housing Office will result in a minimum $5.00 assessment for administrative costs and also could result in the imposition of disciplinary sanctions.

Authority: TCA § 49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December30,1995. Amendment filed June 19, 2006; effective October 27, 2006.

1720-2-2-.06 CHECK OUT. Check Out. When a student is assigned specific accommodations, the University assumes occupancy by that student until notified otherwise. When vacating the premises, either for another on-campus facility or to leave University housing it is the occupant's responsibility to check out in person with a staff member of the residence hall. At that time, an evaluation of the facility is made in the occupant's presence and a report is completed on deficiencies or damages for which the student is responsible. Failure to check out in the prescribed manner will result in the occupant's being held liable for any or all deficiencies or damages found, as well as for the cost to replace keys, locks or other such items that affect the appearance or security of the unit. He/she will also be assessed administrative costs incurred by this failure to check out.

Authority: TCA § 49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.

1720-2-2-.07 INSPECTION AND SEARCH POLICY.

(1) Entry by University authorities into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room or apartment by University authorities in order to ascertain the health and safety conditions in the areas, or to check the physical condition of the area, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city,

Rule 1720-2-2-.07, continued

state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.

(a) Inspection: Scheduled inspection by on-campus authorities with the exception of daily janitorial operations, shall be proceeded, if possible, by twenty-four hours notice to the residents.

(b) During the inspection, there will be no search of drawers or closets or personal belongings.

(c) Search: On-campus authorities will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his/her representative. University authorities shall have, if possible, the Resident Director of the hall or his/her designee accompany them on the search.

(d) For purposes of maintenance, and fire and safety evaluation, rooms will be inspected periodically by the University staff. Normally the resident assistant will be involved in this part of the program and will work out arrangements with the individual occupant beforehand.

Authority: TCA § 49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.

1720-2-2-.08 RESIDENCE HALL REGULATIONS.

(1) Telephone Services. Telephones have been installed in the rooms of all residence halls and apartments. Each phone may be reached directly from without the University as well as within it by merely dialing its assigned number. There is no additional charge for local service. However, long distance calls may be made or accepted collect only by those persons who have an official charge card number from the UTC Telephone Services, or a private company or the Bell Telephone Company. No calls may be charged to the telephone number that is listed on the telephone instrument. No collect calls will be accepted and extensions are prohibited.

(2) Safety Prohibitions.

(a) Percolators, hot plates, immersion heaters, and popcorn poppers are prohibited in dorm rooms.

(b) No candles, open flames, or incense burning is allowed.

(c) Light bulbs should not be touching or near clothing or other flammables.

(d) Extension cords must be underwriter laboratory approved or equal. Covering must be in good condition. Plugs and cords must be the same size or larger than appliance wire and not hidden under rugs, trash, paper, clothing, or books, nor near heat sources.

(e) Storage of gasoline, other fuels or vehicles containing them is prohibited.

(f) Hot plates or other cooking equipment may not be used in dormitory rooms because of fire regulations and sanitary reasons.

(g) Cooking in individual rooms is prohibited.

(3) Fire Drills. Each dormitory must have at least one fire drill per month. These are conducted so that each resident can vacate the building quickly and safely in case of emergency. The drills are planned and supervised by the Housing Office, the Security Office, and the Resident Directors. Anytime that

(Rule 1720-2-2-.08, continued)

the fire alarm is sounded in a University building every occupant of the building is required to evacuate immediately. The University police will assist with the evacuation to see that the building is totally vacated and no one will be allowed to re-enter prior to the expressed consent of the security officers on duty. Reports are filed with the offices concerned.

(4) Guests. Residents may have overnight guests of the same sex only, if prior arrangements have been made with roommate(s). The maximum length of any visit is three days and three nights. All guests are governed by the University and residence hall regulations, and it is the host's responsibility to make guests aware of this. In cases where the guest is in violation of University regulations, disciplinary action may be brought against the host.

(5) Alcohol and Drugs. The possession or use of alcoholic beverages, other illegal drugs or intoxicants of any kind is prohibited on campus.

(6) Pets. Only fish tanks no larger than 10 gallons are allowed. Otherwise, no animals are permitted.

(7) Weapons or Explosives, Fireworks. The possession of firearms, hunting knives, fireworks or other type of weapons and explosives is not allowed in the residence halls or on the University property.

(8) Keys. Misuse or loss of them may jeopardize the safety of others and constitutes grounds for disciplinary action. There is a charge for lost keys and other security measures that must be taken due to the loss of such keys.

(9) Quiet Hours. If a student consistently violates Quiet Hours, he/she will be subject to disciplinary action.

Authority: TCA § 49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.

The University of Tennessee at Chattanooga
Chapter 1720-02-02
Student Housing Regulations

Repeal

Chapter 1720-02-02 Student Housing Regulations is repealed in its entirety.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-02-02 Student Housing

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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
8/17/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Housing/Food Services General, Open House and Visitation Procedures, Termination of Housing Contract
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new 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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

None.

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For Department of State Use Only

Sequence Number: 09-23-16
Rule ID(s): 6308
File Date: 9/16/16
Effective Date: 8/1/17

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

Revision Type (check all that apply):
___ Amendment
___ 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**
1720-04-04	Student Housing Regulations
Rule Number	**Rule Title**
1720-04-04-.01	Housing/Food Services General
1720-04-04-.02	Differentiated Housing
1720-04-04-.03	Open House and Visitation Procedures
1720-04-04-.04	Residence Hall Regulations
1720-04-04-.05	Residence Hall Safety Regulations
1720-04-04-.06	Termination of Housing Contract

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE, KNOXVILLE~~

~~CHAPTER 1720-4-4~~
~~STUDENT HOUSING REGULATIONS~~

~~TABLE OF CONTENTS~~

~~1720-4-4-.01 HOUSING/FOOD SERVICES - GENERAL.~~

~~(1) Freshman Students: All single freshmen students, who do not commute from the home of their parent or legal guardian, are required to live in University Residence Halls.~~

~~*Authority: T.C.A. §49-9-209(e). Administrative History: New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and*~~ *new rule filed October 30, 2007; effective February 28, 2008.*

~~1720-4-4-.02 DIFFERENTIATED HOUSING.~~

~~(1) The University maintains a differentiated housing concept begun Fall Quarter, 1971. Differentiated housing permits the student to select the type of facility in which he or she will live, within the University's capability to offer such living arrangements. Students are encouraged to give considerable thought and attention to their housing selection.~~

~~*Authority: T.C.A. §49-9-209(e). Administrative History: New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*~~

~~1720-4-4-.03 OPEN HOUSE AND VISITATION PROCEDURES.~~

~~(1) Hours of authorized visitation periods will be posted in the lobby of each residence hall.~~

~~(2) All guests of floor members participating in open houses/visitation periods must be escorted by an eligible host (a member of the participating floor) at all times in non-public (living) areas (i.e., rooms, floor corridors, floor study lounges, elevators and stairwells, etc. Resident Assistants are able to define these specifically for the hall). Guests of the opposite sex must stay on floors participating in open houses/visitation periods.~~

~~(3) Guests of the opposite sex must use the restroom provided in the hall main lobby area.~~

~~(4) Any resident who violates the policy shall be subject to disciplinary action and be asked to:~~

~~(a) Leave, if he or she is not a member of the floor.~~

~~(b) Escort his or her guest out and not participate in the remainder of the open house/visitation period if he or she is a resident of the floor.~~

(Rule 1720-4-4-.03, continued)

1. In the event of a floor violation, the Hall Director or Assistant Hall Director on duty may terminate the open house/visitation period at his/her discretion.

2. Hosts and their guests are responsible for the particulars of this policy and will be personally charged when violations occur. Hosts are responsible for the conduct of their guests and may be personally charged for a guests's violations.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*

1720-4-4-.04 RESIDENCE HALL REGULATIONS.

(1) Soliciting: For the residents' protection against fraudulent sales and annoyance, soliciting is not permitted in the halls. Permission for any soliciting must be obtained through the Dean of Students.

(2) Windows and Screens: Window screens may not be unfastened or removed.

(3) Business from Resident's Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms; inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises; or use their room phone numbers for business purposes.

(4) Pets: Pets are not permitted in the halls or on the premises. The only exceptions to this policy are fish, guide dogs accompanying sight impaired persons or guide dogs in training.

(5) Attachments: Residents should not modify the room without prior, written approval of the Hall Director.

(6) Furniture and Fixtures: All University property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director.

(7) Water furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.

(8) Keys: Residence hall keys are the sole property of The University of Tennessee and may not be duplicated under any circumstances.

(9) Unauthorized Moving: Unauthorized room and hall changes are prohibited.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*

1720-4-4-.05 RESIDENCE HALL SAFETY REGULATIONS.

(1) Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.

(2) Open Flames: Items which require an open flame to operate or which produce heat are not allowed in residents' rooms.

(Rule 1720-4-4-.05, continued)

(3) Decorations: Decorative items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (UL) approved lights may be used to decorate a room.

(4) Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking meals is not permitted in student rooms except in the apartment style residence halls. Snack preparation is limited to the use of approved cooking appliances.

(5) Cooking Appliances: Underwriters' Laboratories (UL) approved, closed coil or hot air popcorn poppers, sealed unit coffee makers, and thermostatically controlled hot pots may be kept in student rooms. A student may use a microwave in the Apartment Residence Hall provided the microwave is UL approved and does not exceed 600 watts and provided that student must have prior roommate approval; only one microwave is permitted per room. Other appliances, including slow cookers, electric frying pans, and open coil appliances (including, but not limited to, toasters, toaster ovens, and hot plates) are prohibited except in the apartment style residence halls where kitchens are equipped with fire extinguishers.

(6) Fire Safety: Fire evacuation plans are posted in each resident's room. Tampering with, vandalizing, or misuse of fire safety equipment is prohibited and constitutes reason for eviction from the residence hall and possible suspension or expulsion from the University. Fire safety equipment includes, but is not limited to, alarms, extinguishers, smoke detectors, door closures, alarmed doors, and sprinklers. A Safety Exit Drill will be conducted regularly in each residence hall in accordance with state law.

Failure to evacuate a building during such a Safety Exit Drill will be grounds for disciplinary action.

(7) Elevators: Tampering with, vandalism to, or other misuse of elevator equipment in the University residence halls is prohibited. Such action will constitute reason for disciplinary action, including eviction from the residence hall.

(8) Extension Cords and Multiple Plugs: An extension cord must be UL approved, 16 gauge, a polarized plug and a single outlet; it may not be placed under floor covering or furnishings and may not be secured by penetrating the insulation. Multiple outlets are prohibited; however, one UL approved 15 amp multiple outlet strip with a circuit breaker may be used in each room.

(9) Refrigerators: Refrigerators are prohibited in the residence halls except those provided by the Department of University Housing.

Authority: T.C.A. §49-9-209(e). Administrative History: New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.

1720-4-4-.06 TERMINATION OF HOUSING CONTRACT.

(1) The University may cancel a student's housing contract if the student fails to meet the full terms and conditions of his/her contract, or for violation of University or Residence Hall regulations.

(2) Hearings and/or appeals of disciplinary action are available through established University administrative and judicial procedures.

Authority: T.C.A. §49-9-209(e). Administrative History: New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed October 18, 1989;

~~(Rule 1720-4-4-.06, continued)~~

~~*effective January 29, 1990. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*~~

The University of Tennessee, Knoxville
Chapter 1720-04-04
Student Housing Regulations

Repeal

Chapter 1720-04-04 Student Housing Regulations is repealed in its entirety.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-04-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: [signature]

My commission expires on: 12-4-18

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.

[signature]
Herbert H. Slatery III
Attorney General and Reporter

7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

[signature]
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Residence Hall Agreements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new 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)

The Regulatory Flexibility Addendum is not applicable.

Impact on Local Governments

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

The University of Tennessee anticipates that this rule change 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

(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;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

None.

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: 09-24-16
Rule ID(s): 6309
File Date: 9/16/16
Effective Date: 8/1/17

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

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

Rule(s) 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**
1720-01-13	Student Housing
Rule Number	**Rule Title**
1720-01-13-.01	General
1720-01-13-.02	Residence Hall Agreements
1720-01-13-.03	Definitions

RULES
OF
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-01-13
STUDENT HOUSING

TABLE OF CONTENTS

1720-01-13-.01 GENERAL.

(1) The primary purpose of student housing at The University of Tennessee is to provide living accommodations and educational programming for undergraduate and graduate students enrolled at such campuses.

(2) Subject to the general supervision of the President, Chancellors are authorized to exercise complete executive authority over student housing, including, without limitation, development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. Policies, procedures, and agreements shall be developed in consultation with appropriate system-level administrators (e.g., Chief Financial Officer, Office of the General Counsel) and shall be consistent with this Chapter 1720-01-13.

(3) Chancellors are authorized to determine which categories of students (e.g., full-time; enrolled) are eligible to live in student housing and which categories of students are either required to live in student housing or are restricted from living in student housing, subject to federal and state law.

1720-01-13-.02 RESIDENCE HALL AGREEMENTS.

(1) A student who applies to reside in a residence hall shall, as a condition to residing in the residence hall, sign an agreement prepared by the University that establishes the terms and conditions of the student's occupancy of the residence hall.

(2) The agreement described in Section .02(1) should address the following subjects:

(a) Term of the agreement;
(b) Amounts, billing, payment, and refunds of housing fees, security; deposits, and damage and cleaning fees;
(c) Assignment and reassignment of rooms;
(d) Policies and procedures governing the use and safety of the residence hall and conduct within the residence hall, including, without limitation, policies governing the room within which the student is to reside (e.g., emergency procedures, animals, prohibited items, commercial solicitation);
(e) Rights of entry to rooms;
(f) Loss of or damage to the student's personal property;
(g) Loss of or damage to University property;
(h) Alterations, additions, or improvements to rooms;
(i) Animals;
(j) Prohibited activities;
(k) Visitation;
(l) Prohibition on assignment and subleasing by the student;

(m) Termination of the agreement by either the student or the University, and options for the student to appeal the termination; and

(n) Other reasonable and necessary subjects determined by the Chancellor.

(3) The agreement described in Section .02(1) may be in a paper or electronic format.

1720-01-13-.03 DEFINITIONS.

(1) The term "campus" means The University of Tennessee at Chattanooga; The University of Tennessee Health Science Center; The University of Tennessee, Knoxville; The University of Tennessee Space Institute; The University of Tennessee at Martin; and/or The University of Tennessee Institute of Agriculture.

(2) The term "Chancellor" means the person elected by the Board of Trustees for The University of Tennessee to serve as the Chancellor for a particular campus or institute, or the Chancellor's designee.

(3) The term "fraternity house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university fraternity.

(4) The term "residence hall(s)" means student housing other than fraternity houses and sorority houses.

(5) The term "sorority house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university sorority.

(6) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students.

(7) The term "student housing" means University property primarily intended for use by University students as places to reside. Examples of student housing include, without limitation, residence halls, dormitories, apartments, hotels, fraternity houses, and sorority houses.

(8) The terms "University" and "University of Tennessee" mean the campuses, centers, and institutes of the University of Tennessee, and all their constituent parts, and the University of Tennessee system.

(9) The term "University property" means all land, buildings, houses, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University of Tennessee.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-01-13 Student Housing

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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