

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 04-13-21
Rule ID(s): 9499
File Date: 4/12/2021
Effective Date: 7/11/2021

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 Water and Wastewater Operator Certification Board
Division:	Fleming Training Center
Contact Person:	Sherry Messick
Address:	J. R. Fleming Environmental Training Center 2022 Blanton Drive Murfreesboro, Tennessee
Zip:	37129
Phone:	(615) 898-8090
Email:	Sherry.Messick@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
0400-49-01	Rules Governing Water and Wastewater Operator Certification
Rule Number	Rule Title
0400-49-01-.02	Examinations
0400-49-01-.03	Fees
0400-49-01-.05	Definitions
0400-49-01-.10	Continuing Education

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

Chapter 0400-49-01
Rules Governing Water and Wastewater Operator Certification

Amendments

Rule 0400-49-01-.02 Examinations is amended by adding a new paragraph following paragraph (8) so that the new paragraph (9) shall read as follows:

- (9) Required training.
 - (a) Any person seeking to apply to sit for a Grade III or Grade IV examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 30 hours of Board-sanctioned comprehensive training before the Board will consider the application.
 - (b) A person seeking to apply to sit for a Grade I or Grade II examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 18 hours of Board-sanctioned comprehensive training before the Board will consider the application.
 - (c) A person seeking to apply to sit for a Small Water Systems or a Biological/Natural Systems examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 18 hours of Board-sanctioned comprehensive training before the Board will consider the application.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-49-01-.03 Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) Fees for Certification
 - (a) Fees for certification shall be required of each applicant and paid in advance as follows:
 - 1. Application fee for each operator examination or reciprocity request applied for..... \$100
 - 2. Missed examination fee \$50
 - 3. Discount annual renewal fee for each operator certificate:
(Payment prior to February 1) \$50
 - 4. Standard annual renewal fee for each operator certificate:
(Payment from February 1 through June 30) \$100
 - (b) No application fee will be returned.
 - (c) Upon payment of an application fee and approval by the Board, an applicant may take any one scheduled examination during the following 12 months. If an applicant chooses not to take or fails to appear for the first examination offered after receiving approval, the applicant must reapply on a form approved by the Board and submit the missed examination fee to be scheduled for a subsequent exam within the established time. The reapplication must occur 60 days in advance of the examination he/she wishes to take. If an applicant does not take the examination within 12 months of the Board's approval, he/she must reapply by submitting a new application with fees in order to be considered to take a subsequent examination.

- (d) Each year a certified operator shall submit to the Board for the following year a completed certificate renewal application and a fee for the renewal of each operator certificate he/she possesses. Applications received prior to February 1 of each year shall be subject to discount renewal fees. Applications received February 1 through June 30 of each year shall be subject to standard renewal fees. Any person failing to meet the June 30 deadline may, within 90 days of the deadline, request that the Board grant a variance. The Board may grant a variance when the delay was caused by extenuating circumstances. A completed certificate renewal application or appropriate annual renewal fee for an expired certificate not received by the Board by June 30 shall preclude the recertification of the operator in his/her expired classification until he/she shall have fulfilled all the requirements for the issuance of an initial certificate in that classification, including the satisfactory completion of a written examination. When an operator classification is upgraded, the certificate he/she was upgraded from becomes void; and no additional fee payment is necessary until renewal.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-49-01-.03 Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Reserved.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Rule 0400-49-01-.05 Definitions is amended by deleting it in its entirety and substituting instead the following:

0400-49-01-.05 Definitions.

- (1) "Available" means that a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner, based on system size, complexity and the quality of either the source water or the receiving stream.
- (2) "Board" means the board of certification as described in T.C.A. § 68-221-905.
- (3) "Commissioner" and "Department" mean the Commissioner of the Tennessee Department of Environment and Conservation or his/her duly authorized representative.
- (4) "Operating shift" is that period of time during which operator decisions that affect public health are necessary for proper operation of the system.
- (5) "Person in direct charge" as used in these rules means the person or persons expressly designated to be in direct charge and so named in writing to the Board's authorized representative by each water supply system and wastewater system, whose decisions and directions to system personnel control the manipulation of equipment and thereby determine the quality and quantity of the water supplied by a water treatment plant or a water distribution system, or the quality of the effluent from a wastewater treatment plant or the integrity of a wastewater collection system.
- (6) "Process control/system integrity decisions" means decisions regarding the manipulation of equipment, chemicals or processes that determine the quality and quantity of the water supplied by a water treatment plant or a water distribution system, or the quality of the effluent from a wastewater treatment plant or the integrity of a wastewater collection system.
- (7) "Written examination" means an examination taken in either written or electronic format.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Rule 0400-49-01-.10 Continuing Education is amended by deleting it in its entirety and substituting instead the following:

- (1) Completion of Continuing Education Requirements. At least once during every continuing education period each certified operator shall satisfactorily complete the required number of continuing education hours approved by the Board for the particular type of certificate he/she holds.

- (2) Continuing Education Period. The continuing education period is three calendar years and shall begin either with the date the certified operator obtained his/her certificate or the date the certified operator last satisfactorily completed the required number of continuing education hours and shall end at the conclusion of the annual continuing education term three calendar years thereafter. An annual continuing education term shall begin each year on October 1 and shall end on September 30 of the following year.
- (3) Failure to Complete Continuing Education Requirements. The failure of an operator to satisfactorily complete the required number of continuing education hours approved by the Board Secretary during his/her continuing education period shall be grounds for the denial of his/her application for the renewal of his/her certificate. An operator that fails to satisfactorily complete the required number of continuing education hours during his/her continuing education period due to extenuating circumstances may make a written request to the Board for an extension of time to do so. All requests by an operator for an extension of time to meet the continuing education requirement must be made in writing to the Board either within two months of the elapsed continuing education period or by the date of return of the operator to active employment, whichever is later. All such requests must be accompanied by complete supporting documentation of the circumstances causing the failure to meet the continuing education requirement.
- (4) Notification of Satisfactory Completion. An operator shall notify the Board Secretary upon his/her satisfactory completion of the continuing education requirement by furnishing appropriate documentation of course completion. Notification by the operator is not necessary in those cases where an agency notifies the Board Secretary of such activity.
- (5) A certified operator shall only receive credit for a continuing education course that is completed in its entirety. A certified operator attending the same continuing education course more than once in two consecutive continuing education periods shall only receive credit for the operator's first attendance.

Authority: T.C.A. §§ 68-221-901 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)
Craig Brymer Municipal Government				X	
David Money Commissioner's Designee	X				
J. Darryl Green Certified Operator	X				
Dr. Larry W. Moore Faculty Member	X				
Gregory L. Morgan Certified Operator	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Water and Wastewater Operator Certification Board on 01/14/2021 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: 06/22/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 08/24/2020

Date: 01/14/2021

Signature: J. Darryl Green

Name of Officer: J. Darryl Green

Title of Officer: Chairman

Agency/Board/Commission: Tennessee Water and Wastewater Operator Certification Board

Rule Chapter Number(s): Chapter 0400-49-01

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
3/22/2021
Date

Department of State Use Only

Filed with the Department of State on: 4/12/2021

Effective on: 7/11/2021



Tre Hargett
Secretary of State

RECEIVED

APR 12 2021

Secretary of State
Division of Publications

Public Hearing Comments

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

Comment #1: The requirement for training after two failed exams will limit operators in Tennessee from advancing in their career. The commenter remarked that, currently, the fee and the required time is all a person needs to provide to advance.

Comment #2: The requirement of additional training for those who have failed the exam twice adds more time and cost to our smaller systems that are often in immediate need of an operator. The commenter conveyed his belief that the exam is a major component to the lower test scores.

Response: Under the proposed rules, operators will be required to attend a three- or five-day training course after failing to achieve a satisfactory score on the exam for a second time. After each failed exam attempt, each exam candidate is provided an individualized content mastery summary sheet that is a useful tool in identifying areas in which a candidate might be deficient and where additional training is needed. The addition of the training requirement would serve as an opportunity for individuals to select classes to target these subject matter areas and advance their knowledge to successfully pass the certification exam. By ensuring the applicants who have twice failed the exam receive additional training in order to become a competent water or wastewater operator helps to maintain the integrity of the program statewide. The training also helps to ensure that water and wastewater operators have the requisite skills to provide safe drinking water and treated wastewater entering state water resources.

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.

No small businesses are directly subject to or affected by the proposed rules. The proposed rules required additional education for individuals who fail examinations required to be certified as water or wastewater operators in Tennessee, implements a missed examination fee, and makes changes regarding continuing education for operators. Small businesses providing drinking water or discharging wastewater may be indirectly impacted if an employee is required to take additional training because of failing an examination twice, or misses an examination, but only if the employer chooses to take on the cost of the employee's additional training and/or failure to appear at the examination.

There are approximately 184 drinking water systems that would be considered small businesses. Of the 184, the majority of the businesses are campgrounds and resorts (99), followed by boat docks/marinas (23), restaurants (16), gas stations/markets (15) and manufacturing/service industries (31). There are approximately 43 wastewater systems that would be considered small businesses. Of the 43, most of the businesses are campgrounds and resorts (12), property owners' association (11), mobile home parks (8), and churches (8). Not all of these small businesses employ operators directly, but of those that do, they would only be impacted if they chose to take on the cost of additional training for employees who twice fail the examination or fail to appear.

- (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 rules do not add any reporting, recordkeeping, or other administrative costs to small businesses in order to comply. The proposed rules apply to individual operators and do not require small businesses to track their employees' compliance. An operator's compliance with the rules will be tracked by the Department.

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

Small businesses providing drinking water or discharging wastewater may be impacted if they choose to cover the missed operator examination fee for an employee who misses an examination and wants to retake the examination or the expenses of additional training for employees who twice fail the examination and want to retake it.

- (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 rules implement a missed examination fee, clarify continuing education requirements, and require additional training for people who twice fail the examination. The missed examination fee is to cover the cost of examination materials that the Department incurs when applicants miss an examination. The continuing education and additional training help ensure that water and wastewater operators have the requisite skills to provide safe drinking water and treated wastewater entering state water resources. There is no less burdensome, less intrusive or less costly alternative to achieve that purpose.

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

A similar rule in Alabama requires a one-day class after an applicant has failed the certification exam twice. Other states require attendance at training classes before an applicant initially sits for an exam.

- (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.

Small businesses are only affected by this rule if they choose to pay for additional training after an employee fails the examination twice or misses the examination, and that employee chooses to sit again

for the examination. The exemption of small businesses from this rule would impair the integrity of the water and wastewater operator certification program statewide because operators that are exempted would not receive additional education to ensure they have the requisite skills to provide safe drinking water and treated wastewater entering state water resources.

Impact on Local Governments

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

The Board believes that these new rules will not have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule change will bolster the Water and Wastewater Operator program in Tennessee by implementing new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator. The rule change will also clarify the requirements for continuing education and implement a fee for missed exams.

- (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 or state laws or regulations mandating promulgation of the rule amendment.

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

Persons, organizations, corporations, or governmental entities most directly affected by this rule include water and wastewater operators in general, and people who fail the operator examination twice. These affected have not urged adoption or rejection of the rule; however, commenters noted anticipated impacts of the required training. The rule is the result of a collaborative process between Board members, operators, and the Department. As such, it is understood to be an acceptable approach by the stakeholders.

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

The Board is not aware of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule.

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

The rule contains a missed examination fee, which is designed to cover the costs that the Department expends in preparing examination material. The rule allows the Department to ensure those costs are covered and not passed on to Tennessee taxpayers or to other applicants. The Department estimates that 40 applicants per year would miss the examination, which would result in \$2,000 in fees per year.

The rule could impose training session costs on applicants or employers of applicants who have twice failed to achieve a passing score on the examination. The training sessions administered by the Department typically last for 3-5 days and cost approximately \$225-\$300. Other private entities may offer training sessions for cost, as well. Based on the results from 2019, an approximate 100 applicants a year would need to attend the additional training. There are three primary training providers, including the Department. If a third of the applicants attend the Departmental training and the average class cost is \$300, that would be additional \$9,900 in revenue. However, those required to attend the additional training can choose any approved provider.

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

Patrick Dwyer, Director, Fleming Training Center
Murfreesboro, Tennessee
(615) 898-6505
Patrick.Dwyer@tn.gov

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

Horace Tipton
Legislative Liaison
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) 253-5339
Horace.Tipton@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The action proposed is the adoption of the rules relative to the Water and Wastewater Operator program to implement new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator, clarify the requirements for continuing education, and implement a fee for missed exams. These rules are implemented pursuant to Tennessee Code Annotated Title 4, Chapter 5, and section 68-221-906.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

These rules are believed to be the least-cost method to implement additional training requirements to ensure water and wastewater operators achieve the level of competency to be protective of public drinking water and water resources of the state.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

These rules are being promulgated in order to implement new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator, clarify the requirements for continuing education, and implement a fee for missed exams. The missed exam fee allows the Department to recover the costs paid for exam materials that were not used, and not be passed on to taxpayers. The new training requirement is anticipated to cost approximately \$225-\$300 per person who twice fails the exam. This could apply both to government entities and to other persons, including regulated entities. If the rules are not promulgated, revenue will be lost because the Department cannot cover the costs when an applicant fails to attend the examination. Likewise, the training requirements helps to ensure the integrity of the water and wastewater operator program statewide. Based on this comparison, the benefits of moving forward with this rulemaking outweigh the costs.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources because it does not add any significant costs to administration and enforcement of the rule and it allows recovery of costs expended by the Department when an applicant chooses to miss an examination. Moreover, the new training requirements are not required until a person fails an exam twice and those requirements help to ensure operators in charge of safe drinking water and clean wastewater are sufficiently trained, educated, and certified.

- (5) A determination of the effect of the action on competition.
- The rule may have an advantageous effect on the marketplace because more companies may offer additional training sessions in Tennessee for applicants who fail the examination twice.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- Cost of living in the geographical area in which the action would occur will not be affected, but the rule will work to ensure that communities statewide are receiving safe drinking water and clean wastewater is being discharged into rivers and streams.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- This action would have little impact on employment in the state.
- (8) The source of revenue to be used for the action.
- Existing resources will be used for this action.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- This action will help to ensure the integrity of the water and wastewater operator program and to ensure that Tennesseans are receiving safe drinking water and clean wastewater is discharged into rivers and streams by ensuring the operators are properly trained, educated, and certified. Exam applicants who miss the exam or twice fail the exam, or their employers, will bear the costs of this action.

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

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 Water and Wastewater Operator Certification Board
Division:	Fleming Training Center
Contact Person:	Sherry Messick
Address:	J. R. Fleming Environmental Training Center 2022 Blanton Drive Murfreesboro, Tennessee
Zip:	37129
Phone:	(615) 898-8090
Email:	Sherry.Messick@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-49-01	Rules Governing Water and Wastewater Operator Certification
Rule Number	Rule Title
0400-49-01-.02	Examinations
0400-49-01-.03	Fees
0400-49-01-.05	Definitions
0400-49-01-.10	Continuing Education

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

Chapter 0400-49-01
Rules Governing Water and Wastewater Operator Certification

Amendments

Rule 0400-49-01-.02 Examinations is amended by adding a new paragraph following paragraph (8) so that the new paragraph (9) shall read as follows:

(9) Required training.

- (a) Any person seeking to apply to sit for a Grade III or Grade IV examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 30 hours of Board-sanctioned comprehensive training before the Board will consider the application.
- (b) A person seeking to apply to sit for a Grade I or Grade II examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 18 hours of Board-sanctioned comprehensive training before the Board will consider the application.
- (c) A person seeking to apply to sit for a Small Water Systems or a Biological/Natural Systems examination who failed to achieve a satisfactory score on two previous examinations for the same operator classification for which the person is seeking to apply shall complete 18 hours of Board-sanctioned comprehensive training before the Board will consider the application.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-49-01-.03 Fees is amended by deleting it in its entirety and substituting instead the following:

(1) Fees for Certification

(a) Fees for certification shall be required of each applicant and paid in advance as follows:

- 1. Application fee for each operator examination or reciprocity request applied for..... \$100
- 2. Missed examination fee \$50
- 2.3. Discount annual renewal fee for each operator certificate:
(Payment prior to February 1) \$50
- 3.4. Standard annual renewal fee for each operator certificate:
(Payment from February 1 through June 30) \$100

(b) No application fee will be returned.

(c) Upon payment of an application fee and approval by the Board, an applicant may take any one scheduled examination during the following ~~twelve (12)~~ months. If an applicant chooses not to take or fails to appear for, the first examination offered after receiving approval, the applicant must ~~register~~ reapply on a form approved by the Board and submit the missed examination fee to be scheduled for a subsequent exam within the established time. The ~~registration reapplication~~ must occur ~~sixty (60)~~ days in advance of the examination he/she wishes to take. If an applicant does not take the examination within ~~twelve (12)~~ months of the Board's approval, he/she must reapply by submitting a new application with fees in order to be considered to take a subsequent examination.

- (d) Each year a certified operator shall submit to the Board for the following year a completed certificate renewal application and a fee for the renewal of each operator certificate he/she possesses. Applications received prior to February 1 of each year shall be subject to discount renewal fees. Applications received February 1 through June 30 of each year shall be subject to standard renewal fees. Any person failing to meet the June 30 deadline may, within ~~sixty (60)~~ 90 days of the deadline, request that the Board grant a variance. A The Board may grant a variance may be granted when the delay was caused by ~~Board or staff error, Board action, or documented postal error,~~ extenuating circumstances. A completed certificate renewal application or appropriate annual renewal fee for an expired certificate not received by the Board by June 30 shall preclude the recertification of the operator in his/her expired classification until he/she shall have fulfilled all the requirements for the issuance of an initial certificate in that classification, including the satisfactory completion of a written examination. When an operator classification is upgraded, the certificate he/she was upgraded from becomes void; and no additional fee payment is necessary until renewal.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-49-01-.03 Fees is amended by deleting it in its entirety and substituting instead the following:

(2) Reserved. Fees for Cross Connection Control Training Registration

~~(a) Fees for Cross Connection Control Training registration shall be required of each person and paid in advance as follows:~~

~~1. Registration fee for a Cross Connection Control Basic Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt).....\$275~~

~~2. Registration fee for a Cross Connection Control Renewal Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt)..... \$110~~

~~(b) No registration fee will be returned.~~

~~(c) The registration fee must be received thirty (30) days in advance of the class he/she wishes to take.~~

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Rule 0400-49-01-.05 Definitions is amended by deleting it in its entirety and substituting instead the following:

0400-49-01-.05 Definitions.

(1) "Available" means that a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner, based on system size, complexity and the quality of either the source water or the receiving stream.

(2) "Board" means the board of certification as described in T.C.A. § 68-221-905.

(3) "Commissioner" and "Department" mean the Commissioner of the Tennessee Department of Environment and Conservation or his/her duly authorized representative.

(4) "Operating ~~Shift shift~~" is that period of time during which operator decisions that affect public health are necessary for proper operation of the system.

~~(6)(5)~~ "Person in direct charge" as used in these rules means the person or persons expressly designated to be in direct charge and so named in writing to the Board's authorized representative by each water supply

system and wastewater system, whose decisions and directions to system personnel control the manipulation of equipment and thereby determine the quality and quantity of the water supplied by a water treatment plant or a water distribution system, or the quality of the effluent from a wastewater treatment plant or the integrity of a wastewater collection system.

~~(5)~~(6) "Process control/system integrity decisions" means decisions regarding the manipulation of equipment, chemicals or processes that determine the quality and quantity of the water supplied by a water treatment plant or a water distribution system, or the quality of the effluent from a wastewater treatment plant or the integrity of a wastewater collection system.

~~(7)~~ "Written examination" means an examination taken in either written or electronic format.

Authority: T.C.A. §§ 68-221-901 et seq. and 4-5-201 et seq.

Rule 0400-49-01-.10 Continuing Education is amended by deleting it in its entirety and substituting instead the following:

~~(1)~~ Completion of Continuing Education Requirements. At least once during every continuing education period each certified operator shall satisfactorily complete the required number of continuing education hours approved by the Board for the particular type of certificate he/she holds.

~~(2)~~ Continuing Education Period. The continuing education period is ~~for a certified operator three calendar years and~~ shall begin either with the date the certified operator obtained his/her certificate or the date the certified operator last satisfactorily completed the required number of continuing education hours and shall end at the conclusion of the annual continuing education term three ~~(3)~~ calendar years thereafter. An annual continuing education term shall begin each year on October 1 and shall end on September 30 of the following year.

~~(3)~~ Failure to Complete Continuing Education Requirements. The failure of an operator to satisfactorily complete the required number of continuing education hours approved by the Board Secretary during his/her continuing education period shall be grounds for the denial of his/her application for the renewal of his/her certificate. An operator that fails to satisfactorily complete the required number of continuing education hours during his/her continuing education period due to extenuating circumstances may make a written request to the Board for an extension of time to do so. All requests by an operator for an extension of time to meet the continuing education requirement must be made in writing to the Board either within two months of the elapsed continuing education period or by the date of return of the operator to active employment, whichever is later. All such requests must be accompanied by complete supporting documentation of the circumstances causing the failure to meet the continuing education requirement.

~~(4)~~ Notification of Satisfactory Completion. An operator shall notify the Board Secretary upon his/her satisfactory completion of the continuing education requirement by furnishing appropriate documentation of course completion. Notification by the operator is not necessary in those cases where an agency notifies the Board Secretary of such activity. ~~An operator that fails to satisfactorily complete the required number of continuing education hours during his/her continuing education period due to an unusual event such as an incapacitating illness or similar unavoidable circumstances may make a written request to the Board for an extension of time to do so. All requests by an operator for an extension of time to meet the continuing education requirement must be made in writing to the Board either within two (2) months of the elapsed continuing education period or by the date of return of the operator to active employment, whichever is later. All such requests must be accompanied by complete supporting documentation of the circumstances causing the failure to meet the continuing education requirement.~~

~~(5)~~ A certified operator shall only receive credit for a continuing education course that is completed in its entirety. A certified operator attending the same continuing education course more than once in two consecutive continuing education periods shall only receive credit for the operator's first attendance.

Authority: T.C.A. §§ 68-221-901 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)
Craig Brymer Municipal Government				X	
David Money Commissioner's Designee	X				
J. Darryl Green Certified Operator	X				
Dr. Larry W. Moore Faculty Member	X				
Gregory L. Morgan Certified Operator	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Water and Wastewater Operator Certification Board on 01/14/2021, 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: 06/22/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 08/24/2020

Date: January 14, 2021

Signature: _____

Name of Officer: J. Darryl Green

Title of Officer: Chairman

Agency/Board/Commission: Tennessee Water and Wastewater Operator Certification Board

Rule Chapter Number(s): Chapter 0400-49-01

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

Comment #1: The requirement for training after two failed exams will limit operators in Tennessee from advancing in their career. The commenter remarked that, currently, the fee and the required time is all a person needs to provide to advance.

Comment #2: The requirement of additional training for those who have failed the exam twice adds more time and cost to our smaller systems that are often in immediate need of an operator. The commenter conveyed his belief that the exam is a major component to the lower test scores.

Response: Under the proposed rules, operators will be required to attend a three- or five-day training course after failing to achieve a satisfactory score on the exam for a second time. After each failed exam attempt, each exam candidate is provided an individualized content mastery summary sheet that is a useful tool in identifying areas in which a candidate might be deficient and where additional training is needed. The addition of the training requirement would serve as an opportunity for individuals to select classes to target these subject matter areas and advance their knowledge to successfully pass the certification exam. By ensuring the applicants who have twice failed the exam receive additional training in order to become a competent water or wastewater operator helps to maintain the integrity of the program statewide. The training also helps to ensure that water and wastewater operators have the requisite skills to provide safe drinking water and treated wastewater entering state water resources.

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.

No small businesses are directly subject to or affected by the proposed rules. The proposed rules required additional education for individuals who fail examinations required to be certified as water or wastewater operators in Tennessee, implements a missed examination fee, and makes changes regarding continuing education for operators. Small businesses providing drinking water or discharging wastewater may be indirectly impacted if an employee is required to take additional training because of failing an examination twice, or misses an examination, but only if the employer chooses to take on the cost of the employee's additional training and/or failure to appear at the examination.

There are approximately 184 drinking water systems that would be considered small businesses. Of the 184, the majority of the businesses are campgrounds and resorts (99), followed by boat docks/marinas (23), restaurants (16), gas stations/markets (15) and manufacturing/service industries (31). There are approximately 43 wastewater systems that would be considered small businesses. Of the 43, most of the businesses are campgrounds and resorts (12), property owners' association (11), mobile home parks (8), and churches (8). Not all of these small businesses employ operators directly, but of those that do, they would only be impacted if they chose to take on the cost of additional training for employees who twice fail the examination or fail to appear.

- (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 rules do not add any reporting, recordkeeping, or other administrative costs to small businesses in order to comply. The proposed rules apply to individual operators and do not require small businesses to track their employees' compliance. An operator's compliance with the rules will be tracked by the Department.

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

Small businesses providing drinking water or discharging wastewater may be impacted if they choose to cover the missed operator examination fee for an employee who misses an examination and wants to retake the examination or the expenses of additional training for employees who twice fail the examination and want to retake it.

- (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 rules implement a missed examination fee, clarify continuing education requirements, and require additional training for people who twice fail the examination. The missed examination fee is to cover the cost of examination materials that the Department incurs when applicants miss an examination. The continuing education and additional training help ensure that water and wastewater operators have the requisite skills to provide safe drinking water and treated wastewater entering state water resources. There is no less burdensome, less intrusive or less costly alternative to achieve that purpose.

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

A similar rule in Alabama requires a one-day class after an applicant has failed the certification exam twice. Other states require attendance at training classes before an applicant initially sits for an exam.

- (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.

Small businesses are only affected by this rule if they choose to pay for additional training after an employee fails the examination twice or misses the examination, and that employee chooses to sit again for the examination. The exemption of small businesses from this rule would impair the integrity of the water and wastewater operator certification program statewide because operators that are exempted would not receive additional education to ensure they have the requisite skills to provide safe drinking water and treated wastewater entering state water resources.

Impact on Local Governments

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

The Board believes that these new rules will not have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule change will bolster the Water and Wastewater Operator program in Tennessee by implementing new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator. The rule change will also clarify the requirements for continuing education and implement a fee for missed exams.

- (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 or state laws or regulations mandating promulgation of the rule amendment.

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

Persons, organizations, corporations, or governmental entities most directly affected by this rule include water and wastewater operators in general, and people who fail the operator examination twice. These affected have not urged adoption or rejection of the rule; however, commenters noted anticipated impacts of the required training. The rule is the result of a collaborative process between Board members, operators, and the Department. As such, it is understood to be an acceptable approach by the stakeholders.

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

The Board is not aware of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule.

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

The rule contains a missed examination fee, which is designed to cover the costs that the Department expends in preparing examination material. The rule allows the Department to ensure those costs are covered and not passed on to Tennessee taxpayers or to other applicants. The Department estimates that 40 applicants per year would miss the examination, which would result in \$2,000 in fees per year.

The rule could impose training session costs on applicants or employers of applicants who have twice failed to achieve a passing score on the examination. The training sessions administered by the Department typically last for 3-5 days and cost approximately \$225-\$300. Other private entities may offer training sessions for cost, as well. Based on the results from 2019, an approximate 100 applicants a year would need to attend the additional training. There are three primary training providers, including the Department. If a third of the applicants attend the Departmental training and the average class cost is \$300, that would be additional \$9,900 in revenue. However, those required to attend the additional training can choose any approved provider.

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

Patrick Dwyer, Director, Fleming Training Center
Murfreesboro, Tennessee
(615) 898-6505
Patrick.Dwyer@tn.gov

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

Horace Tipton
Legislative Liaison
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) 253-5339
Horace.Tipton@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The action proposed is the adoption of the relative to the Water and Wastewater Operator program to implement new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator, clarify the requirements for continuing education, and implement a fee for missed exams. These rules are implemented pursuant to Tennessee Code Annotated Title 4, Chapter 5, and section 68-221-906.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

These rules are believed to be the least-cost method to implement additional training requirements to ensure water and wastewater operators achieve the level of competency to be protective of public drinking water and water resources of the state.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

These rules are being promulgated in order to implement new training requirements for people who twice fail to achieve a passing grade on the examination to become an operator, clarify the requirements for continuing education, and implement a fee for missed exams. The missed exam fee allows the Department to recover the costs paid for exam materials that were not used, and not be passed on to taxpayers. The new training requirement is anticipated to cost approximately \$225-\$300 per person who twice fails the exam. This could apply both to government entities and to other persons, including regulated entities. If the rules are not promulgated, revenue will be lost because the Department cannot cover the costs when an applicant fails to attend the examination. Likewise, the training requirements helps to ensure the integrity of the water and wastewater operator program statewide. Based on this comparison, the benefits of moving forward with this rulemaking outweigh the costs.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources because it does not add any significant costs to administration and enforcement of the rule and it allows recovery of costs expended by the Department when an applicant chooses to miss an examination. Moreover, the new training requirements are not required until a person fails an exam twice and those requirements help to ensure operators in charge of safe drinking water and clean wastewater are sufficiently trained, educated, and certified.

- (5) A determination of the effect of the action on competition.
- The rule may have an advantageous effect on the marketplace because more companies may offer additional training sessions in Tennessee for applicants who fail the examination twice.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- Cost of living in the geographical area in which the action would occur will not be affected, but the rule will work to ensure that communities statewide are receiving safe drinking water and clean wastewater is being discharged into rivers and streams.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- This action would have little impact on employment in the state.
- (8) The source of revenue to be used for the action.
- Existing resources will be used for this action.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- This action will help to ensure the integrity of the water and wastewater operator program and to ensure that Tennesseans are receiving safe drinking water and clean wastewater is discharged into rivers and streams by ensuring the operators are properly trained, educated, and certified. Exam applicants who miss the exam or twice fail the exam, or their employers, will bear the costs of this action.