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## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

**Agency/Board/Commission:** Tennessee Higher Education Commission  
**Division:** Division of Postsecondary School Authorization (DPSA)  
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1540-01-02	Authorization and Regulation of Postsecondary Institutions and Their Agents
Rule Number	Rule Title
1540-01-02-.02	Role of the Commission, Committee and Staff
1540-01-02-.03	Definitions
1540-01-02-.05	Exemption
1540-01-02-.06	Minimum Authorization Standards and Requirements
1540-01-02-.07	Institutional Applications
1540-01-02-.08	Regulations for Specific School Types
1540-01-02-.09	Annual Reauthorization
1540-01-02-.10	Required Minimum Standards
1540-01-02-.11	Institutional Catalog
1540-01-02-.12	Admissions Standards
1540-01-02-.13	Enrollment Agreements and Disclosure Standards
1540-01-02-.14	Financial Standards
1540-01-02-.15	Institutional and Student Records
1540-01-02-.16	Personnel and Instructor Qualifications
1540-01-02-.18	Prohibited Acts
1540-01-02-.19	Fair Consumer Practices and Student Complaints
1540-01-02-.20	Advertising and Solicitation
1540-01-02-.21	Authorization Status
1540-01-02-.23	Institutional Closure

1540-01-02-.24	Tuition Guarantee Fund (TGF)
1540-01-02-.26	Return of Regulatory Fees

Amendments

Rule 1540-01-02-.02 Role of the Commission, Committee and Staff paragraph (1) subparagraph (a) is amended by deleting the present language in its entirety and replacing it with the following:

(1)

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

Further, Rule 1540-01-02-.02 Role of the Commission, Committee and Staff paragraph (2) subparagraph (a), subparagraph (a) part 2, subparagraph (b), and subparagraph (c) are amended by deleting the present language in its entirety and replacing it with the following:

(2)

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

...

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

...

- (b) Whenever the Commission staff cannot resolve a complaint or dispute to the administration of these rules, the Executive Director upon a written request from an aggrieved party which in the view of the Executive Director is justifiable, will provide a review and/or hearing for parties involved prior to presentation of the unresolved complaint or dispute to the Commission.
- (c) On the advice of the Committee on Postsecondary Educational Institutions, the Executive Director, in consultation with the Commission, is authorized to recommend the waiving of deadlines or regulations developed pursuant to this Chapter, upon well-documented extraordinary cause, where necessary to carry out the provisions of this part in the public interest and where consistent with the Act.

Further, Rule 1540-01-02-.02 Role of the Commission, Committee and Staff paragraph (3) subparagraph (a), subparagraph (a) parts 4. and 5., subparagraph (b), and subparagraph (c) are amended by deleting the present language in its entirety and replacing it with the following:

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

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

...

- 4. the awarding of educational credentials; and

5. such other matters relating to the Act at the request of the Commission's Executive Director.
- (b) The Committee and/or, as needed, other experts appointed by the Executive Director, shall participate in institutional site visits for purposes of evaluating compliance with legislation and rules.
- (c) The Committee shall exercise such powers and undertake such obligations as are delegated to it by the Commission under the provisions of the Act. Such delegations shall include the authority to initiate and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval and/or disapproval by the Commission.

Further, Rule 1540-01-02-02 Role of the Commission, Committee and Staff paragraph (4) subparagraphs (a) through (e) are amended by deleting the present language in its entirety and replacing it with the following:

(4)

- (a) Designated Commission staff members shall oversee and administer for purposes of compliance the Act and these rules.
- (b) The Commission staff responsible for oversight of the Act and these rules shall be officially referred to as the Tennessee Higher Education Commission, Division of Postsecondary School Authorization.
- (c) Commission staff shall perform site visits to review, inspect and investigate as necessary, institutions seeking, holding or required to hold a certificate of authorization for verification of compliance. Site visits may be conducted for reasons including initial authorization for new institutions, new program reviews, authorization inspections for non-exempt institutions, follow up to written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.
- (d) Investigate as necessary all unauthorized postsecondary educational activities to verify adherence to the Act and these rules.
- (e) Establish a deadline for submission of initial authorization applications, new program applications and any other materials to be included on the agenda for each quarterly meeting of the Committee.

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

Rule 1540-01-02-03 Definitions paragraph (1) and paragraph (1) subparagraphs (a) and (b) are amended by deleting the present language in its entirety and replacing it with the following:

- (1) The following definitions are complementary to definitions in T.C.A. § 49-7-2003 and have the following meanings:
  - (a) "Ability-to-benefit student" as used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means students, regardless of financial condition, who do not possess a high school diploma or GED, but who have demonstrated that they can profit materially or personally from a certain course of study.
  - (b) "Academic" as used in the description of a program or institution means that which is organized primarily for academic training or transfer.

Further, Rule 1540-01-02-03 Definitions is amended by inserting as a new subparagraph (c) the following language after paragraph (1) subparagraph (b) and re-lettering all subsequent subparagraphs accordingly:

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

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (e) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (f) "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, outside of the institution, enrolls or seeks to enroll a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution for any such purpose.
- (g) "Agent's permit" means a nontransferable written authorization issued to a natural person by the Commission which allows that person to act as an agent.
- (h) "Articulation agreement" means an arrangement between two (2) higher education institutions approved and signed by authorized institutional representatives and constructed by faculty in the discipline that equates for transfer of a defined set or block of academic credits that will meet requirements of a specified academic degree program major at the degree-awarding institution.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (f) through (h) are amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (i) "Associate's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours or ninety (90) quarter credit hours of instruction, or equivalent.
- (j) "Authorization to operate" means permission to operate for a specified time in a specified place(s). An institution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the letter or certificate which specify or connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."
- (k) "Authorization site visit" means an institutional site visit conducted by the Commission staff or Postsecondary Committee members to verify compliance with the Act and these rules. The authorization visit is commonly called a "site visit."

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (m) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraph and re-lettering all subsequent subparagraphs accordingly:

- (p) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary institution offering courses of study leading to a degree.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) is amended by inserting as a new subparagraph (r) the following language after newly re-lettered paragraph (1) subparagraph (q) and re-lettering all subsequent subparagraphs accordingly:

- (r) "Committee" means the Committee on Postsecondary Educational Institutions.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (o) and (p) are amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (s) "Contact Hour" or "clock hour" refers to actual directed or supervised instructional time, not to be less than fifty (50) minutes for every sixty (60) minutes of time.
- (t) "Credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) is amended by inserting as a new subparagraph (w) the following language after newly re-lettered paragraph (1) subparagraph (v) and re-lettering all subsequent subparagraphs accordingly:

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

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (t) through (w) are amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (y) "Enrollment" refers to those students who have completed the institution's application forms, submitted a financial deposit where required, and have actually attended one (1) or more sessions of class(es), or, in the case of Distance Learning programs, received one (1) or more lessons.
- (z) "Educational service" means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, unaccredited courses or non-college training.
- (aa) "General education courses" means academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student or give balance to the total program beyond the area of vocational or professional concentration.
- (bb) "Independent certified public accountant" (C.P.A.) means a C.P.A. not associated with the institution or its owners, especially in such a way that a conflict of interest or appearance of conflict arises.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (x) is deleted in its entirety and all subsequent subparagraphs are re-lettered accordingly.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (y) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

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

listed in Rule 1540-01-02-.16.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) is amended by inserting as a new subparagraph (dd) the following language after newly re-lettered paragraph (1) subparagraph (cc) and re-lettering all subsequent subparagraphs accordingly:

- (dd) "Instructional site" means a non-residential facility that is commercially zoned and utilized for the training of students.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (z) is deleted in its entirety and all subsequent subparagraphs are re-lettered accordingly.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (bb) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraph and re-lettering all subsequent subparagraphs accordingly:

- (ff) "Non-exempt institution" means a postsecondary institution not specifically exempted under provisions of T.C.A. § 49-7-2004 of the Act or Rule 1540-01-02-.05 of these rules and means an instructional site which must have separate authorization.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (ee) and (ff) are amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (ii) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.
- (jj) "Quarter" is a period of instruction into which the academic year may be divided. A quarter must consist of at least ten (10) weeks.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (hh) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraph and re-lettering all subsequent subparagraphs accordingly:

- (ll) "Residential course" means a course in which the student comes to an institutional campus or instructional site as opposed to a course where the student stays at home (i.e., Distance Learning).

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (ii) is deleted in its entirety and all subsequent subparagraphs are re-lettered accordingly.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (jj) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (mm) "School" means (1) A unit within a college or university that offers specialized instruction (e.g., a school of engineering). (2) An institution that offers specialized instruction in areas (e.g., driving, modeling, basic travel training) not usually associated with college or university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (mm) and (nn) are amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraphs and re-lettering all subsequent subparagraphs accordingly:

- (pp) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents.
- (qq) "These rules" or "these regulations" means all rules contained in Rule Chapter 1540-01-02.
- (rr) "Traditional degree" shall mean degrees including, but not limited to: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.
- (ss) "Tuition" shall mean, but not be limited to, any money or fee involving the student, actually charged by the institution and directly related to the instruction/training provided (e.g., per credit hour cost and equipment fee). Tuition does not include student activity fees or fees paid to third parties for products or services related to the training. These fees may be referred to as "other fees."

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (pp) is amended by deleting the present language in its entirety and replacing it with the following re-lettered subparagraph and re-lettering all subsequent subparagraphs accordingly:

- (uu) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers traditional undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs.

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

Rule 1540-01-02-.05 Exemption is amended by deleting the present language of this rule in its entirety and replacing it with the following:

- (1) T.C.A. § 49-7-2009 includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2009.
  - (a) Education, instruction or training that is:
    1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, including payroll deduction or minimum length of employment, except that the employer/institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or
    2. maintained or given by a U.S. Department of Labor or state recognized labor organization to its membership/apprentices or without charge, except that the institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or
    3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or
    4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer educational credentials that in the opinion of the Commission are specifically directed toward new or additional vocational, professional or academic goals.

- (b) Programs, seminars or workshops that are recreational or avocational, including motivational or enrichment programs, as determined by the Commission staff shall be considered exempt from authorization requirements. Upon review by the Commission staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized, or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.
- (c) Short-term programs, seminars or workshops that are solely for professional enhancement as determined by the Commission staff shall be considered exempt from authorization requirements. Education, training or instruction resulting in specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation.
- (d) Programs that operate under Part 61 of the Federal Aviation Regulations and that provide only avocational training are exempt. Aviation programs that operate entirely under Part 141 of the Federal Aviation Regulations and programs that operate under Part 61 of the Federal Aviation Regulations and that provide vocational training are non-exempt. Oversight of these aviation schools will in no way conflict with oversight provided by the Federal Aviation Administration. While the FAA oversight ensures adequate curricula and safety of the student, the Commission's oversight is focused on protection of the personal and financial interests of the student.
- (e) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams. The latter shall include, but not be limited to, intensive review courses for certified public accountancy tests, the examination for professional practice in psychology, and the bar examination.
- (f) Training designed to prepare students for credit-by-examination tests may be considered exempt from authorization requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and refrains from any misleading representations. Such representations include:
  1. suggesting that the training results in receipt of an educational credential, such as a degree;
  2. listing anticipated salary amounts; and
  3. suggesting that the entity is accredited.
- (g) Eleemosynary institutions, including religious institutions, that:
  1. offer instruction or training and do not offer degrees of any type;
  2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source; and
  3. do not offer diplomas/certificates, including those that in the opinion of the Commission replicate letters of designation or degrees.
- (h) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.
- (i) Businesses offering short-term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission courses using various software are offered concurrently toward a vocational goal, e.g., word processing

software offered toward secretarial goals.

- (2) To operate within exemption status, the following guidelines shall be used:
  - (a) Institutions that clearly qualify as exempt under the Act and these rules after the Commission staff review shall be considered exempt from authorization without a vote of the Commission.
  - (b) Any institution or program exemption is subject to annual Commission staff review and/or revocation any time the activity deviates from the original determination factors for exemption.
  - (c) Exemptions can be revoked or amended by the Commission staff as they pertain to individual institutions whenever it is determined by the Commission staff that an institution exempted by the Act or these rules has not acted in accordance with the purpose of T.C.A. § 49-7-2002.
- (3) To request an exemption, institutions shall submit a descriptive narrative describing how the institution and/or program(s) qualifies for an exemption. The request shall include a citation to the exemption provision relied on in the Act and/or these rules and documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; and organizational ties and/or contracts with other educational providers. Upon receipt of an exemption request, the Commission staff shall make a written determination and provide a date by which an aggrieved institution may submit a request for further review by the Executive Director. Such date shall not be earlier than ten (10) business days after the date of the letter.
- (4) If the institution is aggrieved by a determination concerning exemption status, the institution may seek review as provided for in Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b). Any request for review shall be in writing, signed, list each instance where the Commission staff erred, and provide a detailed explanation of each alleged error, including references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in paragraph (3).

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

Rule 1540-01-02-.06 Minimum Authorization Standards and Requirements paragraphs (1) through (4), (6), (7) and (10); paragraph (10) subparagraphs (c) through (e); paragraphs (12) and (13); and paragraph (14), including all subparagraphs and parts of paragraph (14), are amended by deleting the present language of the paragraphs and subparagraphs in its entirety and replacing it with the following:

- (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum requirements stated in T.C.A. § 49-7-2006 and as further defined in these rules.
- (2) Meet the definition of a postsecondary educational institution as given in the Act and these rules.
- (3) Have physical presence in the state as given in these rules.
- (4) The institution is properly registered with the Tennessee Department of State or, in the case of a general partnership or sole proprietorship, has a local business license.
- ...
- (6) Secure a continuous institutional surety bond or like security described in Rule 1540-01-02-.07.
- (7) Have an educational program(s) consistent with standards in Tennessee for length, content and quality for the educational credential offered in compliance with the Act and these rules.

...

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

...

(c) Establish and maintain all operational and administration standards, such as educational, financial, admissions, enrollment, instructor, as given in these rules.

(d) New or revised programs must conform to all requirements given in these rules under New Program or Change in Program, Rule 1540-01-02-.07.

(e) Compliance for each of the educational credential(s) offered by the applicant institution, with requirements as given under Non Degree Granting Institutions or Degree Granting Institutions, Rule 1540-01-02-.08.

...

(12) Any institution based primarily outside of Tennessee which proposes to set up a branch in Tennessee and is not accredited by an agency recognized by the Commission must forward reasons why resources would not best be spent on accreditation at the current site.

(13) An exception to any part of this rule must be reviewed on an individual basis by the Commission.

(14) Postsecondary Educational Institution Name:

(a) No postsecondary educational institution under the Act and these rules may use the word "university" in its name unless the institution meets the definition of university as set forth in these rules and has been approved by a regional accrediting body so recognized by the U.S. Department of Education.

(b) No postsecondary educational institution under the Act and these rules may use the word "college" in its name unless:

1. The institution meets the definition of college as set forth in these rules;

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

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

(c) An unaccredited institution or institution that does not meet the requirements in subparagraph (b) may not use "college" in its name unless:

1. For institutions authorized prior to October 1, 2006, the institution name includes an appropriate qualifier along with the word "college", such as "career", "vocational", "business", "technical", "art", or in the case of a religious institution, "Bible" or a denominational term, or

2. For institutions authorized on or after October 1, 2006, the institution name includes an appropriate qualifier preceding the word "college," such as "career," "vocational," "business," "technical," "art" or in the case of a religious institution, "Bible" or a denominational term.

(d) All institutions using "college" in accordance with item 14(c) above, must achieve

accreditation from an accrediting body recognized by the U.S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal. Institutions that fail to make good faith efforts toward accreditation or to achieve accreditation in a timely manner shall be required to remove "college" from the institutional name.

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

Further, Rule 1540-01-02-.06 Minimum Authorization Standards and Requirements is amended by inserting a new paragraph at the end of the rule as follows:

- (15) A sign, acceptable to the Commission, must be affixed to the building and/or the main entrance door indicating the name of the institution.

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

Rule 1540-01-02-.07 Institutional Applications is amended by deleting the present language of this rule in its entirety and replacing it with the following:

- (1) Application deadline:
  - (a) Institutions seeking initial authorization or approval of new programs must submit the appropriate application by the deadline date established by the Commission staff.
  - (b) Incomplete submissions as given below in paragraph (2), Authorization - What Constitutes a Complete Application, applications submitted after the established deadline, or applications that are not typed may be deferred to the next quarterly meeting at the discretion of the Commission staff.
  - (c) Institutions that voluntarily or involuntarily defer an application before the Committee will have two (2) additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.
    1. Exceptions must be requested in writing and granted by the Executive Director.

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

- (a) Institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed and typed application which includes at least the following:
  1. a title or name of the institution in compliance with these rules;
  2. proof that the institution is properly registered with the Tennessee Department of State or, in the case of a general partnership or sole proprietorship, a copy of the institution's local business license;
  3. name(s), home address(es), and phone number(s) of all owner(s), controlling officer(s), and/or members of the board of directors;
  4. address and general description of facilities;
  5. list of instructional equipment for each program specifying whether each item is

- owned or leased;
6. qualifications for instructional staff and administrative personnel, see Rule 1540-01-02-.16;
  7. designation of an institutional director for each site responsible for authorization contracts and maintenance of records and all other duties as described under Rule 1540-01-02-.16;
  8. description of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the institutional director is replaced;
  9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;
  10. institutional surety bond as described by Rule 1540-01-02-.07 and T.C.A. § 49-7-2013;
  11. a copy of the enrollment agreement described in Rule 1540-01-02-.13;
  12. a copy of the pre-enrollment checklist described in Rule 1540-01-02-.13;
  13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held);
  14. verification of satisfactory fire and sanitation inspections of educational facilities and student housing, which is owned, leased or otherwise operated by the institution, that is conducted within twelve (12) months of the date of the application and any subsequent corrections to the application;
  15. a draft or copy of the institutional catalog as described in Rules 1540-01-02-.11, .12, .17 and .19;
  16. a complete description of the proposed educational programs in compliance with the Act and these rules;
  17. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;
  18. any specific requirements as outlined under degree granting and/or non degree granting sections of Rule 1540-01-02-.08;
  19. if participating in federal student financial aid programs, a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the U.S. Department of Education;
  20. evidence of institutional financial stability as follows:
    - (i) sufficient finances to establish and conduct proposed operation;
    - (ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;
  21. the balance sheet in the financial statement must reflect owner's (proprietorship,

partnership, corporation, other, etc.) assets and liabilities.

- (3) Each application for a certificate of authorization or change of ownership must be signed by the applicant and signature(s) must correspond with required names on surety bonds. If the applicant is a partnership, all partners must sign. If the applicant is a corporation, it must be signed and certified by the president and secretary; all officers of the corporation must be listed.
- (4) A separate application for authorization, which is site specific, must be made for each location.
- (5) The applicant institutional director must sign and date, on forms provided by the Commission, the director's intention to:
  - (a) conduct the institution in accordance with the Act and these rules;
  - (b) advertise or solicit using institutional employees familiar with these rules;
  - (c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;
  - (d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;
  - (e) advise the Commission of any application to operate in another state (Tennessee institutions only);
  - (f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and
  - (g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the U.S. Department of Education.
- (6) Bond Requirements for Institutions:
  - (a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company authorized to do business in Tennessee, a surety bond for the penal sum of:
    1. ten thousand dollars (\$10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and
    2. twenty thousand dollars (\$20,000) for all other institutions, including out-of-state private institutions.
  - (b) Out-of-state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of five thousand dollars (\$5,000) per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a five thousand dollars (\$5,000) surety bond.
  - (c) All bonds provided by institutions under Rule 1540-01-02-.07(6) must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.
  - (d) All bonds provided by institutions under Rule 1540-01-02-.07(6) must be identified on the top half of the first page by the name and the address of the institution. Bonds and

verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.

- (e) An irrevocable letter of credit secured by a certificate of deposit or a cash deposit with a bank may be accepted in lieu of the bond, pending approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.

(7) Fire and Sanitation Inspections:

- (a) Initial authorization, change of ownership, and renewal applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
- (b) Institutions must maintain and provide upon request by the Commission staff documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve (12) months
- (c) Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.

(8) Change in Ownership:

- (a) The following constitutes a change in ownership:
  - 1. in the case of ownership by an individual, when more than fifty percent (50%) of the institution has been sold or transferred;
  - 2. in the case of any other ownership structure, when more than fifty percent (50%) of the institution or of the owning entity has been sold or transferred;
  - 3. when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.
- (b) A person or persons purchasing an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program. In addition, a copy of the sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the institution shall be submitted to the Commission.
- (c) Commission staff should be notified of any anticipated change of ownership prior to the change. In the event of a change of ownership, greater than fifty percent (50%), a new owner or governing body must request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under the established standard procedure by recommendation of the Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.
- (d) The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or another current owner is not considered a change in ownership. The Executive Director may determine that other transfers should also be excluded from these requirements.

(9) New Program or Program Revisions:

- (a) Vocational program names and objectives must generally coincide with or be equated with the Dictionary of Occupational Titles published by the U.S. Department of Labor

and/or the Classification of Instructional Programs published by the U.S. Office of Education, National Center for Education Statistics.

- (b) Institutions must submit a rationale with supporting data to justify initiation of programs proposed.
- (c) Authorized institutions must submit to the Commission a New Program Application if additional programs are proposed during any authorization year and the program must be approved prior to providing or offering instruction, including advertising and solicitation. Applications must be received by the quarterly deadline established by the Commission staff to be included on the ensuing Committee and Commission agenda.
- (d) The following shall apply to all program revisions, including tuition and fee changes:
  - 1. All program revisions must be submitted on Program Revision Forms provided by the Commission and approved by the Commission staff prior to implementation. All program revisions shall be submitted thirty (30) to ninety (90) days prior to the proposed effective date.
  - 2. Institutions that revise an approved program must file a New Program Application if program changes exceed twenty-five percent (25%) within the past twelve (12) months or if in the opinion of staff a significant change has occurred.
  - 3. Tuition and fee revisions that in the opinion of the Commission are excessive, unreasonable and exceed initial disclosure to the student may result in an in-depth audit of the institution at the institution's expense.
  - 4. All changes must be reflected in the institutional catalog.
  - 5. Institutions shall not arbitrarily add a course or courses to an existing program in which a student would incur additional time and expense beyond the catalog requirements at the time of enrollment. Any course addition must be in response to: demonstrated educational necessity; a reasonable program completion period had elapsed; state approval agencies; recognized accrediting agencies or for requirements of professional certifications or licenses. Under approval conditions, the institution shall provide written notification to the Commission and give adequate notice to all students affected prior to any change.

(10) Change of Address:

- (a) an application from an authorized institution to reflect a change of address shall be submitted to the Commission staff thirty (30) days prior to moving and shall include all documents designated by the Executive Director as being necessary with the appropriate fee. Documents shall include, but are not limited to:
  - 1. evidence of satisfactory health inspection,
  - 2. evidence of satisfactory fire inspection,
  - 3. copy of an executed lease or proof of ownership, and
  - 4. all physical material and building requirements given under Initial Authorization.
- (b) Approval may be issued after the new facilities have been inspected and the application is complete.
- (c) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location as determined by the Executive Director, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.

- (d) Within thirty (30) days of approval of any change of address, the institution shall submit a bond or bond rider reflecting the institution's current address.

Further, Rule 1540-01-02-.07 Institutional Applications is amended by inserting two (2) new paragraphs at the end of the rule as follows:

(11) Change of Institution Name:

- (a) An application from an authorized institution to reflect a change of name shall be submitted to the Commission staff thirty (30) days prior to changing the institution's name and shall include all documents designated by the Executive Director as being necessary and the appropriate fee.

(12) Discontinuance of Program:

- (a) Institutions that discontinue any approved program must complete a Program Deletion Form.

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

Rule 1540-01-02-.08 Regulations For Specific School Types is amended by deleting the present language of this rule in its entirety and replacing it with the following:

(1) General:

- (a) Institutions offering programs of legal interest to other state agencies must, if directed by the Commission staff, provide information necessary for the dual review of the program. For example, any institution proposing a teacher education program for the purpose of teacher licensure must also be reviewed by the Department of Education.
- (b) Authorized institutions that promote, advertise or use prepared materials of any person, group or entity that offers vocational/professional certifications (that are not part of the institution's authorized educational credential) or certification exams, (e.g., national certifying exam for Phlebotomy) must demonstrate to the Commission clear benefit to the students prior to usage. The Commission upon review may:
  - 1. allow promotion and usage because of benefits to the student;
  - 2. allow promotion and usage but with clear disclosure to the students with language such as, "this certification is voluntary and is not required for employment in the state of Tennessee" or "this certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry"; or
  - 3. deny usage, see Rule 1540-01-02-.18.
- (c) Institutions must adhere to all copyright laws and observe intellectual property rights in conducting the school.
  - 1. Using video tapes or other forms of telecommunication as a large portion of the contact hours in a program or on a per class basis for the purpose of granting educational credit, must have implied consent by purchase or the written consent of that instructor and/or the institution that produced the educational material, prior to incorporating them into the curriculum.

(2) Non Degree Granting Institutions:

- (a) Non-degree programs typically prepare individuals for employment and do not require

courses beyond those specific to the job or field with program length sufficient to effect outcomes.

1. Institutions must provide a minimum program length that adequately prepares students for entry-level employment.
2. Program lengths that exceed standard or currently acceptable times or program periods established by rules and/or statutes must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.

(3) Degree Granting Institutions:

(a) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional degrees or professional degree designations unless previously approved by a recognized regional accrediting body. An exception may be approved by the Executive Director upon recommendation of the Commission staff. Any request for exception shall be made in writing and include proof of the following:

1. The institution is accredited by a U.S. Department of Education approved accreditor for the specific degree level;
2. The program is accredited by an appropriate accrediting agency if such accreditation is necessary for employment in or licensure by the state; and
3. The institution has articulation agreements with two (2) regionally accredited institutions with physical locations in the Southeast region and the agreements are applicable to at least one of the institutions' physical locations in the Southeast region.

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

(c) Unaccredited institutions seeking authority to grant degrees in the state must meet in addition to the requirements in these regulations for temporary or regular authorization, the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards:

1. the operation shall incorporate instructional procedures, texts and materials appropriate to the purpose, curriculum and standards of postsecondary degree-granting institutions offering similar programs in the state;
2. Twenty-five percent (25%) to fifty percent (50%) of the total program, depending on the degree offered, must be in general education courses and should be indicated separately in the curriculum presented;
3. provide a syllabus for each course offered;
4. maintain library resources and holdings that shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
5. demonstrate that the degree and the program have merit and value academically, professionally or vocationally in Tennessee;
6. master's and doctorate level degrees must demonstrate in the curriculum

and outcomes increasing levels of critical, analytical and interpretive thinking, use of primary documents or resources and independent research skills.

- (d) Undergraduate degree programs must include at least twenty-five percent (25%) to fifty percent (50%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are less. Unaccredited institutions proposing to offer associate degree level programs which are technical in nature, and have less than twenty-five percent (25%) of general education courses must demonstrate to the Commission staff the benefit to students. All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent (25%) of the general education staff with earned master's degrees or equivalent.
- (e) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student to student and student to staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.

(4) Distance Learning:

- (a) Required authorization of distance learning institutions shall be reviewed based upon the Commission staff's evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.
  - 1. No ruling by the Commission regarding authorization or exemption of a distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.
- (b) All authorized distance learning institutions must provide to a student a catalog and a signed copy of the pre-enrollment checklist and enrollment agreement as required in these rules. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.
- (c) Distance learning institutions must meet directly and indirectly all requirements of the Act and these rules and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.
- (d) Distance learning courses or programs must consist of at least the following:
  - 1. a preliminary lesson or set of instructions on how to study by the distance learning method, or adequate study instructions per assignment;
  - 2. current and accurate text or lesson materials;
  - 3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented;
  - 4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by an instructor qualified in that specific course or subject matter area;

5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered; and
  6. educational goals and overall program goals are achievable through distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.
- (5) Bartending Schools:
- (a) Pursuant to T.C.A. § 49-7-115, all institutions involved in training in the areas of management, operation, procedures or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.
- (6) Truck Driving (CDL) Schools:
- (a) Authorized truck driving schools may advertise in the "help wanted" section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in Rule 1540-01-02-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".
  - (b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from the Commission staff. All claims related to carriers must be documented and on file at the school.
- (7) Modeling Schools:
- (a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function including when advertising the agency and the institution.
  - (b) Talent seminars, interviews or "talent searches" may not be used to enroll individuals in modeling schools or training.
  - (c) Schools that operate as a "finishing school," exclusively for personal deportment or for enrichment may not advertise or conduct courses that implies or suggests vocational modeling or related goals.
- (8) Teacher Training (K-12) or Licensing or Recertification:
- (a) The Tennessee Department of Education or the Commission may request a dual review of any institution or business with physical presence in Tennessee offering courses related to but not limited to teacher (K-12) licensing, recertification or career ladder.

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

Rule 1540-01-02-.09 Annual Reauthorization paragraph (1) through (3) are amended by deleting the present language in its entirety and replacing it with the following paragraphs and re-numbering all subsequent paragraphs accordingly:

- (1) All authorized institutions must submit a reauthorization application on a form provided by the Commission staff. The annual reauthorization year will be from July 1 through June 30. The annual reauthorization application is due each October 15 and must be accompanied by an annual fee as prescribed by these rules.

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

Further, Rule 1540-01-02-.09 Annual Reauthorization paragraph (4) and paragraph (4) subparagraph (c), including parts 1. and 2., are amended by deleting the present language in its entirety and replacing it with the following:

- (3) For all authorized institutions, unless otherwise required by the Commission staff, the reauthorization application must be accompanied by the following:

...

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

1. a balance sheet (statement of financial position);
2. an income statement (statement of the results of institutional operation including, but not limited to, gross amount of tuition and fees earned and total refunds during the fiscal year);

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2008 and 49-7-2014.

Rule 1540-01-02-.10 Required Minimum Standards paragraphs (3), (5), and (6), including all subparagraphs, are amended by deleting the present language in its entirety and replacing it with the following:

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

...

- (5) Liberal arts schools or professional schools may request a waiver of the requirement to provide placement rates for programs for which the institution does not typically report vocational placement data.

- (a) Requests for waiver shall be made when filing a new program application or, for programs approved prior to the effective date of this rule, by submitting a letter requesting a waiver for each program.
- (b) Requests for waiver shall include at a minimum an explanation as to why the institution does not typically report vocational placement data for that program.
- (c) Institutions are required to gather the data required for reporting until such time as a waiver is granted.

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

- (a) lecture: 40-1;
- (b) business laboratory: 50-1 (such as accounting, typing, shorthand);

- (c) technical and vocational theory: 40-1;
- (d) technical lab: 40-1 (such as computer programming, data processing);
- (e) vocational lab: 40-1 (such as auto mechanics, drafting, air conditioning);
- (f) class A truck cab: 4:1; and
- (g) class B truck cab: 2:1.

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

Rule 1540-01-02-.11 Institutional Catalog paragraph (1), paragraph (1) subparagraphs (o) and (p), and paragraphs (3), (4), and (5) are amended by deleting the present language of the paragraphs and subparagraphs in its entirety and replacing it with the following:

- (1) Each institution must publish a catalog or brochure (a draft copy may be provided in the initial application) which must include at least the following information:
  - .....
  - (o) a statement provided within the first four (4) pages or in a designated state authorization section of the catalog that reads as follows:
 

(Name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation by minimum standards concerning quality of education, ethical business practices, health and safety, and fiscal responsibility;
  - (p) a description of the student grievance procedure, a listing of the title, address, and telephone number of the institutional employee(s) designated to receive student complaints. If the institution used a mediation clause in its enrollment agreement, the catalog must describe the steps required of the student and/or the institution to initiate the mediation process. The address and telephone number of the Division of Postsecondary School Authorization must be in the catalog for grievances not settled at the institutional level;
  - .....
- (3) Catalogs should be written in a way and at a level which enables prospective enrollees to make informed decisions;
- (4) Less information may be required to be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable; and
- (5) Full-time students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.

Further, Rule 1540-01-02-.11 Institutional Catalog paragraph (1) is amended by adding a new subparagraph, as written below, at the end of paragraph (1).

- (r) the cash discount policy, if offered to students.

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

1540-01-02-.12 Admissions Standards is amended by deleting the present language of this rule in its entirety and replacing it with the following:

- (1) Institutions must adopt an admission policy that is based on the institution's objectives and that meets the following minimum requirements.
  - (a) Non-degree program admission policies must require the prospective student to have received a high school diploma, passed the General Education Development (GED) test, or passed an ability-to-benefit test as that term is described below.
  - (b) Degree program admission policies must be at least the following:
    1. Undergraduate degree programs must require a high school diploma or General Education Development (GED) test, and
    2. Graduate degree programs must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.
- (2) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written. Institutions should not admit to programs leading to licensure students who the institution knows or, by the exercise of reasonable care should know, would be ineligible to obtain licensure in the occupation for which they are being trained (ex., certain prior legal convictions render one ineligible to hold certain licenses). If a student ineligible for licensure desires to enroll in a licensure program, regardless of license eligibility, the institution may admit such student after the student submits, in writing for retention by the institution and review by the Commission staff, a statement acknowledging such ineligibility. This provision is not intended to speak contrary to institutions' options to enroll students as non-credit students, auditing students or continuing education students.
- (3) Any test administered for purposes of determining admission shall be a standardized test recognized nationally or by the U.S. Department of Education with minimally acceptable scores as referenced in the test material or by the U.S. Department of Education or only in cases where a standardized test is not available, a non-standardized test developed by institutional officials and approved by the Commission staff with minimally acceptable scores approved by the Commission staff.
- (4) Additional requirements for the administration of ability-to-benefit tests:
  - (a) Tests shall be administered in a secure environment (e.g., monitors present). Tests shall not be administered in a manner inconsistent with the manner (e.g., frequency) recommended by standardized test developers. Testing policies shall be stated along with the admissions policy published in the institutional catalog.
  - (b) An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
  - (c) If the admission test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student and may be charged for the remedial program on an hourly pro rata basis. The student is not obligated for the tuition and fees of the non-remedial regular program until the admission requirements are met. The minimum admission requirement for postsecondary education remains a high school diploma, GED, or a passing score on the admission exam.
  - (d) Tests administered for purposes other than the determination of admissibility are not governed by this rule.
  - (e) Institutions which admit enrollees on an ability-to-benefit basis, must submit all documents related to such admission policies to the Commission.

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

Rule 1540-01-02-.13 Enrollment Agreements and Disclosure Standard paragraphs (2) through (9), including all subparagraphs and parts, are amended by deleting the present language in its entirety and replacing it with the following:

- (2) Institutions prior to enrolling an individual shall require the prospective student to sign and date a pre-enrollment checklist verifying that the student:
  - (a) Toured the institution (not applicable to institutions that deliver all instruction through distance learning);
  - (b) Received an institutional catalog;
  - (c) Was given the time and opportunity to review the institutional policies in the catalog;
  - (d) Knows the length of the program for full-time and part-time students in academic terms and actual calendar time;
  - (e) Has been informed of the total tuition and fee cost of the program;
  - (f) Has been informed of the estimated cost of books and any required equipment purchases such as a stenography machine, computer, specialized tools, art supplies etc.;
  - (g) Has been given a copy of the institutional cancellation and refund policy;
  - (h) Has been given a copy of the completed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and understands what "transferability of credits" means and the specific limitations (if any) should the institution have articulation agreements;
  - (i) Knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form the following statement:
    1. "I realize that any grievances not resolved on the institutional level may be forwarded to the Tennessee Higher Education Commission, Nashville, TN 37243-0830, (615) 741-5293."
  - (j) Has received the most recent withdrawal, completion and in-field placement data as calculated by the Commission by including:
    1. The following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to [www.tn.gov/thec](http://www.tn.gov/thec) and clicking on the Authorized Institution Data button."; or
    2. A copy of the report created for the institution by the Commission staff and a statement that "the report can be viewed by going to [www.tn.gov/thec](http://www.tn.gov/thec) and clicking on the Authorized Institution Data button"; and
  - (k) Has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- (3) Institutions that receive a waiver pursuant to Rule 1540-01-02-.10(5) do not have to include the in-field placement rate for the program in the pre-enrollment checklist.
- (4) Institutions shall require a student enrolling to sign and date an enrollment agreement, which shall include, but not be limited to, the following items:
  - (a) Full and correct name and location of the institution;

- (b) Name, address and social security number or unique student identification number of the student;
  - (c) Date training is to begin and program length;
  - (d) Full-time or part-time status of the student;
  - (e) Projected date of graduation/completion as a full-time or part-time student;
  - (f) Program title;
  - (g) Total cost of the program, including itemized separate costs for tuition (including costs of any books and equipment required to be purchased from the institution), fees paid to the institution, and estimated costs for items such as books and required equipment that students may purchase from the institution or a third party;
  - (h) Cancellation and refund policy;
  - (i) Verification that the student has received an exact signed copy of the agreement; and
  - (j) A guarantee of the total cost of tuition and fees for one thousand two hundred (1200) contact (clock) hours or twelve (12) months from the time of enrollment.
- (5) When enrolling a student in a single class that is part of an approved program, an institution may modify the pre-enrollment checklist and enrollment agreement as needed to substitute the word class (or other similar word) for the word program where necessary and to qualify any other language so that it applies to the specific class. In no event shall any modification result in less protection for or fewer disclosures to the student.
  - (6) Programs less than one thousand two hundred (1200) contact (clock) hours must have an enrollment contract with a set total tuition and fees.
  - (7) Programs longer than one thousand two hundred (1200) contact (clock) hours that increase tuition and fees after the initial one thousand two hundred (1200) contact (clock) hours or twelve (12) months period must provide counseling related to the increase.

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

Rule 1540-01-02-.14 Financial Standards paragraph (6) is amended by deleting the language of the paragraph in its entirety and replacing it with the following:

- (6) All authorized institutions must file each year the most recent audited financial statement, certified by an independent certified public accountant for the most recent institutional fiscal year. For multi-campus institutions, or for institutions owned by one parent company, an audited consolidated corporate financial statement shall be routinely required. The staff, Committee, or Commission, however, may request additional campus or institution specific-information where needed to protect the public interest. The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act; the balance sheet must reflect owner's (proprietorship, partnership, corporation, other) assets and liabilities. In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized; related parties must be disclosed; related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected. It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis. Current financial statements on each site separately authorized under the Act must be filed annually for the most recent institutional fiscal year. Neither the ratio of current fund revenues to current fund expenditures nor the ratio of current assets to liabilities, both site specific and corporate, where applicable, shall be less than 1:1. Institutions that have annual gross tuition revenue of one million dollars (\$1,000,000) or less may request a waiver of the audit contemplated by this section and provide

the most recent financial information in a format acceptable to the Commission.

Further, Rule 1540-01-02-.14 Financial Standards is amended by adding a new paragraph, as written below, at the end of the rule.

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

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

Rule 1540-01-02-.15 Institutional and Student Records paragraphs (1), (2), (5), (6), (7), and (8), including all subparagraphs and parts, are amended by deleting the language in its entirety and replacing it with the following:

- (1) Records of enrollees, completers, and placements must be sufficient to verify data reported to the Commission.
- (2) A record of written student complaints must be maintained, including a copy of the complaint, subsequent documents, and a statement of the matter's disposition for a minimum of three (3) years from the conclusion of said complaint.
- ...
- (5) Each institution must maintain a master student registration list, in table format, consisting of at least the following information for any person who signs an enrollment agreement financially obligating that person or makes a down payment to attend, or both:
  - (a) registration/enrollment date;
  - (b) full name of the student;
  - (c) complete address;
  - (d) telephone number;
  - (e) social security number or unique student identification number;
  - (f) name of course or program name and code;
  - (g) status of student (e.g., enrolled, withdrawn, leave of absence, or graduated);
- (6) Institutions must maintain the following documentation in each enrolled student's file:
  - (a) transferability of credit disclosure statement required by T.C.A. § 49-7-144;
  - (b) proof that the student meets the institution's admission requirements. If a high school diploma or the equivalent is required, the institution shall have on file an official copy of the high school transcript, the equivalency certificate with scores which meet the state's minimum for passing, or an official transcript from a postsecondary educational institution or official documentation from the U.S. Department of Defense that indicates that the student received a high school diploma or GED (military documentation includes a DD Form 214 Certificate of Release or Discharge from Active Duty or Enlisted Record Brief); or if an ability-to-benefit basis, the institution shall have on file official records of such;
  - (c) pre-enrollment checklist as given in these rules;
  - (d) a complete enrollment agreement as given in these rules;
  - (e) an up-to-date educational transcript for each enrollee in a form that permits easy and accurate review by the student, transfer schools, potential employers and authorized

state or federal agencies. Transcripts must indicate the name and address of the institution and be signed by an appropriate institutional officer(s), (e.g., registrar, president, dean). The transcript shall be a permanent record of the student's progress and academic performance, which shall include, but not be limited to:

1. full and complete name of the institution;
  2. full name of student;
  3. social security number;
  4. program or department of enrollment;
  5. status of student (e.g., active; withdrawal; probation; leave of absence; graduate etc.);
  6. an official date recorded for all student withdrawals, leaves of absence, and graduations;
  7. beginning date or academic term with the year for each course attempted, with a grade posted at the completion of the term or discrete contact hours for that course;
  8. as applicable to the type of school, credit hours earned or contact hours completed;
  9. actual name of each course (subject) with code numbers as given in institutional catalog;
  10. indication of credits given by transfer from another institution or credit by exam;
  11. cumulative Grade Point Average (GPA);
  12. date the transcript was last updated and/or printed;
  13. appropriate signature(s); and
- (f) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress.
- (7) The institution may maintain transcripts by electronic storage provided that there is at least one complete updated "backup" copy in a separate system or location, the Commission staff and other authorized groups have complete and easy access to review student transcripts during site visits and the institution can print out any or all transcripts upon request.
- (8) For institutions with programs with no separation of courses by subject content, such as bartending and truck driving, an exact copy of the certificate of completion may be placed in the student file in lieu of an academic transcript.

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

Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraphs (1) through (3) are amended by deleting the present language in its entirety and replacing it with the following language and re-numbering all subsequent paragraphs accordingly:

- (1) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. As further described below, personnel qualifications must be submitted to the Commission on a School Personnel Application to be

provided by the Commission staff, no later than ten (10) days after the hire date.

- (a) Unaccredited institutions must submit to the Commission School Personnel Applications for all instructors and administrative personnel as that term is defined in this rule.
- (b) Institutions accredited by an accrediting body recognized by the U.S. Department of Education must submit to the Commission School Personnel Applications for all administrative personnel as that term is defined in this rule. For each instructor, an accredited institution shall maintain on-site documentation supporting instructors meeting the minimum qualifications and shall complete a School Personnel Application at any time upon request from the Commission staff.
- (2) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training (including official transcripts) for each personnel must be maintained on-site at the location. Institutions must submit a copy of this evidence at any time upon request from the Commission staff.
- (3) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.
- (4) Administrative personnel generally encompass individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (6) is amended by deleting the present language in its entirety and replacing it with the following re-numbered language and re-numbering all subsequent paragraphs accordingly:

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

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (11); paragraph (11) subparagraphs (a), (b) and (d); paragraph (11) subparagraph (d) part 4. and 5. are amended by deleting the present language in its entirety and replacing it with the following re-numbered language and re-numbering all subsequent paragraphs accordingly:

- (12) Instructors:
  - (a) Instructional staff for all institutions must be selected at a minimum on the basis of these rules.
  - (b) Instructors in a trade related or specific skill areas must have documented proficiency and practical applied experience in that trade or skill.
  - ...
  - (d) An instructor must be qualified by education and experience/background and must meet the following qualifications as minimum requirements:
    - ...
    - 4. Minimum for an associate level:
      - (i) Meet the minimum requirements for doctorate, masters or baccalaureate

level; or

- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:
  - (I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or
  - (II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

5. Minimum for diploma and certificate level:

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

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (12) is deleted in its entirety and all subsequent paragraphs are re-numbered accordingly.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (13) is amended by deleting the present language in its entirety and replacing it with the following language:

- (13) The Executive Director may approve a variance from the specific qualifications in paragraph (12) with sufficient justification and an assurance that the program quality will not be lessened. In such a situation the institutional director must submit written justification and documentation with the School Personnel Application submission. In addition, the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to the Commission staff upon request.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (15) is amended by deleting the present language in its entirety and replacing it with the following language:

(15) Agents:

- (a) Agents as defined by the Act and Rule 1540-01-02-.03 must submit an Agent Permit Application, as provided by the Commission staff, and have received approval and an agent permit from the Commission staff prior to any solicitation. The application must be accompanied by the following:
  - 1. recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;
  - 2. a check payable to the State Treasurer of Tennessee as required under these regulations;
  - 3. a surety bond of five thousand (\$5,000) per agent of an out-of-state institution or

as specified in Rule 1540-01-02-.07; and

4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.
- (b) Agent permits must be renewed every year. The expiration date of a permit is one (1) year from the date of issue or termination of employment whichever occurs first.
  - (c) Agents must have separate permits to represent separate institutions unless the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required.
  - (d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.
  - (e) Institutional directors, not marketing offices, are responsible for actions of agents.
  - (f) The agent shall be under the control of the institution, and the institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.
  - (g) Any student solicited or enrolled by a non-licensed agent is entitled to a refund of all moneys paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent shall be unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because he or she was solicited by a non-licensed agent.
  - (h) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to the following:
    1. administering the admission test;
    2. advising students about financial aid other than informing the student of the general availability of financial assistance;
    3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
    4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have;
    5. soliciting enrollments in a program which has not been approved by the Commission.
  - (i) An agent must display the current permit to all prospective students and other interested parties.

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

Rule 1540-01-02-.18 Prohibited Acts paragraphs (2) and (3) are amended by deleting the language of the paragraphs in its entirety and replacing it with the following:

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

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

Further, Rule 1540-01-02-.18 Prohibited Acts is amended by adding a new paragraph, as written below, at the end of the section.

- (6) Unaccredited institutions shall not accept funds for tuition and fees prior to ten (10) business days before the scheduled start date of the class or program.

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

Rule 1540-01-02-.19 Fair Consumer Practices and Student Complaints paragraphs (1) and (2) are amended by deleting the present language in its entirety and replacing it with the following language and re-numbering all subsequent paragraphs accordingly:

- (1) Institutions may not discount tuition except that an institution may provide a discount for cash payments provided:
  - (a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount, and
  - (b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.
- (2) An institution may award a scholarship, tuition waiver or other award provided:
  - (a) the criteria for receiving the award are clearly defined in writing;
  - (b) the institution has a form and procedure to verify eligibility; and
  - (c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.
- (3) All institutions authorized by the Commission and their representatives shall be required to operate in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the school are accurate, such that students can make appropriate decisions concerning their investment of time and money.
- (4) Fair consumer practices means honesty, fairness and disclosure to students in areas including: recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary schools and also includes misrepresentation concerning competitor schools. Fair consumer practices include applying institution policies as written and presented to students.
  - (a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and school brochures and must always be provided by institutional recruiters and agents.
  - (b) Accredited institutions may apply accreditation standards of fair consumer practices.

Further, Rule 1540-01-02-.19 Fair Consumer Practices and Student Complaints is amended by adding a new paragraph, as written below, at the end of the rule.

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

- (a) Complaints shall be signed and submitted through hand delivery, mail, electronic mail or facsimile.
- (b) Commission staff shall investigate all written complaints.
- (c) Any named institution and/or agent will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
- (d) Any named institution and/or agent shall provide all information requested by the Commission staff as part of the investigation.
- (e) As part of the investigation process, the Commission staff may work with the complainant and the named institution and/or agent to effectuate a settlement.
- (f) Following the completion of the investigation, the Commission staff shall provide to all parties written findings and conclusions, including any determinations with regard to the complainant's receipt of a refund or other monetary relief or the assessment of a fine or other adverse action. The written findings and conclusions shall contain a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the findings and conclusions.
- (g) Any request for review shall be in writing, signed, list each instance where the Commission staff erred, and provide a detailed explanation of each alleged error, including, where applicable, references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in subparagraph (f).
- (h) Notwithstanding this paragraph, the Commission staff may take appropriate action to investigate complaints in order to protect the public interest.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2011.

Rule 1540-01-02-.20 Advertising and Solicitation paragraph (2); paragraph (3) subparagraph (a); and paragraphs (4), (6), and (16) are amended by deleting the language of the paragraphs and subparagraph in its entirety and replacing it with the following:

- (2) The Tennessee Higher Education Commission logo may not be used in any school advertising, brochures, telecommunications or institutional material.
- (3)
  - (a) In the case of an internet site, within the required statement given above, "Tennessee Higher Education Commission" must be an electronic link to the agency's web site at [www.tn.gov/thecc/](http://www.tn.gov/thecc/).
- (4) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and that of an appropriate recognized accrediting agency listed by the U.S. Department of Education.
- ...
- (6) All advertisements, except for radio, placed by the institution or its representatives seeking prospective students must include and clearly indicate the full and correct name of the institution, its address, and the city where the institution is located; radio advertisements must include the full and correct name of the institution and the city and state where the institution is located.
- ...

- (16) Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification, see Rule 1540-01-02-.08 for truck driving.

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

Rule 1540-01-02-.21 Authorization Status paragraph (1) subparagraph (d) is deleted in its entirety and paragraph (1) subparagraph (c) and paragraph (2) are amended by deleting the language of the subparagraph and paragraph in its entirety and replacing it with the following:

(1)

...

- (c) Temporary authorization allows ninety (90) days for initiation of enrollment of students or instruction/education, and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety (90) days after receipt of temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.

...

(2) Regular Authorization:

- (a) Institutions must be reauthorized annually on forms supplied by the Commission staff.

Authority: T.C.A. §§ 49-7-2004, 49-7-2005, 49-7-2008, 49-7-2010.

Rule 1540-01-02-.23 Institutional Closure paragraph (1); paragraph (1) subparagraphs (f) through (i); paragraph (5) subparagraph (a) part 2.; paragraph (5) subparagraph (d); and paragraph (6), including subparagraphs (a) through (c), are amended by deleting the language of the paragraphs, subparagraphs and parts in its entirety and replacing it with the following:

- (1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify the Commission staff within twenty-four (24) hours or on the first business day following the date of that decision and shall submit to the Commission staff within three (3) days (or other deadline established by the Commission staff) a plan to fulfill all obligations given below. Such plan shall include but not be limited to:

...

- (f) Disposition and servicing of all student records as required by T.C.A. § 49-7-2016;
- (g) A request for conditional authorization to operate where required;
- (h) Completion of obligations as designated by the Commission staff by established deadlines;
- (i) Submission of any information or materials related to the closure requested by staff; and

...

(5)

- (a)

...

2. exist or be provided in the same or reasonable geographic area as that in which the closed institution existed;

...

(d) The teachout plan requirement is intended to supplement, not supplant, the provisions concerning the disposition of records when an institution closes, as indicated in T.C.A. § 49-7-2016.

(6) Disposition of Records:

- (a) Any institution ceasing operation must secure student educational transcripts by an arrangement with an authorized institution or make them available to the Commission.
- (b) When academic transcripts from closed institutions are prepared for delivery to the Commission, the transcripts shall be alphabetized and separated by year. If necessary as a result of the number of transcripts, institutions should provide transcripts to the Commission staff in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and handles.
- (c) Financial aid records shall be alphabetized and separated by year. If necessary as a result of the number of records, institutions shall provide the records in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and handles.
- (d) In the event that an Institution provides academic transcripts to the Commission, the Commission staff will provide an official copy of a transcript to a student after the student has requested the transcript using the Student Request Form and paid the ten dollar (\$10) fee as described in the form.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2016.

Rule 1540-01-02-.24 Tuition Guarantee Fund (TGF) is amended by deleting the rule in its entirety and replacing it with the following:

- (1) "Tuition guaranty fund" or "TGF" or "fund" means the tuition guaranty fund created by T.C.A. § 49-7-2018.
- (2) All institutions authorized on or after July 1, 2006, shall pay into the Tuition Guarantee Fund for six consecutive years.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2018.

New Rule

Rule 1540-01-02-.26 Return of Regulatory Fees is added as written below as a new section at the end of Rule Chapter 1540-01-02.

- (1) Following the year-end closing, the Commission shall return to authorized institutions as described herein any reserve balance as of the end of the fiscal year that is greater than one and a half million dollars (\$1,500,000).
  - (a) No moneys shall be returned if the amount due an institution is less than twenty-five dollars (\$25.00).
  - (b) The percentage of the excess due an institution is calculated by determining the percentage of the total of all reauthorization fees paid by the institution during the fiscal year.
  - (c) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive

any share of the excess.

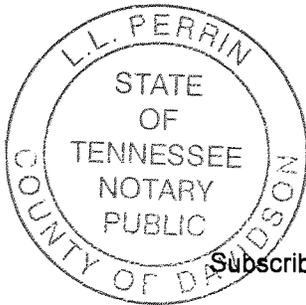
- (d) Institutions that close or that have had their authorization to operate revoked prior to the end of the fiscal year shall forfeit any share of the excess.
- (2) If an institution withdraws its pending application as a new institution, renewal applicant, or a new program within three (3) working days from receipt, or prior to the Commission staff's review and/or a site visit then all fees assessed shall be refunded. After three (3) days and once staff review begins the following shall apply:
- (a) For in-state schools making initial application, the Commission may retain fifty percent (50%) of the assessed fees if staff have reviewed the submitted materials and completed appropriate reports. Once the site visit has been conducted no rebate of assessed fees is possible.
  - (b) For out-of-state schools making initial application, the Commission may retain one hundred percent (100%) of the assessed fees if staff have reviewed the submitted materials and completed appropriate reports.
  - (c) For any school that voluntarily or involuntarily deferred an application before the Committee and failed to complete the application process in the established time deadline given under Institutional Applications (1540-1-2-.07) shall forfeit all fees paid.
  - (d) Any other fee collected is nonrefundable once the Commission staff have performed the associated review or work related to that fee.

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

\* 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)
Ms. Sue Atkinson	X				
Mr. Charles W. Bone	X				
Mr. Tre Hargett		X			
Ms. Sharon L. Hayes	X				
Mr. Gregory P. Isaacs				X	
Mr. Cato Johnson	X				
Mr. Jon Kinsey	X				
Mr. David H. Lillard, Jr.	X				
Mr. Charles Mann	X				
Mr. Zachary Walden	X				
Mr. AC Wharton, Jr.				X	
Mr. Robert White, Chair	X				
Mr. Justin P. Wilson				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 04/26/2012, 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: 7.16.12

Signature: [Signature]

Name of Officer: Dr. Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: July 16, 2012

Notary Public Signature: [Signature]

My commission expires on: January 6, 2014

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]

Robert E. Cooper, Jr.  
Attorney General and Reporter

7-18-12

Date

2013 APR -1 PM 4:08

Department of State Use Only

Filed with the Department of State on: 4/1/13

Effective on: 9/28/13

[Signature]

Tre Hargett  
Secretary of State

### **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 Tennessee Higher Education Commission (THEC) represents that the businesses affected by these rule revisions are non-exempt postsecondary educational institutions. THEC opines that as of March 2012 approximately 110 or 56% of the non-exempt postsecondary educational institutions may be small businesses.

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

THEC represents that the additional reporting, recordkeeping and other administrative costs required for compliance with the proposed rule revisions is minimal. Similarly, the rule revisions do not require small business institutions to procure any professional skills that the institution would not already need to comply with the rules.

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

THEC represents the following:

- The adoption of the new rule titled "Return of Regulatory Fees" may result in a refund to small businesses and such refund may be passed down, in whole or in part, to the students through lower fees or tuition.
- The revision to rules .13 and .11 may cause a small business to create a separate pre-enrollment checklist and revise the enrollment agreement and/or catalog. THEC notes that many of the institutions that are small businesses already use a separate pre-enrollment checklist and will need only to revise the existing checklist. Additionally, the catalog will only need to be revised if the institution chooses to implement a cash discount, which may in fact benefit institutions and students. Lastly, the revisions to these forms will benefit students by providing more accurate and complete disclosures.
- The revision to rule .14 should benefit small business institutions by alleviating the financial burden of submitting audited financial statements.

(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:

THEC represents that this is not applicable because the proposed rule revisions are not burdensome, intrusive or costly.

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

THEC represents that there are no federal or state counterparts to the proposed rule revisions.

(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:

THEC represents that this question is not applicable because the proposed rule revisions are not burdensome, intrusive or costly. Moreover, exemption from the rules noted in response to number (3) would operate to deny small businesses the benefit of the refund and the waiver of the audit requirement and deny students the benefits of more accurate and complete disclosures.

## **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)

THEC represents that the proposed rule revisions will not have a financial impact on local governments.

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

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

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

1540-01-02-.02	<p>Role of the Commission, Committee and Staff:</p> <ul style="list-style-type: none"> <li>▪ The revisions to .02(1)(a), .02(3), .02(3)(a), and .04 insert the name of the Committee as stated in T.C.A § 49-7-207 and alter the language to use consistent terminology, such as "the Act."</li> <li>▪ The revision to .02(2)(a)2. clarifies that the ten day time period is calculated using business days.</li> </ul>
1540-01-02-.03	<p>Definitions:</p> <ul style="list-style-type: none"> <li>▪ Generally, the revisions to .03 are intended to improve internal consistency as well as consistency between the rules and the Act.</li> <li>▪ In certain instances, the revisions adopt the definition in the Act. In others, THEC added definitions to provide users additional information and to aid the implementation of other rule provisions.</li> <li>▪ Revisions also incorporate changes made during the 2008 rulemaking process. In October 2011, the Davidson County Chancery Court declared the 2008 rulemaking revisions void and of no effect as a result of a procedural error.</li> </ul>
1540-01-02-.05	<p>Exemption:</p> <ul style="list-style-type: none"> <li>▪ The revision to .05(1) clarifies that the exemption authority is located in T.C.A. § 49-7-2009.</li> <li>▪ The revisions to .05(1)(a)1. and 2. address situations where there is no charge directly to the student, but the institution does receive funds on behalf of the student through a program as described in the revision. It has become apparent to THEC that the current rule restricts the allocation of federal funds to certain educational providers and that this was not the intent of the rule. Thus, the revision is made to avoid an unintended consequence of the current wording of the rule.</li> <li>▪ The revisions to .05(1)(b), the deletion of current .08(8) and (10), and the addition of .05(1)(c) place all exemptions under .05 and clarify the grounds under which short term programs, seminars, and workshops may be exempt. This revision should make the rules more user-friendly and improve understanding.</li> <li>▪ The revisions to .05(1)(d) and (g) reintroduce exemptions into the rules that were removed from the rules as a result of the determination of the Davidson County Chancery Court in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error.</li> <li>▪ The revision to .05(1)(e) includes language similar to language that appeared in the 1998 version of the rules, but that appears to have been deleted in error. This is a housekeeping item.</li> <li>▪ The addition of .05(1)(f) exempts a type of exam preparation not contained in .05(1)(e). This exemption is listed separately because the nature of the training requires that explicit provisions be included to address promotion and advertising.</li> <li>▪ The additions of .05(1)(h) and (i) and the deletion of current .08(8) result in all exemptions being listed under .05. This revision should make the rules more user-friendly and improve understanding.</li> <li>▪ The revisions to .05(2) clarify that either programs or institutions may be granted exemptions. The revisions also remove the language that limits the term of the exemption status. This allows THEC to award exemptions for an unlimited amount of time while preserving the ability to revoke or amend an exemption. These revisions benefit institutions by simplifying the exemption review process and better describing the procedure for receiving an exemption.</li> </ul>
1540-01-02-.06	<p>Minimum Authorization Standards and Requirements:</p> <ul style="list-style-type: none"> <li>▪ The revisions to .06(1) thru (7) clarify language and improve consistency of terminology.</li> <li>▪ The revisions to .06(14)(a) clarify that institutions that use "university" in the institution name must meet the definition of "university" in .03(1)(pp). This revision benefits institutions and students by ensuring that the name of an institution appropriately describes the institution.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Additionally, the revision to .06(14)(b) permits institutions to use the word college in the institution name without a qualifier as long as the institution is accredited, meets the definition of "college" in .03(1)(p), and offers or is seeking to offer at least one degree program. This revision benefits institutions and students by ensuring that the name of an institution appropriately describes the institution and permitting nationally accredited institutions to use the word college in their names without a qualifier.</li> <li>▪ The revisions to .06(14)(c) maintain the current requirement that an unaccredited institution using college in the institution name include a qualifier. The revisions to .06(14)(c) serve to condense and clarify current requirements. The revisions remove references to dates that are no longer relevant and the provision allowing the Executive Director to consider an exception to the naming restrictions. THEC opines that exceptions are no longer needed given the other revisions to the rules.</li> <li>▪ The addition of .06(15) reintroduces language into the rules that was removed from the rules as a result of the determination of the Davidson County Chancery Court in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error. The requirement will aid consumers and the Commission when locating the institution.</li> </ul>
1540-01-02-.07	<p>Institutional Applications:</p> <ul style="list-style-type: none"> <li>▪ The addition of .07(1)(a) clarifies that applications must be submitted by the established deadline and (b) explains that incomplete, late, or un-typed applications may be deferred. The language is similar to language that was removed from the rules as a result of the determination of the Davidson County Chancery Court in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error.</li> <li>▪ The revisions to .07(2) clarify the language of the rule to better inform readers of the requirements of a complete application. The revisions also add rule references where applicable and improve the consistency of the terminology.</li> <li>▪ The revision to .07(4) is intended to modify the language such that it mirrors the 2008 version of the rules.</li> <li>▪ The revision to .07(6) makes the rule consistent with T.C.A. § 49-7-2-2013, corrects internal cross references, and places all bond requirements under one paragraph.</li> <li>▪ The revision to .07(7) simplifies the language of the rule without diminishing the requirement to maintain a satisfactory fire and sanitation inspection.</li> <li>▪ The revision to .07(8) clarifies the definition of a "change of ownership," requires that THEC be notified prior to the change, and allows existing owners to gain a larger share of the institution after the death of a co-owner without the transaction being treated as a change of ownership.</li> <li>▪ The revision to .07(9) provides additional guidance to the new program/program revision process. Added language explains when revisions must be submitted. Also, language regarding excessive tuition revisions is moved from .13 to .07(9). The change should make the rules more user-friendly.</li> <li>▪ The revision to .07(10) explains when a Change of Address Application must be filed. Further, the rule notifies institutions that a bond change is required 30 days following approval.</li> <li>▪ The revisions to .07(11) and (12) provide institutions guidance as to Change of Institution Name Applications and Discontinuance of Program Forms. Previously, these forms were not discussed in the rules.</li> </ul>
1540-01-02-.08	<p>Regulations for Specific School Types:</p> <ul style="list-style-type: none"> <li>▪ The addition of .08(3)(b)1. thru 3. were included to describe in detail what an institution must provide in order to receive an exception to the restriction in .08(3)(b). THEC opines that this addition provides an institution with a better understanding of how to plan for and obtain an exception. THEC further asserts that the provisions of 1. thru 3. will help to ensure that students of nationally accredited institutions that receive an exception will have more options available if they choose to transfer credits.</li> <li>▪ THEC is deleting current .08(8) and (10), but is providing for the exemptions in .05. This modification neither expands nor limits the scope of the current exemptions and serves to place all exemptions under .05. This revision should make the rules more user-friendly.</li> </ul>
1540-01-02-.09	<p>Annual Reauthorization:</p> <ul style="list-style-type: none"> <li>▪ The revisions to .09(1) and (2) clarify which institution must file reauthorization and the</li> </ul>

	<p>length of the reauthorization period.</p> <ul style="list-style-type: none"> <li>▪ The revision to .09(3) allows THEC to modify the reauthorization application to accommodate the various types of institutions subject to the Commission's regulation. This revision will allow greater flexibility in the amount and type of information collected and will benefit institutions by permitting THEC to more easily implement suggestions made by institutions and streamline the reauthorization process by allowing for truncated versions of the application when deemed appropriate by THEC staff.</li> <li>▪ The revision to .09(3)(c)2. clarifies that the statement requested is an income statement. This revision should improve understanding of the rules.</li> </ul>
1540-01-02-.10	<p>Required Minimum Standards:</p> <ul style="list-style-type: none"> <li>▪ The revision to .10(5) describes how to obtain a waiver from the requirement to annually provide placement data and clarifies how institutions should act until a waiver is granted. Additionally, the rule now requires that waivers be received at the program level. These revisions should provide improved guidance as to the waiver process.</li> <li>▪ THEC notes that this rule was revised with the federal program integrity regulations (published October 29, 2010) in mind and that under the new regulations many institutions will be required to provide placement disclosures to students.</li> </ul>
1540-01-02-.11	<p>Institutional Catalog:</p> <ul style="list-style-type: none"> <li>▪ The revision to .11(1)(o) allows institutions to include the mandatory authorization statement in the state authorization section of the catalog. This modification is made to address instances where a catalog is used in multiple states including Tennessee. This revision benefits institutions by affording them greater flexibility.</li> <li>▪ THEC added .11(1)(r) as a result of the revision made to .19 concerning cash discounts. This revision seeks to ensure that all students receive the policy and protects an institution in the event of a complaint.</li> </ul>
1540-01-02-.12	<p>Admissions Standards:</p> <ul style="list-style-type: none"> <li>▪ The revisions to .12(1) and (2) and deletion of current .12(4) simplify the language of the admission requirements and clarify the requirements for the degree and non-degree programs.</li> <li>▪ The revision of newly numbered .12(4) improves the organization of the rule.</li> </ul>
1540-01-02-.13	<p>Enrollment Agreement and Disclosure Standards:</p> <ul style="list-style-type: none"> <li>▪ The revision to .13(2) requires institutions to use a pre-enrollment checklist and clarifies what must be in the checklist. The requirement to use a pre-enrollment checklist is proposed to ensure that students receive the required information. Review of reauthorization applications reveals that institutions often combine the pre-enrollment checklist and enrollment agreement. Often when this occurs, the items in the pre-enrollment checklist are not clearly stated. Additionally, the pre-enrollment checklist by the very title is to be completed in advance of the student signing an enrollment agreement further supporting the need for two documents. This revision seeks to ensure that all students are made aware of the checklist items and protects an institution in the event of a complaint.</li> <li>▪ The addition to .13(2)(h) is due to the fact that pursuant to T.C.A. § 49-7-144 institutions are required to provide prospective students a written disclosure about transferability of credits. This revision seeks to ensure that all students have received the statutory disclosure and protects an institution in the event of a complaint.</li> <li>▪ The revision to .13(2)(j) is due to the waiver made by Dr. Richard Rhoda on April 29, 2010. At that time, it was determined that it was necessary to waive the provisions that require that certain language concerning placement, completion and withdrawal data appear in the enrollment agreement, because the language contained in the rule had become obsolete as a result of the passage of and subsequent implementation of 2008 Public Chapter 1103 (codified at Tenn. Code Ann. § 49-7-2019). The revision will benefit students and institutions by making sure students receive clear and recent statistical data.</li> <li>▪ The addition of .13(2)(k) was made as a result of adding language to .19 allowing institutions to offer cash discounts. This revision seeks to ensure that all students are made aware that the institution has a cash discount policy and protects an institution in the event of a complaint.</li> <li>▪ The revision to .13(3) clarifies that institutions do not have to provide placement data in the pre-enrollment checklist if the institution received a waiver for that program. This is a housekeeping item.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ The revisions to .13(4) result in part from the decision to require that the pre-enrollment checklist and the enrollment agreement be two separate documents. Additionally, some of the revisions to .13(4)(j), (6) and (7) are proposed to better reflect the definition of "tuition" in .03(rr). Lastly, .13(4)(j) and (7) are also revised to clarify that "one year" is a twelve-month period. These are housekeeping items and clarify the rules.</li> <li>▪ The addition of .13(5) allows institution to customize the language of the pre-enrollment checklist and the enrollment agreement to address instances where a student chooses to enroll in a single class rather than an entire program. The rules did not previously address this.</li> </ul>
1540-01-02-.14	<p>Financial Standards: The revision to .14(6) is due to the waiver made by Dr. Richard Rhoda on April 29, 2010. At that time, it was determined that certified public accountants are not performing audits on smaller companies and that the cost of approximately \$10,000 is prohibitive to smaller institutions. This trend has been verified and documented by letters from the certified public accountants of several of our authorized institutions.</p>
1540-01-02-.15	<p>Institutional and Student Records:</p> <ul style="list-style-type: none"> <li>▪ The revision to .15(1) is proposed to more accurately describe the requirement given the change in data collection from aggregate data to student-level data. This revision benefits institutions by clarifying which records an institution must maintain.</li> <li>▪ The revision to .15(2) clarifies the record retention length. Previously, there was no length listed.</li> <li>▪ The revision to .15(5) clarifies the requirements for the masters student registration list and allows flexibility with regard to the social security number.</li> <li>▪ The revision to .15(6) adds the transferability of credit disclosure statement and pre-enrollment checklist to the items that must be maintained in a student's file. The former is required to ensure compliance with T.C.A. § 49-7-144 and the latter is required to ensure compliance with the revisions to rule .13. The revision also deletes the language requiring an institution to maintain an admissions form in the student's file. This revision is due to the fact that the information on the admission form is required by .12 to be in the enrollment agreement, which is already required by .15 to be maintained in the student's file. This is a housekeeping item.</li> </ul>
1540-01-02-.16	<p>Personnel and Instructor Qualifications:</p> <ul style="list-style-type: none"> <li>▪ The revisions to .16(1) and (2) put into the rule the policy of the Commission regarding the filing of School Personnel Applications, states that qualifications must be met, and explains the institution's evidentiary burden. These revisions also result in the deletion of current paragraph (12).</li> <li>▪ The language of current rule .16(11)(d)4. and 5. can be read such that an instructor with a bachelor's degree may not be qualified to teach an associate, diploma, or certificate level program. THEC opines that this was not the intent of the rule. Therefore, THEC has revised the rule so that an instructor will be qualified to teach all program levels beneath the highest level for which the instructor is qualified. This revision benefits institutions by simplifying the qualification requirements.</li> <li>▪ The revision to .16(15) generally clarifies the language of the rule. The revision of paragraph (c) is intended to provide guidance as to the term "common ownership."</li> </ul>
1540-01-02-.18	<p>Prohibited Acts: The addition of .18(6) establishes that unaccredited institutions are not allowed to accept funds for tuition and fees beyond 10 business days of the start of the program. The revision protects students in the event that an institution closes.</p>
1540-01-02-.19	<p>Fair Consumer Practices and Student Complaints:</p> <ul style="list-style-type: none"> <li>▪ The addition of .19(1) and (2) allows institutions to provide cash discounts to students under certain circumstances. The addition of a new paragraph allows institutions to issue monetary awards, such as scholarships, under certain circumstances. Neither provision requires pre-approval by THEC, but institutions are required to provide any necessary documentation if asked by THEC to establish compliance. THEC proposes this revision in recognition of the fact that under certain circumstances cash discounts and monetary awards are appropriate. This revision, which was requested by institutions, will benefit institutions by allowing students to use cash payments, but it will also protect students by requiring that all students be made aware of the policy.</li> <li>▪ The revision of .19(4) clarifies the meaning of fair consumer practices and should aid institutions in knowing how to comply with and improve their understanding of the rules.</li> <li>▪ The new paragraph at the end of the rule describes the complaint process. To date, this process has not been described in the rules and the description should help</li> </ul>

	complainants and institutions understand the process.
1540-01-02-.20	<p>Advertising and Solicitation:</p> <ul style="list-style-type: none"> <li>• The revisions to this rule insert the updated web address for THEC.</li> <li>• The revision to .20(2) clarifies that an institution is prohibited from using the THEC logo on any promotional and institutional material.</li> <li>• The revision to .20(6) removes the requirement that radio advertisements by institutions state the physical address of their authorized site and clarifies what information must be included in such radio advertisements.</li> </ul>
1540-01-02-.21	<p>Authorization Status:</p> <ul style="list-style-type: none"> <li>• The revisions to .21(1)(c) and (d) move the substance of subparagraph (d) to subparagraph (c) and clarify that temporary authorization requires institutions to either enroll students or begin providing educational instruction within ninety (90) days.</li> <li>• The revision to .21(2) clarifies that all authorized institutions under regular authorization are required to submit a reauthorization application on forms supplied by the Commission.</li> </ul>
1540-01-02-.23	<p>Institutional Closure:</p> <ul style="list-style-type: none"> <li>• The revision to .23(1) reduces the amount of time by which an institution must notify THEC of its intention to close and the time by which an institution must submit a closure plan. This revision allows THEC to timely ensure that plans are in place to protect the financial and educational interests of students.</li> <li>• The revision to .23(5) requires that the location of any student teachouts must be within reasonable distance to the geographic location of the closing institution. This revision protects students to ensure they will not have to travel an unreasonable distance to complete their education and allows institutions greater flexibility when arranging a teachout.</li> <li>• The revisions to .23(6)(b) and (c) clarify the process for submitting transcripts and financial aid records to THEC upon closure.</li> <li>• The addition of .23(6)(d) clarifies the process by which a student may obtain a copy of the student's transcript and clarifies that a student must pay a \$10.00 fee in order to cover associated costs with providing the transcript. The revisions seeks to place THEC's current process in the rules.</li> </ul>
1540-01-02-.24	<p>Tuition Guarantee Fund: This revision restates the requirement of T.C.A. § 49-7-2018(e) that an institution is required to pay into the Tuition Guarantee Fund for six years.</p>
1540-01-02-.26	<p>Return of Regulatory Fees:</p> <ul style="list-style-type: none"> <li>• The addition of paragraph (1) is a result of discussions during the 2009 rulemaking proceeding. At that time, institutions were concerned that the rate increase was excessive. In response, THEC crafted this rule to ensure that it collects no more than is necessary to cover the costs in the annual budget and to maintain a reasonable surplus. This will benefit institutions by ensuring that excess collections will be returned to the institutions as described in the rule.</li> <li>• Paragraph (2) provides a mechanism by which an institution can request a refund of all, or a portion, of fees paid if it decides to withdraw a pending application. This will benefit institutions by allowing THEC to return a portion of the fees depending on how much staff review has occurred at the time of withdrawal. This rule is identical to language that was removed from the 2000 rules as a result of the republication of the rules following the Davidson County Chancery Court's determination in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error.</li> </ul>

**(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;

In proposing these rule revisions, THEC relies on its authority under state law. Specifically, T.C.A. § 4-5-2005(a)(6) states that THEC has the power and duty to: "Promulgate rules, regulations, performance standards and procedures necessary or appropriate for the conduct of its work and the implementation of this part, which rules and regulations shall have the force of law; and to hold such hearings as it may deem advisable or as required by law in developing such rules, regulations and procedures, or in aid of any investigation or inquiry." Further, as specifically relates to new rule "Return of Regulatory Fees," THEC notes that T.C.A. § 49-7-2014(c)

states, "[t]he commission is authorized to set fees annually based on the intent to collect revenues sufficient to cover the costs of this regulatory function (including, but not limited to travel, employee costs, legal costs, expert 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;

All non-exempt postsecondary educational institutions are directly affected by these rule revisions. During the rulemaking process, THEC notified institutions of the proposed revisions and provided the institutions with an opportunity to submit comments. On or near March 19, 2012, THEC received comments from 3 organizations and 17 of the authorized 195 institutions (count as of March 2012). The following is a list of commenters:

1. Aircraft Owners & Pilot Association (AOPA) – Southern Region
2. Anthem Career College (Nashville)
3. Bridgepoint Education (Ashford University and University of the Rockies)
4. Capella University
5. Daymar Colleges Group, LLC (Corporate Office-3 letters, Clarksville, Nashville, and Murfreesboro)
6. International Academy of Design & Technology
7. ITT Technical Institute (Cordova)
8. Larenda LLC (Larenda Emerging Technologies College)
9. Miller-Motte Technical College (Madison)
10. Nashville Auction School
11. National College of Business and Technology (Corporate Office, Bristol, Nashville, Memphis, Bartlett, Madison and Knoxville)
12. North Central Institute
13. Remington College (Memphis)
14. South College
15. Tennessee Association of Independent Colleges & Schools
16. Tennessee Proprietary Business School Association
17. Virginia College (Corporate Office)
18. Weston Distance Learning, Inc. (At-Home Professions)
19. Wings of Eagles School of Flight (Smyrna and Nashville)

THEC summarized and responded to all comments in a document sent to the Commission members in preparation for the April 26, 2012 meeting. The majority of critical comments concerned Rules 1540-01-02-.08(3)(a) [degree name], .12(1)(a) [admission standards], and .15(6)(b) [student file].

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

THEC represents that there is an opinion of the attorney general and reporter and an order of the Davidson County Chancery Court that are directly related to the proposed rule revisions. In AG Opinion No. 12-35, the Attorney General was asked whether "a flight training school that provides training primarily to avocational students and whose programs are regulated by the Federal Aviation Administration" must be authorized pursuant to the Postsecondary Education Authorization Act and whether federal law preempted the Act. The Attorney General determined:

1. If such a flight training school operated in Tennessee it must be authorized to operate by THEC under the Act.
2. Regulation of the content and instruction of the flight training courses would likely be preempted by federal law and regulations. However, THEC's regulation of other aspects of the flight school pursuant to the Act, such as the school's marketing, business practices and fiscal soundness, would not be preempted.

On October 17, 2011, Chancellor Lyle of the Davidson County Chancery Court issued her opinion on the Petition for Declaratory Judgment filed by National College of Business and Technology and Remington College in September 2008. Chancellor Lyle determined that THEC failed to comply with the Uniform Administrative Procedures Act during a rulemaking that concluded in 2008 and determined that the resulting rules were void and of no effect. As a result, the Secretary of State republished Rule Chapter

1540-01-02 in November 2011. With the exception of Rule 1540-01-02-.25, which was revised in 2009, the November 2011 rules are identical to the June 2000 rules. Further, in January 2012, the Commission voted to withdraw its rule revisions pending with the Attorney General's office as the revisions amended rules that were no longer in effect. Given these circumstances, the rules contained in this Proposed Rule(s) Filing Form reflect changes since 2000.

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

THEC represents that there will be no increase or decrease in state or local government revenues, but that the implementation of the new rule "Return of Regulatory Fees" will require minimal expenditures and that the operation of this rule will result in a reduction of fee revenue equal to the amount in excess of any reserve balance as of the end of the fiscal year that is greater than 1.5 million dollars.

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

Will Burns, Associate Executive Director, Legal and Regulatory Affairs  
Dr. Stephanie Bellard Chase, Assistant Executive Director, Division of Postsecondary School Authorization  
Julie Woodruff, Director of Regulatory Affairs, Division of Postsecondary School Authorization

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

Will Burns, Associate Executive Director, Legal and Regulatory Affairs  
Dr. Stephanie Bellard Chase, Assistant Executive Director, Division of Postsecondary School Authorization  
Julie Woodruff, Director of Regulatory Affairs, Division of Postsecondary School Authorization

- (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

Will Burns, Associate Executive Director, Legal and Regulatory Affairs  
(615)741-7571  
Dr. Stephanie Bellard Chase, Assistant Executive Director, Division of Postsecondary School Authorization  
(615)532-7495  
Julie Woodruff, Director Regulatory Affairs, Division of Postsecondary School Authorization  
(615)253-8857  
All persons are located at:  
Tennessee Higher Education Commission  
Parkway Towers, Suite 1900  
404 James Robertson Parkway  
Nashville, TN 37243-0830

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

Additional information available upon request.

RULES OF  
TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-01-02  
AUTHORIZATION AND REGULATION OF  
POSTSECONDARY EDUCATION INSTITUTIONS AND THEIR AGENTS

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1540-01-02-.01 PREFACE [NO PROPOSED AMENDMENTS]

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

(1) Role of the Commission:

- (a) The Tennessee Higher Education Commission at each quarterly meeting shall consider recommendations from the Commission staff and/or Committee on Postsecondary Educational Institutions ~~Committee~~ regarding all authorizations, awarding educational credentials (including authority to grant degrees) and any other matter at the request of the Commission's Executive Director.
- (b) No institution may solicit, recruit, award credentials or operate as a postsecondary educational institution until such authorization is granted by affirmative vote of the Commission.

(2) Role of the Executive Director:

- (a) The Executive Director is empowered to take any urgent action, based on these rules and the Act, necessary to conduct this consumer protection regulatory function, during the periods between authorization action meetings of the Commission, subject to ratification by the Commission provided that:
  - 1. the Executive Director shall give written notice of such action to the affected party;
  - 2. the Executive Director shall instruct the affected party that they may notify the Commission within ten (10) business days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final;

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

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

(c) On the advice of the Committee on Postsecondary Educational Institutions, the Executive Director, in consultation with the Commission, is authorized to recommend the waiving of deadlines or regulations developed pursuant to this Chapter, upon well-documented extraordinary cause, where necessary to carry out the provisions of this part in the public interest and where consistent with ~~T.C.A. §49-7-2001 et seq~~ the Act.

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

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

1. Assess fines under this Part.

2. Intervene to alter, place conditions on, suspend or revoke, in full or in part, an institution's or agent's authorization to operate.

3. Issue temporary, conditional, limited, or probationary authorization.

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

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

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

1. all initial applications for temporary authorization;

2. all applications for regular authorization;

3. all applications for reauthorization;

4. the awarding of educational credentials; and

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

- (b) The Committee, and, as needed, other experts appointed by the Executive Director, shall participate in institutional site visits for purposes of evaluating compliance with legislation and rules.
  - (c) The Committee shall exercise such powers and undertake such obligations as are delegated to it by the Commission under the provisions of Part 20 of this chapter the Act. Such delegations shall include the authority to initiate and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval and/or disapproval by the Commission.
  - (d) The Chairman of the Committee may appoint sub-committees as needed.
- (4) Role of the Commission staff:
- (a) Designated Commission staff members shall oversee and administer for purposes of compliance the Act and these rules TCA §49-7-2001 et seq. and the related Postsecondary Regulations chapter 1540-1-2.
  - (b) Beginning July 1, 1997, the office and The Commission staff responsible for oversight of the Act and these rules TCA §49-7-2001 et seq. and the related Postsecondary Regulations chapter 1540-01-02 shall be officially referred to as the Tennessee Higher Education Commission, Office Division of Postsecondary School Authorization (Professional, Business, Vocational and Career).
  - (c) Commission staff shall Pperform site visits to review, inspect and investigate as necessary, institutions seeking, holding or required to hold a certificate of authorization for verification of compliance. Site visits may be conducted for This includes but is not limited to initial authorization for new institutions, new program reviews, authorization inspections for non-exempt Tennessee institutions, follow up to written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.
  - (d) Investigate as necessary all non-unauthorized postsecondary educational activities operating in Tennessee to verify adherence to the Act and these rules by all institutions not exempted by the Act.
  - (e) Establish a deadline for submission of initial authorization packages applications, new program applications and any other materials to be included on the agenda for each quarterly meeting of the Postsecondary Committee. (Institutional Applications (1540-01-02-07)).
  - (f) Share with state or federal agencies information for institutions seeking, holding or required to hold a certificate of authorization and unauthorized educational operations. Provide state or federal agencies information pertaining to school closures under any condition. Share with appropriate accrediting bodies any adverse action taken by the Executive Director or Commission.

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

#### 1540-01-02-.03 DEFINITIONS

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

- (a) "Ability-to-benefit student" as used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means students, regardless of financial condition, who do not possess a high school diploma or GED, but who have demonstrated that they can profit materially or personally from a certain course of study.
- (b) "Academic" as used in the description of a program or institution means that which is organized primarily for academic training or transfer.
- (c) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs. Private educational associations of regional and national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.
- (ed) "Act" means the Postsecondary Education Authorization Act of 1974, Tennessee Code Annotated 49-7-2001, et seq. as amended.
- (ee) "Adverse action" means action taken by the Executive Director or Commission to penalize, limit, change, suspend or cause to cease activity that is in non-compliance with the Act and these rules. Such adverse action may include but not be limited to fines of \$500 per violation per day; suspension of activity; conditional authorization or revocation.
- ~~(e) "Agent" means a person employed full or part time by the institution, whether the institution is located within or without the state of Tennessee, to act as representative, solicitor, broker, or independent contractor to directly procure or induce people to become students or enrollees for the institution at an off-campus location.~~
- ~~(f) "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, outside of the institution, enrolls or seeks to enroll a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution for any such purpose.~~
- (g) "Agent's permit" means a nontransferable written authorization issued to a natural person by the Commission which allows that person to act as an agent.
- (h) "Articulation agreement" means an arrangement between two higher education institutions approved and signed by authorized institutional representatives and constructed by faculty in the discipline that equates for transfer of a defined set or block of academic credits that will meet requirements of a specified academic degree program major at the degree-awarding institution.
- (fi) "Associate's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least 60 semester credit hours or 90 quarter credit hours of instruction, or equivalent.
- (gj) "Authorization to operate" means permission ~~or licensure~~ to operate for a specified time in a specified place(s). An institution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the

letter or certificate which specify or connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."

- (hk) "Authorization site visit" means an institutional site visit conducted by Commission staff or Postsecondary Committee members to verify compliance with ~~Postsecondary Education Authorization Act of 1974, Tennessee Code Annotated §49-7-2001, et seq. as amended the Act and these rules chapter 1540-1-2 of the Postsecondary Regulations.~~ The authorization visit is commonly called a 'site visit'.
- (il) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least 120 semester credit hours or 180 quarter hours, or equivalent.
- (jm) "Certificate program" generally means one or more technical courses usually completed in one to twenty-six weeks, or up to and including 500 contact hours normally with a single skill objective.
- (kn) "Certified" when used to modify audit refers to an audit in accordance with Generally Accepted Auditing Standards (GAAS) and in accordance with the auditing standards set forth in the book, "Government Auditing Standards" issued by the Comptroller of the United States (often referred to as the "yellow book" standards). If, however, the entity is required for other reasons to have conducted a certified audit in accordance with O.M.B., Circular A-133, such an audit shall be an acceptable substitute for the audit required pursuant to these regulations.
- (lo) "Closed enrollment" means instruction provided between an educator or educational service to a group or business on a private contractual bases, whereby public solicitation does not occur and the instructional provider is given a list of enrollees to train at no cost to the students.
- (mp) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary institution offering courses of study leading to a degree ~~traditional undergraduate college degrees~~. Some examples of traditional degrees are: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, and Bachelor of Fine Arts.
- (nq) "Commission" means the Tennessee Higher Education Commission.
- (r) "Committee" means the Committee on Postsecondary Educational Institutions.
- (es) "Contact Hour" or "~~{clock hour}~~" refers to actual directed or supervised instructional time, not to be less than 50 minutes for every 60 minutes of time.
- (tp) "Credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution. ~~refers to educational credentials which include but are not limited to: certificates, diplomas, letters of designation, degrees, transcripts or any other papers generally taken to signify progress or completion of education/training~~

at a postsecondary educational institution.

- (ue) "Degree" means letters of designation or credential or a title from a postsecondary level program acceptable to and so authorized by the Commission and/or an accrediting body recognized by the U.S. Department of Education. Typically used in some form is the term 'associate', 'bachelor', 'masters' or 'doctor' in the credential designation.
- (vf) "Diploma program" means a program of instruction offering technical and some basic course work. Some general or peripheral courses may be included. The program shall generally range for more than 500 contact hours but less than contact requirements for the Associates degree.
- (w) "Distance learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.
- (xs) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least 90 semester hours or 135 quarter hours of graduate credit or equivalent.
- (yf) "Enrollment" refers to those students who have completed the institution's application forms, submitted a financial deposit where required, and have actually attended one or more sessions of class(es), or, in the case of ~~home~~ study Distance Learning programs, received one or more lessons.
- (zt) "Educational service" means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, ~~non-~~ unaccredited courses or non-college training.
- (aav) "General education courses" ~~means are general education core or academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student and/or give balance to the total program beyond the area of vocational or professional concentration.~~
- (bbw) "Independent certified public accountant (C.P.A.)" means a C.P.A. not associated with the institution or its owners, especially in such a way that a conflict of interest or appearance of conflict arises.
- (x) ~~"Institute" means a postsecondary institution offering courses of study and training not usually associated with traditional liberal arts degrees. Appropriate credentials awarded would include applied science degrees, certificates, and diplomas such as the Associate of Applied Science (A.A.S).~~
- (ccy) "Institutional director" means the institutional executive designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents is within these rules and the Act. Further, the institutional director will serve as the official contact for all business conducted between the institution and the Commission and maintain complete authorization files. Additional responsibilities and qualifications are listed in Rule 1540-01-02-16.

(dd) "Instructional site" means a non-residential facility that is commercially zoned and utilized for the training of students.

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

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

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

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

(~~hhdd~~) "Physical presence" means actual presence within the state of Tennessee for the purpose of conducting activity related to: a postsecondary educational institution; an educational service; dissemination of educational credentials; enrollment; solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:

1. An instructional site within the state.
2. Instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors etc., or computer resources, or computer linking (e.g. internet), or any form of electronic telecommunications;
3. Dissemination of an educational credential from a location within the state;
4. An agent, recruiter, institution or business that solicits for enrollment or credits or for the award of an educational credential;
5. Advertising, promotional material or public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding or required to hold a certificate of authorization.

~~(ee) "Postsecondary education institution" means an entity which maintains a place of business within Tennessee, or solicits business in Tennessee, and which offers or maintains a course or courses of instruction or study, or at which place of business such a course or courses of instruction or study are available through field instruction, classroom instruction or by long distance learning or both to a person or persons for the purpose of training or preparing the person~~

for a field of endeavor in a business, trade, technical, service or industrial occupation, for a vocation, or for the award of an educational credential, except as excluded by the provisions of these rules and the Act.

- (ii) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.
- (jjff) "Quarter" is a period of instruction into which the academic year may be divided. A quarter must consist of at least ten (10) weeks.
- (kkgg) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one classroom lecture hour per week for one quarter or two hours of laboratory experience per week for one quarter, or three hours of intern/externship experience per week or the equivalent number of hours.
- (llhh) "Residential~~lee~~ course" means a course in which the student comes to an institutional campus or instructional site as opposed to a course where the student stays at home (i.e., Long-Distance Learning).
- ~~(ii) "SACS Commission on Colleges" means the Commission of the Southern Association of Colleges and Schools which accredits degree-granting postsecondary institutions.~~
- (mmjj) "School" means (1) A unit within a college or university that offers specialized instruction (e.g., i.e., a school of engineering). (2) An institution that offers specialized instruction in areas (i.e., e.g., driving, modeling, basic travel training) not usually associated with college or university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.
- (nnkk) "Semester" is a period of instruction into which the academic year may be divided. A semester must consist of at least 15 weeks.
- (oo#) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one classroom lecture hour per week for one semester or two hours of laboratory experience per week for a semester, or three hours of intern/externship experience per week or the equivalent number of hours.
- ~~(ppmm) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents inducing or attempting to induce a resident of Tennessee to sign, at any off-campus location, an enrollment agreement to attend a postsecondary educational institution.~~
- (qq) "These rules" or "these regulations" means all rules contained in Rule Chapter 1540-01-02.
- (rr) "Traditional degree" shall mean degrees including, but not limited to: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration,

Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.

- (~~ssaa~~) "Tuition" shall mean, but not be limited to, any money or fee involving the student, actually charged by the institution and or tracked as a bookkeeping item for directly related to the instruction-/training provided (e.g., per credit hour cost and equipment fee). Tuition does not include student activity fees or fees paid to third parties for products or services related to the training. These fees may be referred to as "other fees."
- (~~ttee~~) "Unearned tuition" means at any given time, the total of refunds due former students, all tuition and fees that have or will be collected from students prior to graduation and which would be refundable pursuant to 1540-01-02-.17 of these rules, and any tuition and fees collected in advance from prospective students.
- (~~uupe~~) "University" means a postsecondary institution that provides facilities for teaching and research, offers traditional undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs. ~~Some examples of traditional degrees are: Bachelor of Arts, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, and Doctor of Education.~~
- (~~vvqq~~) "Vocational" in description of a program or institution means that which is organized primarily for job entry or upgrading of job skills that would result in a new job title or position.

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

1540-01-02-.04 DETERMINATION FOR REQUIRED AUTHORIZATION [NO PROPOSED AMENDMENTS]

1540-01-02-.05 EXEMPTION

- (1) T.C.A. § 49-7-2009 includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2009. In addition to institutions exempt by Tennessee Code Annotated, Chapter 49-7-2004, the following institutions are exempt from the annual reporting and the provisions of these regulations:
- (a) ~~any entities offering e~~Education, instruction or training that isare:
1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, including payroll deduction or minimum length of employment, except that the employer/institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by Commission staff; or
  2. maintained or given by a U.S.U.S. Department of Labor or state recognized labor organization, without charge, to organization to its membership/ or apprentices or without charge, except that the institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as

determined by Commission staff; or

3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or
4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer degrees or educational credentials such as but not limited to diplomas or special certifications that in the opinion of the Commission are specifically directed toward new or additional vocational, professional or academic goals.

(b) Programs, seminars or workshops that are recreational or avocational, including motivational or enrichment programs, as determined by Commission staff shall be considered exempt from authorization requirements. Upon review by Commission staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized, or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.

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

(d) Programs that operate under Part 61 of the Federal Aviation Regulations and that provide only avocational training are exempt. Aviation programs that operate entirely under Part 141 of the Federal Aviation Regulations and programs that operate under Part 61 of the Federal Aviation Regulations and that provide vocational training are non-exempt. Oversight of these aviation schools will in no way conflict with oversight provided by the Federal Aviation Administration. While the FAA oversight ensures adequate curricula and safety of the student, the Commission's oversight is focused on protection of the personal and financial interests of the student.

(e) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams. The latter shall include, but not be limited to, intensive review courses for certified public accountancy tests, the examination for professional practice in psychology, and the bar examination.

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

1. suggesting that the training results in receipt of an educational credential, such as a degree;
2. listing anticipated salary amounts; and
3. suggesting that the entity is accredited.

- (g) Eleemosynary institutions, including bona fide religious institutions, that:
  1. offer instruction or training and do not offer degrees of any type;
  2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source; and
  3. do not offer diplomas/certificates, including those that in the opinion of the Commission replicate letters of designation or degrees.
- (h) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.
- (i) Businesses offering short-term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission courses using various software are offered concurrently toward a vocational goal, e.g., word processing software offered toward secretarial goals.

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

- (a) Institutions that clearly qualify as exemption under the Act ~~and~~ these ~~regulations~~ rules after Commission staff review shall be considered exempt from authorization without a vote of the Commission.
- (b) Institutional ~~Any institution or program~~ exemption is subject to annual Commission staff review and/or revocation any time the activity deviates from the original determination factors for exemption.
- ~~(c) Exemptions secured under this section of the rules are effective for each authorization year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.~~
- ~~(d) Exemptions can be revoked or amended by the Commission staff as they pertain to individual institutions whenever it is determined by the Commission staff that an institution exempted by the Act or these ~~regulations~~ rules has not acted in accordance ~~to~~ with the purpose of T.C.A. § 49-7-2002; 'Legislative intent'.~~

(3) Institutions or educational providers seeking an exemption status (or not wanting to pursue authorization) that in the opinion of Commission staff do not clearly qualify under the exemption categories given in the Act and these rules will be required to complete an Exemption Request Form. The form shall include but not be limited to To request an exemption, institutions shall submit a descriptive narrative describing how the institution and/or program(s) qualifies for an exemption. The request shall include a citation to the exemption provision relied on in the Act and/or these rules and documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; and organizational ties and/or contracts with other educational providers and a descriptive narrative of how the organization qualifies for exemption specifically citing the Act and/or rules. Upon receipt of an exemption request, Commission staff shall make a written determination and

provide a date by which an aggrieved institution may submit a request for further review by the Executive Director. Such date shall not be earlier than ten business days after the date of the letter.

(a) ~~Based upon the submitted material Commission staff shall make a written determination of institutional status.~~

(4) ~~If the institution is aggrieved by a that determination concerning exemption status, the party institution may appeal seek review as provided for in the manner provided by Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b). Any request for review shall be in writing, signed, list each instance where Commission staff erred, and provide a detailed explanation of each error, including references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth is paragraph (3).~~

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

#### 1540-01-02-.06 MINIMUM AUTHORIZATION STANDARDS AND REQUIREMENTS

- (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum requirements stated in ~~Tennessee Code Annotated~~ T.C.A. § 49-7-2006 and as further defined in these ~~regulations~~ rules.
- (2) Meet the definition of a postsecondary educational institution as given in the Act and/or these ~~rules~~ postsecondary regulations.
- (3) Have physical presence in the state as given in these ~~rules~~ regulations.
- (4) The institution is properly registered with the Tennessee Department of State or, in the case of a general partnership or sole proprietorship, has a local business license ~~Establish a charter or business license in the state of Tennessee for the proposed institution.~~
- (5) Financial stability to start up and initially operate a postsecondary educational institution demonstrated through a certified audit or statement acceptable to the Commission of the resources to be utilized in the school.
- (6) ~~Ability to s~~Secure an continuous institutional surety bond or like security described in ~~rule~~ Rule 1540-01-02-.07(7).
- (7) Have an educational program(s) consistent with standards in Tennessee for length, content and quality for the educational credential offered in compliance with the Act and these ~~rules~~ regulations.
- (8) All programs must include training and substantive content to attain outcomes stated as the program purpose and mission of the institution.
- (9) No principal party, owner or administrator involved with the proposed institution has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime.
- (10) Before an institution is granted temporary authorization, the following requirements and standards required of an approved ~~school~~ institution must be met in preauthorization and

maintained operationally.

- (a) Complete all required initial authorization materials in package provided by the Commission staff with payment of all corresponding fees.
  - (b) Verification of a stable physical presence and/or a physical site acceptable to the Commission and these rules.
  - (c) Establish and maintain all ~~o~~Operational and ~~a~~Administration ~~s~~Standards, such as educational, financial, admissions, enrollment, instructor, etc., as given in these rules.
  - (d) New or revised programs must conform ~~with~~to all requirements given in these rules under New Program or Change in Program, Rule 1540-01-02-.07.
  - (e) Compliance for each of the educational credential(s) offered by the applicant institution, with requirements as given under Non Degree Granting Institutions or Degree Granting Institutions, Rule 1540-01-02-.08.
  - (f) Demonstrate compliance for branch sites or expansion of programs by prior approval or prior notification with the institution's accrediting body wherever necessary to be consistent with the requirements of the accrediting body and the federal regulations.
- (11) No ~~out-of-state~~ institution will be considered for authorization if it is not authorized in the state where primarily located.
- (12) Any institution based primarily outside of Tennessee which proposes to set up a branch in Tennessee and is not accredited by an agency recognized by the Commission must forward reasons why resources would not best be spent on accreditation at the current site.
- (13) An exception to any part of ~~the Minimum Authorization Standards~~this rule must be reviewed on an individual basis by the Commission.
- (14) School-Institution Name:
- (a) No postsecondary educational institution under the Act and these rules may use the word "university" in ~~their~~its name unless the school/institution meets the definition of university as set forth in these rules and has been so approved by a regional accrediting body so recognized by the U.S.U.S. Department of Education.
  - (b) No postsecondary educational institution under the Act and these rules may use the word "college" in ~~their~~its name unless:
    - 1. The institution meets the definition of college as set forth in these rules;
    - 2. The institution ~~the school~~ has been so approved by an regional accrediting body recognized by the U.S.U.S. Department of Education to offer degree level programs; and
    - 3. The institution offers or is seeking to offer at least one (1) degree program, or

(c) An unaccredited institution or institution that does not meet the requirements in subparagraph (b) may not use "college" in its name unless:

1. For institutions authorized prior to October 1, 2006, the institution name includes uses an appropriate qualifier along with the word "college", such as "career", "vocational", "business", "technical", "art" etc., or in the case of a religious institution, "Bible" or a denominational term or-
2. For institutions authorized on or after October 1, 2006, the institution name includes an appropriate qualifier preceding the word "college," such as "career," "vocational," "business," "technical," "art" or in the case of a religious institution, "Bible" or a denominational term.

(de) All institutions authorized after July 1, 1997 using "college" in accordance with item 14(bc) above, must achieve regional or national accreditation from an accrediting body recognized by the U. S. U. S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal. Institutions that fail to make good faith efforts toward accreditation or to achieve accreditation in a timely manner shall be required to remove "college" from the institutional name.

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

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

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

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

(15) A sign, acceptable to the Commission, must be affixed to the building and/or the main entrance door indicating the name of the institution.

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

#### 1540-01-02-.07 INSTITUTIONAL APPLICATIONS

(1) Application deadline:

(a) Institutions seeking initial authorization or approval of new programs must submit the appropriate application by the deadline date established by Commission staff.

(ab) Incomplete submissions as given below in paragraph (2), Authorization - What Constitutes a Complete Application, ~~or applications submitted after the established deadline, or applications that are not typed~~ may be deferred to the next quarterly meeting at the discretion of staff.

(bc) Institutions that voluntarily or involuntarily defer an application before the Committee will have two additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.

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

(2) Authorization - What Constitutes a Complete Application:

(a) ~~Prior to operation, which includes advertising, recruitment and solicitation,~~ Institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed and typed application which includes at least the following:

1. a title or name of the institution in compliance with these rules;
2. proof that the institution is properly registered with the Tennessee Department of State or, in the case of a general partnership or sole proprietorship, a copy of the institution's local business license ~~a copy of the Tennessee state charter as filed with the Secretary of State (incorporated) or local business license (sole proprietorship);~~
3. ownership and/or controlling officers name(s), home address(es), and phone number(s) of all owner(s), controlling officer(s), and/or members of the board of directors;
4. address and general description of facilities;
5. list of instructional equipment for each program specifying whether each item is (owned or leased);
6. qualifications for instructional staff and supervisors ~~administrative personnel, see Rule 1540-01-02-.16;~~
7. designation of an institutional director for each site responsible for authorization contracts and maintenance of records and all other duties as described under ~~Personnel and Instructor Qualifications (Rule 1540-01-02-.16);~~
8. definition ~~description~~ of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the institutional director is replaced;
9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;
10. institutional surety bond as described by ~~rule~~ Rule 1540-01-02-.07 ~~and/or as prescribed by T.C.A. § 49-7-2013;~~

11. a copy of the enrollment ~~contract or agreement~~ described in these regulations Rule 1540-01-02-.13;
12. a copy of the pre-enrollment checklist described in Rule Enrollment Disclosure Standards (1540-01-02-.13) checklist if not incorporated within the enrollment agreement (contract);
13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held). ~~Instructional equipment (specify owned or leased) must be listed and described. Current verification of fire and sanitation inspections of educational facilities (and student housing owned by institution) must be filed as described in 1540-01-02-.07 of these rules;~~
14. current verification of fire and sanitation inspections of educational facilities and student housing that is owned, leased or otherwise operated by the institution;
4415. a draft or copy of the institutional catalog as described in Rules (see 1540-01-02-.11, .12, .17 and .19);
4516. a complete description of the proposed educational programs in compliance with the Act and these rules;
4617. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;
4718. any specific requirements as outlined under degree granting and/or non degree granting sections of ~~these regulations~~ Rule 1540-01-02-.08;
4819. if participating in federal student financial aid programs, a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the ~~United States~~ U.S. Department of Education;
4920. evidence of institutional financial stability as follows:
  - (i) sufficient finances to establish and conduct proposed operation;
  - (ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;
2021. the balance sheet in the financial statement must reflect owner's (proprietorship, partnership, corporation, other, etc.) assets and liabilities.

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

the corporation must be listed.

- (4) A separate application for authorization, which is site specific, must be made for each location located outside of reasonable walking distance from the main site. The Commission staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where, in view of the Commission, administrative requirements are limited and precise.
- (5) The applicant institutional director must sign and date, on forms provided by the Commission, the director's intention to:
- (a) conduct the institution in accordance with the Act and these rules established by the Commission;
  - (b) advertise or solicit using institutional employees familiar with these rules;
  - (c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;
  - (d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;
  - (e) advise the Commission of any application to operate in another state (Tennessee institutions only);
  - (f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and
  - (g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the ~~United States~~ U.S. Department of Education.
- (6) Bond Requirements for Institutions:
- (a) Institutions ~~not exempted from surety bond provisions, must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company authorized to do business an insurance company licensed in Tennessee, a surety bond for the penal sum of:~~
    - 1. ten thousand dollars (\$10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction and
    - 2. twenty thousand dollars (\$20,000) for all other institutions, including out-of-state private education institutions, including branch campuses as specified in T.C.A. 49-7-2013, except as follows:
      - 1. ~~In state institutions with substantially less unearned tuition or student exposure than \$10,000 may post a surety bond equal to 125% of the maximum unearned tuition or student exposure rounded upward to the nearest thousand dollars (prior written administrative agreement by the Commission staff is required).~~

- (7b) ~~Out-of-state~~ institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of five thousand dollars (\$5,000) per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a five thousand dollars (\$5,000) surety bond.
- (8c) ~~All B~~bonds provided by institutions under ~~Section Rule 1540-01-02-.07(7)~~ must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.
- (9d) ~~All B~~bonds provided by institutions under ~~Section Rule 1540-01-02-.07(7)~~ must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.
- (10e) ~~An irrevocable letter of credit secured by a C~~certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond, ~~pending with~~ approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.

(117) Fire and Sanitation Inspections:

- (a) ~~Initial authorization, change of ownership, and renewal A~~applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
- (b) ~~Tennessee i~~nstitutions seeking initial authorization and renewal must maintain and provide upon request by Commission staff documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve months and, further, the institution must notify the Commission of the most recent inspection dates as part of the renewal application. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
- (c) ~~Out-of-state institutions must forward to the Commission a copy of fire and sanitation inspection reports and these reports must be made at least every twelve months.~~
- (dc) Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.

(128) New Ownership / Change in Ownership:

- (a) The following constitutes ~~new a change in~~ ownership:
  1. in the case of ownership by an individual, when more than 50% of the institution has been sold or transferred;
  2. in the case of any other ownership structure ~~by a partnership or a corporation~~, when more than 50% of the institution or of the owning ~~partnership or corporation~~ entity has been sold or transferred;

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

(b) A person or persons purchasing an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program. In addition, a copy of the sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the institution shall be submitted to the Commission.

(c) ~~Commission staff should be notified of any anticipated change of ownership prior to the change. In the event of a change of ownership, greater than 50%, a new owner or governing body must notify the Commission within 10 days after the change in ownership and request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under the standard established standard procedure by recommendation of the Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.~~

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

(139) ~~New Program or Change in Program Revisions:~~

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

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

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

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

~~(ed) The following shall apply to all program revisions, including tuition and fee changes:~~

~~1. All program revisions must be submitted on Program Revision Forms provided by the Commission and approved by Commission staff prior to implementation. All program revisions shall be submitted thirty (30) to~~

ninety (90) days prior to the proposed effective date.

2. Ongoing institutions that revise an approved program make changes to an existing program(s) previously approved by the Commission must file a New Program Application if program changes exceed 25% within the past twelve months in one calendar year, or if in the opinion of staff a significant change has occurred. Changes of less than 25% should be reported by letter as a file item to the Commission detailing changes made.
3. Tuition and fee revisions that in the opinion of the Commission are excessive, unreasonable and exceed initial disclosure to the student may result in an in-depth audit of the institution at the institution's expense to assure the Commission of financial stability.
4. All changes must be reflected in the institutional catalog.
- (f) 5. Institutions shall not arbitrarily add a course or courses to an existing program in which a student would incur additional time and expense beyond the catalog requirements at the time of enrollment, unless the Any course addition must be in response to: demonstrated educational necessity; a reasonable program completion period had elapsed; state approval agencies; recognized accrediting agencies or for requirements of professional certifications or licenses. Under approval conditions, the institution shall provide written notification to the Commission and give adequate notice to all students affected prior to any change.

(1410) New Location / Change of Address:

- (a) An application from an authorized institution to reflect a new location change of address shall be filed submitted to the Commission staff thirty (30) days prior to moving and shall include all documents designated by the Executive Director as being necessary with the appropriate fee. Documents shall include, but are not necessarily limited to:
  - (1.) evidence of satisfactory health inspection,
  - (2.) evidence of satisfactory fire inspection,
  - (3.) copy of an executed lease or proof of ownership, and
  4. all physical material and building requirements given under Initial Authorization.
- (b) Approval may be issued after the new facilities have been inspected and the application is complete.
- (c) If a move is beyond 10 miles and a student is prevented from completing the training at the new location as determined by the Executive Director, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.
- (d) Within thirty (30) days of approval of any change of address, the institution shall submit a bond or bond rider reflecting the institution's current address.

(11) Change of Institution Name:

- (a) An application from an authorized institution to reflect a change of name shall be submitted to Commission staff thirty (30) days prior to changing the institution's name and shall include all documents designated by the Executive Director as being necessary and the appropriate fee.

(12) Discontinuance of Program:

- (a) Institutions that discontinue any approved program must complete a Program Deletion Form.

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

1540-01-02-.08 REGULATIONS FOR SPECIFIC SCHOOL TYPES

(1) **General:**

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

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

1. allow promotion and usage because of benefits to the student;
2. allow promotion and usage but with clear disclosure to the students with language such as, "this certification is voluntary and is not required for employment in the state of Tennessee" or "this certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry";
3. deny usage, ~~—(see Prohibitive Acts~~ Rule 1540-01-02-.18).

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

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

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

(2) Non Degree Granting Institutions:

- ~~(a) Non-degree programs which are designed primarily for job entry or upgrading of skills must be described in clock (contact) hours.~~
- (ba) Non-degree programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.
1. Institutions must provide a minimum program length that adequately prepares students for entry-level employment.
  2. Program lengths that exceed standard or currently acceptable times or program periods established by ~~regulations~~ rules and/or statutes must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.

(3) Degree Granting Institutions:

- ~~(a) New institutions seeking authorization to offer degrees in the state of Tennessee or new program applications for a degree program must submit the application by the deadline date established by Commission staff, which shall be 45 to 60 days prior to the quarterly meeting of the Committee on Postsecondary Educational Institutions.~~
- (ba) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional liberal arts degrees or professional degree designations such as those given in the definitions under "college" and "university" unless previously approved by a recognized regional accrediting body. An exception may be approved by the Executive Director upon recommendation of Commission staff. Any request for exception shall be made in writing and include proof of the following:
1. An exception may be approved by the Executive Director upon recommendation of Commission staff. The institution is accredited by a U.S. Department of Education approved accreditor for the specific degree level;
  2. The program is accredited by an appropriate accrediting agency if such accreditation is necessary for employment in or licensure by the state; and
  3. The institution has articulation agreements with two (2) regionally accredited institutions with physical locations in the Southeast region and the agreements are applicable to at least one of the institutions' physical locations in the Southeast region.
- (eb) Authorization to offer any degree in the state will require either institutional accreditation as defined in these regulations or authority to grant degrees by affirmative vote of the Commission. Accredited institutions shall be deemed during initial authorization to have met the minimum requirements to offer degrees.

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

1. the operation shall incorporate instructional procedures, texts and materials appropriate to the purpose, curriculum and standards of postsecondary degree-granting institutions offering similar programs in the state;
2. Twenty-five percent (25%) to fifty percent (50%) of the total program, depending on the degree offered, must be in general education courses and should be indicated separately in the curriculum presented;
3. provide a syllabus for each course offered;
4. maintain library resources and holdings that shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
5. ~~demonstration~~ that the degree and the program ~~has~~have merit and value academically, professionally or vocationally in Tennessee;
6. ~~master's~~ and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical and interpretive thinking, use of primary documents or resources and independent research skills.

(ed) Undergraduate degree programs must include at least twenty-five percent (25%) to fifty percent (50%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are less, or ~~or for a non-accredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that 25% of the program for job skills courses.~~ Unaccredited institutions proposing to offer associate degree level programs which are technical in nature, and have less than twenty-five percent (25%) of general education courses must demonstrate to Commission staff the benefit to students. All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent (25%) of the general education staff with earned master's degrees or equivalent.

(ef) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student to student and student to staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.

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

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

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

(4) Long-Distance Learning:

- (a) Required authorization of ~~long~~-distance learning institutions shall be reviewed based upon Commission staff evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.
1. No ruling by the Commission regarding authorization or exemption of a ~~long~~-distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.
- (b) All authorized ~~long~~-distance learning institutions must provide to a student a printed catalog, and a signed copy of the pre-enrollment checklist and enrollment agreement-enrollment disclosure statement and a contract as required in these ~~regulations~~rules. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.
- (c) ~~Home study or long~~-distance learning institutions must meet directly and indirectly all requirements of the Act and these ~~regulations~~rules and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.
- (d) ~~Long~~-distance learning courses or programs must consist of at least the following:
1. a preliminary lesson or set of instructions on how to study by the ~~home study~~distance learning method, or adequate study instructions per assignment;
  2. current and accurate text or lesson materials; and
  3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented.
  4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by a instructor qualified in that specific course or subject matter area.
  5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered.
  6. educational goals and overall program goals are achievable through

long-distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.

(5) Bartending Schools:

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

(6) Truck Driving (CDL) Schools:

- (a) Authorized truck driving schools may advertise in the 'help wanted' section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in Rule 1540-01-02-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".
- (b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from Commission staff. All claims related to carriers must be documented and on file at the school.

(7) Modeling Schools:

- (a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function including when ~~and~~ advertising the agency and from ~~the school-institution~~.
- (b) Talent seminars, interviews or 'talent searches' may not be used to enroll individuals in modeling schools or training.
- (c) Schools that operate as a 'finishing school', exclusively for personal department or for enrichment may not advertise or conduct courses that implies or suggests vocational modeling or related goals.

~~(8) Computer Training:~~

- ~~(a) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.~~
- ~~(b) Businesses offering short term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission courses using various software are offered concurrently toward a vocational goal. (e.g. word processing software offered toward secretarial goals).~~
- ~~(c) Businesses offering specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or~~

new job title must be authorized for operation of that training in the state.

(98) **Teacher Training (K-12) or Licensing or Recertification:**

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

~~(10) Seminars / Workshops:~~

- ~~(a) Seminars or workshops of short duration that are motivational, enrichment, recreational, avocational or solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements.~~
- ~~(b) Upon review by Commission staff a seminar/workshop provider regardless of length that presented the instruction in such a way to suggest a vocational end may be required to become authorized in the state, or clarify through public advertising that the seminar/workshop is in fact enrichment or recreational.~~

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

1540-01-02-.09 ANNUAL RENEWAL FOR AUTHORIZATION

- (1) ~~All unaccredited authorized institutions and institutions under Temporary or Conditional Authorization must submit an annual report or renewal~~a reauthorization application on a form provided by Commission staff. The annual reauthorization year will be from July 1 through June 30, and The annual reauthorization application or reports submitted is due each October 15 and must be accompanied by an annual fee as prescribed by these rules.
- (2) ~~Accredited institutions under Regular Authorization will be granted upon affirmative vote of the Commission an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation/reaffirmation cycle and require each October 15 (in lieu of the Commission's annual renewal package) the most recent annual reporting documents submitted to the accrediting agency along with any minimum forms required by the Commission.~~
- ~~(3) Annual reports or renewal Reauthorization applications postmarked after October 15 or other due date will be assessed a late renewal fee as described in Rule 1540-01-02-.25 FEES.~~
- (43) ~~For unaccredited all authorized institutions and institutions under Temporary or Conditional Authorization, unless otherwise required by Commission staff, the annual report or renewal~~reauthorization application must be accompanied by the following:

- (a) any changes or additions to information previously submitted as part of the basis for authorization;
- (b) copy of current catalog with major changes cited;
- (c) the latest financial statement for the most recent institutional fiscal year as given under Financial Standards, Rule 1540-01-02-.14 and shall include:
  - 1. a balance sheet (statement of financial position);
  - 2. an income statement (statement of the results of institutional operation including, but not limited to, gross amount of tuition and fees earned and total refunds during the fiscal year);
- (d) a renewal fee (check or money order) made payable to the State of Tennessee for such fees as stated under these regulations.
- (e) an enrollment report for the first enrollment period on or after July 1 of previous year through and including the last enrollment on or before June 30 of the current year;
- (f) a list of all institutional personnel including staff, instructors and agents;
- (g) summary data for the most recent institutional fiscal year on students participating in state or federal aid programs;
- (h) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendations and study of institutional and/or enrollees or former enrollees.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2008 and 49-7-2014.

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

- (1) The institutional purpose and objectives must be stated in measurable potential outcomes in a catalog, bulletin, or brochure of the institution.
- (2) In relation to the size and scope of the institutions, it shall furnish adequate student services to fulfill the mission of the school and provide counseling and/or resources necessary to support programs and claims of the institution. Such services must have staff available to students with the knowledge and skills to effect counseling, guidance and coordination in areas such as; academic standing and satisfactory progress; admissions; employment opportunities or placement; intern/externships; library; financial aid.
- (3) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability includes, but is not limited to, ~~is~~ the ongoing effective coordination of federal, state and accreditation (where applicable) requirements in a positive and educationally enriching environment to the benefit of students. Indicators of the breakdown of administrative capability may include but not be limited to: reoccurring violations in the same area; numerous student complaints during the year; failure to correct compliance issues; frequent or sudden turnover in faculty or staff; multiple findings in several different areas during aan institutional site visit.

- (4) Institutions must annually report program completion rates and placement rates in a format approved by the Commission which may include accreditation standards or an average of comparable rates from Tennessee public institutions. If program completion rates are less than 66%, or if average program withdrawal rates are in excess of 33%, or if average placement rates are less than 75%, those rates shall be monitored, reported on, compared with those of similar institutions, and explained to the extent that it can be determined whether or not the low rate is an indicator of poor educational quality.
- (5) Liberal arts schools or professional schools may request a waiver of the requirement to provide placement rates for programs for which the institution does not that typically do not report vocational placement data may be required to report to the Commission either by testimonial, survey or by some other means that program completers have benefited from the instruction.
- (a) Requests for waiver shall be made when filing a new program application or, for programs approved prior to the effective date of this rule, by submitting a letter requesting a waiver for each program.
- (b) Requests for waiver shall include at a minimum an explanation as to why the institution does not typically report vocational placement data for that program.
- (c) Institutions are required to gather the data required for reporting until such time as a waiver is granted.
- (6) The maximum pupil to teacher ratios acceptable, without special permission from the Commission, are:
- (a) lecture: 40-1;
- (b) business laboratory: 50-1 (such as accounting, typing, shorthand);
- (c) technical and vocational theory: 40-1;
- (d) technical lab: 40-1 (such as computer programming, data processing) ~~and~~;
- (e) vocational lab: 40-1 (such as auto mechanics, drafting, air conditioning) ~~;~~
- (f) class A truck cab: 4:1; and
- (g) class B truck cab: 2:1.

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

#### 1540-01-02-.11 INSTITUTIONAL CATALOG

- (1) Each institution must publish a catalog or brochure (a draft copy may be provided ~~for~~ in the initial ~~original~~ application) which must include at least the following information:
- (a) the name and address of the institution;
- (b) identifying data, such as catalog number and publication date;
- (c) table of contents;

- (d) names of owners and officers, including any governing boards, and faculty with credentials for position;
- (e) the institutional calendar, including holidays, enrollment periods and the beginning and ending dates of terms, courses, or programs;
- (f) the institutional enrollment procedures and entrance requirements, including late enrollment, if permitted;
- (g) the institutional attendance policy including minimum attendance requirements, and the circumstances under which a student will be interrupted for unsatisfactory attendance and the conditions under which a student may be readmitted;
- (h) the institutional policy covering satisfactory progress with an explanation of any grading system used and a description of any probation policy and a description of the institutional system for making progress reports to students;
- (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;
- (j) a description of each program offered including objectives, costs, length, program components or course requirements, or in the case of correspondence instruction, the number of lessons;
- (k) a description of the placement assistance available and, if none, so state;
- (l) a description of the facilities and equipment used for educational programs and the address of training site;
- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy which must describe the procedure for determining the official date of termination;
- (o) ~~in catalogs (except for out of state degree granting institutions which choose to make no reference to the Commission) which describe educational programs conducted in Tennessee and with enrollment contracts used by programs outside of Tennessee, a statement provided within the first four pages or in a designated state authorization section of the catalog and on the signature page of enrollment contracts, which must~~ that reads as follows:  
  
The ~~(Name of institution)~~ is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation by minimum standards concerning quality of education, ethical business practices, health and safety, and fiscal responsibility;
- (p) a description of the student grievance procedure, a listing of the title, address, and telephone number of the institutional employee(s) designated to receive student complaints. If the institution used a mediation clause in its enrollment agreement, the catalog must describe the steps required of the student and/or the institution to initiate the mediation process. The address and telephone number of the Division of Postsecondary School Authorization ~~licensure staff of the Commission~~ must be in the catalog for

grievances not settled at the institutional level;

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

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

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

- (2) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;
- (3) Catalogs should be written in a way and at a level which enables prospective enrollees to make informed decisions; ~~and~~
- (4) ~~Lesser information requirements~~ may be required to be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable; ~~and~~
- (5) ~~Full-time~~ students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.

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

#### 1540-01-02-.12 ADMISSIONS STANDARDS

- (1) Institutions must adopt an admission policy that is based on the institution's objectives and that meets the following minimum requirements.
- (a) Non-degree program admission policies must require the prospective student to have received a high school diploma, passed the General Education Development (GED) test, or passed an ability-to-benefit test as that term is described below.
- (b) Degree program admission policies must be at least the following, as applicable.
1. undergraduate degree programs must require a high school diploma or General Education Development (GED) test and
  2. graduate degree programs must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.
- (2) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written. Institutions should not admit to programs leading to licensure students who the institution knows or, by the exercise of

reasonable care should know, would be ineligible to obtain licensure in the occupation for which they are being trained (ex., certain prior legal convictions render one ineligible to hold certain licenses). If a student ineligible for licensure desires to enroll in such a licensure program, regardless of license eligibility, the institution may admit such a student after the student submits, in writing for retention by the institution and review by Commission staff, a statement acknowledging such ineligibility. This provision, ~~1540-01-02-12(1)~~ is not intended to speak contrary to institutions' options to enroll students as non-credit students, auditing students or continuing education students.

~~(2) Students without high school diploma or GED may be admitted as an Ability to Benefit student into non-degree programs that are customarily not accepted for college credit if the student has terminated secondary enrollment and is beyond the age of compulsory attendance, subject to the following conditions:~~

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

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

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

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

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

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

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

~~(3e) Any test administered for purposes of determining admission shall be a standardized test recognized nationally or by the U.S. Department of Education with minimally acceptable scores as referenced in the test material or by the U.S. Department of Education or only in cases where a standardized test is not available, a non-standardized test developed by institutional officials and approved by the Commission staff with minimally acceptable scores approved by the Commission staff.~~

~~(4) Additional requirements for the administration of ability-to-benefit tests:~~

~~(ae) Tests shall be administered in a secure environment (e.g., monitors present). Tests shall not be administered in a manner inconsistent with the manner (e.g., frequency) recommended by standardized test developers. Testing policies shall be stated along with the admissions policy published in the institutional catalog.~~

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

~~(cf) If the admission test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student and may be charged for the remedial program on an hourly pro rata basis. The student is not obligated for the tuition and fees of the non-remedial regular program until the admission requirements are met. The minimum admission requirement for postsecondary education remains a high school diploma, GED, or a passing score on the admission exam.~~

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

(e3) Institutions which admit enrollees on an ability-to-benefit basis, must submit all documents related to such admission policies to the Commission.

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

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

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

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

#### 1540-01-02-.13 ENROLLMENT AGREEMENTS AND DISCLOSURE STANDARDS

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

(2) Institutions prior to enrolling an individual shall require the prospective student to sign and date a pre-enrollment checklist ~~form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list~~ verifying that the student:

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

(b) received an institutional catalog;

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

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

(e) has been informed of the total tuition and fee cost of the program;

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

(g) has been given a copy of the institutional cancellation and refund policy;

(h) has been given a copy of the completed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and understands what 'transferability of credits' means and the specific limitations (if any) should the institution have articulation agreements;

(i) knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form the following ~~a~~ statement ~~in~~ the following format:

1. ~~A statement: "I realize that any grievances not resolved on the institutional level may be forwarded to the Tennessee Higher Education Commission, Nashville, TN 37243-0830, (615) 741-5293."~~
  - (j) has received the most recent withdrawal, completion and in-field placement data as calculated by the Commission by including:
    1. the following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to [www.tn.gov/thec](http://www.tn.gov/thec) and clicking on the Authorized Institution Data button."; or
    2. a copy of the report created for the institution by Commission staff and a statement that "the report can be viewed by going to [www.tn.gov/thec](http://www.tn.gov/thec) and clicking on the Authorized Institution Data button"; and
- (3) ~~Also included, shall be documentation that the student received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in the following format:~~
  - (a) ~~A statement: "For the program entitled \_\_\_\_\_, I have been informed that the current withdrawal rate is \_\_\_\_\_%, or in the past 12 months \_\_\_\_\_ students enrolled in this program and \_\_\_\_\_ completed this program."~~
  - (b) ~~A statement: "For the program entitled \_\_\_\_\_, I have been informed that for the students who graduated, the job placement rate is \_\_\_\_\_%, or in the past 12 months \_\_\_\_\_ were placed in their field of study out of \_\_\_\_\_ students who graduated from this program."~~
  - (k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- (34) Institutions that receive a waiver pursuant to Rule 1540-01-02-10(5) do not have to include the in-field placement rate for the program in the pre-enrollment checklist. Liberal arts schools or professional schools that typically do not report vocational placement data may request a waiver of 1540-01-02-13(3) above.
- (54) Institutions shall require a student enrolling to sign and date an enrollment agreement, which ~~An enrollment contract~~ shall include, but not be limited to, the following items:
  - (a) full and correct name and location of the institution;
  - (b) name, address and social security number or unique student identification number of the student;
  - (c) date training is to begin and program length;
  - (d) full-time or part-time status of the student;
  - (e) projected date of graduation/completion as a full-time or part-time student;
  - (f) program title;
  - (g) total cost of the program, including itemized separate costs for tuition (including costs of any books and equipment required to be purchased from the

institution), fees paid to the institution, and estimated costs for items such as books and any required equipment that students may purchase from the institution or a third party;

- (h) cancellation and refund policy;
- (i) verification that the student has received an exact signed copy of the agreement; and-
  - (i) a guarantee of the total cost of tuition and fees for 1200 contact hours or twelve (12) months from the time of enrollment.
- ~~(6) Institutions shall contractually guarantee total cost of tuition for 1200 contact hours or one calendar year from the time of enrollment for full and part time student.~~
- ~~(5) When enrolling a student in a single class that is part of an approved program, an institution may modify the pre-enrollment checklist and enrollment agreement as needed to substitute the word class (or other similar word) for the word program where necessary and to qualify any other language so that it applies to the specific class. In no event shall any modification result in less protection for or fewer disclosures to the student.~~
- ~~(7) Programs less than 1200 clock (contact) hours must have an enrollment contract with a set total tuition and fees.~~
- ~~(8) Programs longer than 1200 clock (contact) hours that increase tuition and fees cost after the initial 1200 clock (contact) hours or one year twelve (12) month period, must provide counseling related to the tuition increase.~~
- ~~(9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceeds initial disclosure to the student may result in an in depth audit of the institution at the school's expense to assure the Commission of financial stability.~~

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

#### 1540-01-02-.14 FINANCIAL STANDARDS

- (1) Institutions administering Title IV financial assistance programs will maintain all required guidelines and standards.
- (2) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.
- (3) The institution shall maintain financial and business practices in line with common business procedures utilizing standard accounting practices.
- (4) The institution shall maintain and be prepared to demonstrate financial resources adequate to meet the following:
  - (a) facility maintenance and overhead;
  - (b) staff and faculty payroll;
  - (c) books, supplies and / or equipment utilized by students;
  - (d) general operating costs including printing and advertising;
- (5) Institutions shall be able to demonstrate annual financial planning through a budget.

New degree granting program schools must establish financial planning that reflects at least a three year plan which includes anticipated income and expenses.

- (6) All authorized institutions must file each year the most recent audited financial statement, certified by an independent certified public accountant for the most recent institutional fiscal year. For multi-campus institutions, or for institutions owned by one parent company, an audited consolidated corporate financial statement shall be routinely required. The staff, Committee, or Commission, however, may request additional campus or institution specific-information where needed to protect the public interest. The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act; the balance sheet must reflect owner's (proprietorship, partnership, corporation, other) assets and liabilities. In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized; related parties must be disclosed; related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected. It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis. Current financial statements on each site separately authorized under the Act must be filed annually for the most recent institutional fiscal year. ~~Within five years from initial temporary authorization, n~~ Neither the ratio of current fund revenues to current fund expenditures nor the ratio of current assets to liabilities, both site specific and corporate, where applicable, shall be less than 1:1, ~~without convincing explanation~~. Institutions that have annual gross tuition revenue of one million dollars (\$1,000,000) or less may request a waiver of the audit contemplated by this section and provide the most recent financial information in a format acceptable to n forms provided by the Commission.
- (7) The institution must submit an operating statement and balance sheet to the Commission within four months of the end of the institutional fiscal year. In addition, if a regular or certified audit is available, it should be submitted within four months of the end of the institutional fiscal year as well.
- (8) At any time, the Commission may require a certified audit of the institution when there are questions about the institution's financial stability.
- (9) All institutions seeking authorization must maintain a business account with a financial institution that is federally insured in said institution's name.

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

#### 1540-01-02-.15 INSTITUTIONAL AND STUDENT RECORDS

- (1) Records of enrollees, completers, and placements must be sufficient to verify data reported to the Commission ~~provide annual auditable reports to the Commission from the master student registration list.~~
- (2) A record of written student complaints must be maintained, including a copy of the complaint, subsequent documents, and a statement of the matter's disposition for a minimum of three (3) years from the conclusion of said complaint.
- (3) Financial records of the institution must be maintained and open for inspection and copying by properly authorized officials of the Commission pursuant to compliance with confidentiality laws.
- (4) Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits

which is understandable to the enrollee.

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

- (a) registration/enrollment date;
- (b) full name of the student;
- (c) complete address of student;
- (d) telephone number;
- (e) social security number or unique student identification number;
- (f) name of course or program name and code; and
- (g) current student status of student or date of dropout or completion, date of employment, employment status (i.e.g., enrolled, withdrawn, leave of absence, or graduated) employed, unemployed, disabled, or deceased), where employed, including the name, address, and telephone number of the employer.

(6) Institutions must maintain the following documentation in each enrolled student's file or folder and shall include but not be limited to:

- (a) transferability of credit disclosure statement required by T.C.A. § 49-7-144an admissions form that provides basic information such as student name, social security number, address, telephone number, program or area of application, projected entrance date, etc., and information relevant for determination that the student meets the minimum entrance requirements of the institution, (see 1540-01-02-.12). This information may be incorporated into the enrollment contract;
- (b) proof that the student meets the institution's admission requirements. If a high school diploma or the equivalent is required, the institution shall have on file an official copy of the high school transcript, the equivalency certificate with scores which meet the state's minimum for passing, or an official transcript from a postsecondary educational institution or official documentation from the U.S. Department of Defense that indicates that the student received a high school diploma or GED (military documentation includes a DD Form 214 Certificate of Release or Discharge from Active Duty or Enlisted Record Brief); or if an ability-to-benefit basis, the institution shall have on file official records of such; basis for admission (e.g., name and address of high school); if a high school diploma or the equivalent is required, for high school graduates or those with high school equivalency, the institution shall have on file an official copy of the high school transcript, or the equivalency certificate with scores which meet the state's minimum for passing; if an ability to benefit basis, the institution shall have on file official records of such; or if on an exception basis, documentation of such;
- (c) pre-enrollment disclosure statement or checklist as given in these rules/regulations (unless incorporated in the enrollment agreement);
- (d) a complete enrollment agreement as given in these regulations/rules;

(e) an up-to-date educational transcript for each enrollee in a form that permits easy and accurate review by the student, transfer schools, potential employers and authorized state or federal agencies. Transcripts must indicate the name and address of the institution and be signed by an appropriate institutional officer(s), (e.g., registrar, president, dean). The transcript shall be a permanent record of the student's progress and academic performance, which shall include, but not be limited to:

1. full and complete name of the institution;
2. full name of student;
3. social security number;
4. program or department of enrollment;
5. status of student (e.g., active; withdrawal; probation; leave of absence; graduate etc.);
6. an official date recorded for all student withdrawals, leaves of absence, and graduations;
7. beginning date or academic term with the year for each course attempted, with ~~an~~ a grade posted at the completion of the term or discrete contact hours for that course;
8. as applicable to the type of school, credit hours earned or contact hours completed;
9. actual name of each course (subject) with code numbers as given in institutional catalog;
10. indication of credits given by transfer from another institution or credit by exam;
11. cumulative Grade Point Average (GPA);
12. date the transcript was last updated and/or printed;
13. appropriate signature(s); and

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

(7) ~~In lieu of hard copy educational transcripts, t~~The institution may maintain transcripts~~the above information~~ by electronic storage provided that there is at least one complete updated 'backup' copy in a separate system or location, Commission staff and other authorized groups have complete and easy access to review student transcripts during site visits and the institution can print out any or all transcripts upon request.

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

lieu of an academic transcript.

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

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

#### 1540-01-02-.16 PERSONNEL AND INSTRUCTOR QUALIFICATIONS

- (1) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. As further described below, personnel qualifications must be submitted to the Commission on a School Personnel Application to be provided by the Commission staff, no later than ten (10) days after the hire date.
  - (a) Unaccredited institutions must submit to the Commission School Personnel Applications for all instructors and administrative personnel as that term is defined in this rule.
  - (b) Institutions accredited by an accrediting body recognized by the U.S. Department of Education must submit to the Commission School Personnel Applications for all administrative personnel as that term is defined in this rule. For each instructor, an accredited institution shall maintain on-site documentation supporting instructors meeting the minimum qualifications and shall complete a School Personnel Application at any time upon request from Commission staff.
- (2) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training (including official transcripts) for each personnel must be maintained on-site at the location. Institutions must submit a copy of this evidence at any time upon request from Commission staff.
- (3) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.
- (34) Administrative personnel generally encompasses individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.
- (45) Administrative personnel at authorized institutions must be graduates of an accredited college or university or have sufficient background and training in his/her area of responsibility.
- (56) Each institution must designate one person as the institutional director, who is responsible for the institution's program, the organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to authorization and all other administrative matters related to authorization.
- (67) Institutional owners or the controlling board must ensure that each authorized site has an institutional director on that location for at least 50% of the operational time each week the school has students present unless other provisions have been approved by the

Commission staff.

(78) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these regulations including but not limited to advertising, records, contracts, required benchmarks, annual deadlines and fee payments.

(89) The institutional director at authorized institutions must be a graduate of an accredited college or university with at least one year experience in administration, institutional management, or the total years of administration/institutional management experience/higher education shall equal at least five years.

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

(1011) If the institution employs a director of education, that director shall meet the same requirements as an instructor as specified in these rules and shall also have either one year supervisory experience or a relevant post-bachelor's degree.

(1112) Instructors:

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

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

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

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

1. Minimum for doctorate level:

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

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

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

2. Minimum for masters level:

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

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

3. Minimum for a baccalaureate level:

- (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
  - (I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or
  - (II) a baccalaureate or higher degree not in the subject area but with a minimum of one year of demonstrated practical experience within the last five years in the subject area to be taught and completion of nine semester hours or 12 quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

4. Minimum for an associate level:

- (i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or
- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:
  - (I) an associate degree with a concentration in the subject to be taught and one year of practical experience; or
  - (II) an associate degree not in the subject area but with a minimum of two years of practical experience within the last five years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine semester hours or 12 quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

5. Minimum for diploma and certificate level:

- (i) Meet the minimum requirements for doctorate, masters, baccalaureate or associate level; or
- (ii) Hold a high school diploma or GED and a certificate of completion from a postsecondary institution judged to be appropriate by the Commission in a relevant subject area and a

minimum of three years of practical experience within the last seven years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.

- (12) ~~Evidence of qualifiable education, experience, or training (including official transcripts) for each instructor must be maintained on-site at the location.~~
- (13) The Executive Director may approve a variance from these specific qualifications in paragraph (7) with sufficient justification and an assurance that the program quality will not be lessened. In such a situation the institutional director must submit written justification and documentation with the ~~personnel form~~ School Personnel Application submission. In addition, the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to the Commission staff upon request.
- (14) Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.
- (15) ~~Agents and Recruiters:~~
- (a) ~~Institutional a~~ Agents as defined by the Act and Rule 1540-01-02-.03 ~~these regulations must submit an Agent Permit Application, on forms as provided by the Commission staff, have authorization and have received approval and an agent permit from Commission staff and secure the appropriate bond prior to any solicitation. The application~~ must be accompanied by the following:
1. ~~new applicants must forward~~ recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;
  2. a check payable to the State Treasurer of Tennessee as required under these regulations;
  3. a surety bond of five thousand (\$5,000) per agent of an out-of-state institution or as specified in Rule 1540-01-02-.07 ~~of these rules~~; and
  4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.
- (b) Agent permits must be renewed every year. The expiration date of a permit is one year from the date of issue or termination of employment whichever occurs first.
- (c) Agents must have separate permits to represent separate institutions unless ~~they are commonly held~~ the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required.
- (d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.
- (e) Institutional directors, not marketing offices, are responsible for actions of agents.

- (f) The agent shall be under the control of the institution, and the institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.
- (fg) Any student solicited or enrolled by a non-licensed agent is entitled to a refund of all moneys paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent ~~shall be~~ may be null and void and unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because he or she was solicited by a non-licensed agent.
- (h) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to the following:
  1. administering the admission test;
  2. advising students about financial aid other than informing the student of the general availability of financial assistance;
  3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
  4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have;
  5. soliciting enrollments in a program which has not been approved by the Commission.
- (i) An agent must display the current permit to all prospective students and other interested parties.

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

1540-01-02-.17 CANCELLATION AND REFUND POLICY [NO PROPOSED AMENDMENTS]

1540-01-02-.18 PROHIBITED ACTS

- (1) Grant or offer to grant or infer through advertising, promotions or other representations that educational credentials or credits may be obtained through any postsecondary institution, business, person or educational service unless so authorized in the state.
- (2) No school seeking, holding or required to hold authorization under the Act may call itself a university or use university in its name, unless prior to authorization in Tennessee such an institution has been so approved by a regional accrediting body recognized by the U.S.U.S. Secretary of Education and the U.S.U.S. Department of Education.
- (3) No entity may publicize, promote or imply an accreditation that is not recognized by the U.S.U.S. Department of Education.
- (4) No school seeking, holding or required to hold authorization under the Act or these

regulations may publicize, promote or imply an academic, vocational, professional or educational certification from any entity without the approval of the Commission.

- (a) Certifications held out to students that imply a special status, licensing or credential beyond the authorized award by the institution whether offered within the school or by an independent entity, where such certifications are not recognized or required by: the state and its laws or for employment purposes within the industry/profession, will require the approval of the Commission.
- (5) For consumer disclosure and truth in advertising to all Tennessee citizens, an educational service, business or person must clearly identify the nature of the educational service offered and may not use broad language or phrases to imply that the service is a school, can award credits, degrees or other educational credentials.
- (6) Unaccredited institutions shall not accept funds for tuition and fees prior to ten (10) business days before the scheduled start date of the class or program.

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

#### 1540-01-02-.19 FAIR CONSUMER PRACTICES AND STUDENT COMPLAINTS

- (1) Institutions may not discount tuition except that an institution may provide a discount for cash payments provided:
  - (a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount and
  - (b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.
- (2) An institution may award a scholarship, tuition waiver or other award provided:
  - (a) the criteria for receiving the award are clearly defined in writing;
  - (b) the institution has a form and procedure to verify eligibility; and
  - (c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.
- (3) All institutions authorized by the Commission and their representatives shall be required to operate in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the school are accurate, such that students can make appropriate decisions concerning their investment of time and money.
- (24) Fair consumer practices means honesty, fairness and disclosure to students in the areas—of areas including: recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary schools and also includes misrepresentation concerning competitor schools. Fair consumer practices include applying institution policies as written and presented to students.

- (a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and school brochures and must always be provided by institutional recruiters and agents.
  - (b) Accredited institutions may apply accreditation standards of fair consumer practices.
- (35) Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure or discrepancies between verbal and written information, intimidation or coercion may require corrective public announcements or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or institutional authorization.
- (46) Institutions authorized under these rules must report to the Commission in writing within 30 working days any unresolved written complaints about their operation of which they are knowledgeable (including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within 30 working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue in operation is sought.
- (7) The investigation and further review of written complaints will occur in accordance with the following provisions:
- (a) Complaints shall be signed and submitted through hand delivery, mail, electronic mail or facsimile.
  - (b) Commission staff shall investigate all written complaints.
  - (c) Any named institution and/or agent will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
  - (d) Any named institution and/or agent shall provide all information requested by Commission staff as part of the investigation.
  - (e) As part of the investigation process, Commission staff may work with the complainant and the named institution and/or agent to effectuate a settlement.
  - (f) Following the completion of the investigation, Commission staff shall provide to all parties written findings and conclusions, including any determinations with regard to the complainant's receipt of a refund or other monetary relief or the assessment of a fine or other adverse action. The written findings and conclusions shall contain a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten business days after the date of the findings and conclusions.
  - (g) Any request for review shall be in writing, signed, list each instance where Commission staff erred, and provide a detailed explanation of each error, including, where applicable, references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in subparagraph (f).

(h) Notwithstanding this paragraph, Commission staff may take appropriate action to investigate complaints in order to protect the public interest.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008, and 49-7-2011~~49-7-2013.~~

#### 1540-01-02-.20 ADVERTISING AND SOLICITATION

- (1) Institutions authorized by the Tennessee Higher Education Commission may use the authorization in advertising, promotional material and on letterhead stationary using the following: "(name of school) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must be used with the same size font and font type of print.
- (2) The Tennessee Higher Education Commission logo may not be used in any school advertising, brochures, telecommunications or institutional material ~~without written approval.~~
- (3) Institutions authorized by the Commission that have presence, advertise or offer instruction via internet, world wide web or other electronic telecommunication means must state on the first 'page' (as registered with standard web/internet search engines) viewed by the consumer, "[name of school] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission".
  - (a) In the case of an internet site, within the required statement given above, "Tennessee Higher Education Commission" must be an electronic link to the agency's web site at www.tn.gov/thec/~~www.state.tn.us/thec~~ or a picture/button link using a standardized approved Commission logo for school web sites.
- (4) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and that of an appropriate ~~nationally~~ recognized accrediting agency listed by the ~~United States~~ U.S. Department of Education.
- (5) No statement shall be made that the institution or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.
- (6) All advertisements, except for radio, placed by the institution or its representatives seeking prospective students must include and clearly indicate the full and correct name of the institution, its address, and the city where the institution is located; radio advertisements must include the full and correct name of the institution and the city and state where the institution is located.
- (7) Institutions that advertise in formats that will be in the public domain for long periods (such as the telephone book directory), where such advertising, if in noncompliance, cannot be rewritten or retracted may be fined in accordance with the Act for each day, week or month the advertisement is in active circulation. Such fines shall not exceed \$10,000.
- (8) Printed bulletins or other promotional information must emphasize training available rather than amount and kinds of aid available.
- (9) Promotion of the institution must be based on education programs, not student aid promotion, number of jobs available or educational credentials.
- (10) No dollar amount or amounts will be quoted in any advertisement as representative or

indicative of the earning potential of graduates without prior approval by Commission staff.

- (11) Institutions authorized to offer specialized courses or subjects not available to other institutions shall not advertise such courses in such manner to diminish the value and scope of courses offered by other institutions.
- (12) Institutions or representatives shall not use a photograph, cut engraving, or illustration in bulletins, sales literature, or otherwise, in such a manner as to convey a false impression as to size, importance, or location of the institution, equipment, and facilities associated with that institution.
- (13) Institutions or representatives shall not use endorsements, commendations, or recommendations by students in favor of an institution except with the consent of the writer and without any offer of financial compensation, and such material shall be kept on file and made a permanent record for the institution, and such endorsements shall bear the actual name or professional name of the student.
- (14) Institutions or representatives shall not make deceptive statements concerning other institutional activities in attempting to enroll students.
- (15) Every display-type newspaper advertisement, or other advertisement placed by the institution or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.
- (16) Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification. ~~(See special school section Rule 1540-01-02-.08(19) for truck driving.)~~
- (17) No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the institution has or knows of jobs or employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.
- (18) No statement or representation shall be made that students will be guaranteed employment while enrolled in the institution or that employment will be guaranteed for students after graduation, nor shall any institution or representative thereof falsely represent opportunities for employment upon completion of any course of study.
- (19) No school shall use job placement percentages or statistics in advertisements or recruitment materials except by written permission of the Commission.
- (20) Should a placement service be advertised, adequate records shall be maintained by those institutions advertising such placement service which will reflect employment data. However, no institution shall advertise as an employment agency under the same or a confusingly similar name or at the same location of the school. No representative shall solicit students for an institution through an employment agency.
- (21) The Commission staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to the Executive Director of the Commission cannot be furnished, a retraction of such advertising claims published in the same manner as the constitute cause for suspension or revocation of its

certificate of authorization.

- (22) If student tuition loans are available at the institution, the school may advertise them only with the language "student tuition loans available" in type no larger than that used for the name of the school. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.
- (23) Promotional materials or agent solicitation practices must not state or infer that programs are available on a free tuition basis.
- (24) No statement shall be made by an institution or its representatives that the programs and/or courses or tests are transferable to another institution without current documentation by an authorized official of the receiving institution.
- (25) Claims by institutions in advertisements must be substantiated in Commission files prior to such claim.
- (26) Claims must not be vague. For example, "award winning" institution should include full name of award in advertisement and specify year of any such attainment and source of award.

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

#### 1540-01-02-.21 AUTHORIZATION STATUS

(1) Temporary Authorization:

(a) A temporary authorization may be issued following:

1. staff review of the completed application for authorization based on these rules;
2. site visitation of the proposed institutional facilities as deemed necessary and feasible by the Commission staff;
3. recommendation from the Committee on Postsecondary Education Institutions; and;
4. favorable Commission action.

(b) Institutions satisfactorily, as deemed by the Commission, completing the pre-operation requirements will be notified by letter of temporary authorization. Temporary authorization must be maintained for at least twenty-four months prior to eligibility for regular authorization on the basis of public Commission action.

(c) ~~Institutions accredited through an accrediting agency recognized by the United States Department of Education which have satisfactorily completed the specified time as an institution with temporary authorization will be considered for an authorization certificate for a period of six years. The Commission may select a shorter period, and in no case, is such school exempt from the annual reporting requirements given in these rules. (See Annual Renewal for Authorization).~~ Temporary authorization allows ninety (90) days for initiation of enrollment of students or instruction/education, and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and

enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety (90) days after receipt of temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.

- (d) The temporary authorization allows ninety days for initiation of actual operation and enrollment of students and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety days after receipt of temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.

(2) Regular Authorization:

- (a) Institutions must be reauthorized annually on forms supplied by the Commission staff. Institutions that complete the mandatory period of temporary authorization may cancel all bonds required at initial authorization.
- ~~(b) Institutions accredited through an accrediting agency recognized by the United States Department of Education completing temporary authorization will be considered for an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation/reaffirmation cycle.~~
- ~~1. Such accredited institutions eligible for regular authorization will be allowed to submit for annual reauthorization each October 15, the most recent annual reporting documents submitted to the accrediting agency along with the minimum forms required by the Commission.~~
- ~~(c) Schools with no accreditation (or schools with an affiliation under an accrediting agency not recognized by the United States Department of Education) must be reauthorized annually on forms supplied by the Commission staff.~~
- ~~(d) Nothing in this section shall be construed to absolve institutions of annual fee requirements, response to complaints, site visits or any Commission request for additional information or materials.~~

(3) Conditional Authorization:

- (a) A conditional authorization to operate is the issuance of authorization to operate, but with additional conditions, e.g., reporting requirements, on the meeting of certain performance standards, securing new or additional bonds, authorization to operate for a limited period of time such as during change of ownership or for the purpose of teaching out existing students. Such conditional authorization may be issued when deemed necessary to protect the public interest.
- (b) As an alternative to revocation of authorization (c.f. TCA §49-7-2010 as amended), by making conditional its authorization to operate, the Executive Director may suspend or cause to cease any part of institutional activity such as enrolling additional students, advertising, or conducting specific classes or programs. Such cessation shall remain in effect until conditions precipitating the suspension of the activity are corrected with preventive measures in place and Commission staff have completed all related reviews and investigations.

- (c) At the discretion of the Executive Director, the institution may be afforded the opportunity to "show cause" why a conditional authorization should not be imposed.
  - (d) An institution may voluntarily request conditional authorization including suspension of the operation, rather than expose the institution to adverse action or loss of authorization, for situations such as unexpected loss of lease and training site; extended travel or sabbatical. Voluntary suspension and the time period involved must be approved by Commission staff.
  - (e) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.
- (4) Revocation of Authorization:
- (a) Revocation of authorization is the immediate and complete withdrawal of the institution's authorization to enroll, advertise or operate a postsecondary educational school in the state.
  - (b) Grounds for immediate revocation of authorization to operate shall include but not be limited to:
    - 1. loss of authorized instructional site without immediate notification to the Commission;
    - 2. a principal party, owner or administrator involved with the institution who has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime;
    - 3. a pattern of deceptive practices which include: hiding of any institutional records or documents; manipulation, alteration or falsification of materials required under the Act and these regulations which impugns administrative capability, fair consumer practices or operational standards;
    - 4. failure to correct any situation that resulted in a show cause or conditional authorization within a reasonable time period to be determined by the Executive Director;
    - 5. disregard for any specific directive issued by the Commission or the Executive Director;
    - 6. failure to pay required fees, penalties or fines;
    - 7. closing an institution without proper notification to the Commission.
    - 8. knowledgeable or demonstrated pattern of deceptive solicitation.
  - (c) Revocation of authorization shall not relieve a school of complete compliance with the requirements in these regulations applicable to a school closing or ceasing operation, including but not limited to refunds to students, arranging instructional teach-outs and securing the disposition of student records.

Authority: T.C.A. §§ 49-7-2004, 49-7-2005, 49-7-2008, 49-7-2010.

1540-01-02-22 CAUSES FOR ADVERSE ACTION [NO PROPOSED AMENDMENTS]

1540-01-02-23 INSTITUTIONAL CLOSURE

- (1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify the Commission staff within 2472 hours or on the first business day following the date of that decision and shall submit to Commission staff within ~~40~~ 3 days (or other deadline established by Commission staff) a plan to fulfill all obligations given below. Such plan shall include but not be limited to:
  - (a) Anticipated date to terminate teaching activity;
  - (b) Ending date of present term;
  - (c) A listing by name of all students in all programs. Such list shall include student's social security number, address, and phone number, program enrolled in, and estimated graduation dates;
  - (d) The status of all current refunds due (the amount of unearned tuition paid by each student and for which the school is obligated);
  - (e) A verified agreement with one or more local institutions able to provide sound education to all students in all programs;
  - (f) Disposition and servicing of all student records as required by T.C.A. § 49-7-2016<sub>i</sub>;
  - (g) A request for conditional authorization to operate where required<sub>i</sub>;
  - (h) Completion of obligations as designated by Commission staff by established deadlines<sub>i</sub>;
  - (i) Submission of any information or materials related to the closure requested by staff<sub>i</sub>; and
  - (j) Demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (2) The institution which proposes to cease operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.
- (3) Should the institution fail to make arrangements satisfactory to the executive director for the completion of the programs in which the currently enrolled students are enrolled and/or for the reimbursement of unearned tuition and fees, the institution shall be subject to fines as stipulated in T.C.A. § 49-7-2017.
- (4) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this section (1540-01-02-.23) may be deemed retroactively by the Executive Director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individual(s) directly involved, including but not limited to the director, owner(s) and/or board chair.

(5) Student Completion of Education ("Teachouts"):

- (a) The executive director may approve other institutions which are authorized under T.C.A. 49-7-2001 et seq. or exempt institutions to teachout students who were currently enrolled in an institution which ceases operation. An approved teachout institution shall:
1. offer the course of study or similar course of study as those offered at the closed institution;
  2. exist or be provided in the same or reasonable geographic area as that in which the closed institution existed ~~or provide necessary transportation expenses;~~
  3. provide the student the opportunity to complete his/her program at no additional cost than for which the student originally contracted at the closed institution;
  4. accept any and all credits earned at the closed institution;
  5. not reduce total course hours required for the student to graduate.
- (b) If the closed or closing institution fails to provide an acceptable plan to the executive director, the Commission staff may work toward effecting teachout arrangements with other authorized institutions.
- (c) Teachout plans may involve other institutions or be carried out by the terminating institution as circumstances may dictate.
- (d) The teachout plan requirement is intended to supplement, not supplant, the provisions concerning the disposition of records when an institution closes, as indicated in T.C.A. § 49-7-2016.

(6) Disposition of Records:

- (a) Any institution ceasing operation must secure student educational transcripts by an arrangement with an authorized institution or make them available to the Commission.
- (b) ~~When financial aid and academic transcripts from closed institutions are prepared for delivery to the Tennessee Student Assistance Corporation and the Tennessee Higher Education Commission, such~~ the transcripts academic and financial records, each, shall be alphabetized and sorted and separated by year. If necessary as a result of the number of transcripts, institutions should provide transcripts, in alphabetical order, and physically contained to Commission staff in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and with handles, consistent with State of Tennessee Archives regulations.
- (c) ~~Financial aid transcripts must be organized, marked and boxed separately from academic transcripts~~ Financial aid records shall be alphabetized and separated by year. If necessary as a result of the number of records, institutions shall provide the records in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and handles.

(d) In the event that an Institution provides academic transcripts to the Commission, Commission staff will provide an official copy of a transcript to a student after the student has requested the transcript using the Student Request Form and paid the ten dollar (\$10) fee as described in the form.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2016.

#### 1540-01-02-.24 TUITION GUARANTEE FUND (TGF)

(1) "Tuition guaranty fund" or "TGF" or "fund" means the tuition guaranty fund created by T.C.A. § 49-7-2018.

(2) No institution organized as an in-state private postsecondary vocational education institution covered under the Act is exempt from the Tuition Guaranty Fund as described in T.C.A. 49-7-2018.(2) All institutions authorized on or after July 1, 2006, shall pay into the Tuition Guarantee Fund for six consecutive years.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2018.

#### 1540-01-02-.25 FEES [NO PROPOSED AMENDMENTS]

##### 1540-01-02-.26 Return of Regulatory Fees

(1) Following the year-end closing, the Commission shall return to authorized institutions as described herein any reserve balance as of the end of the fiscal year that is greater than one and a half million dollars (\$1,500,000).

(a) No monies shall be returned if the amount due an institution is less than twenty-five dollars (\$25.00).

(b) The percentage of the excess due an institution is calculated by determining the percentage of the total of all reauthorization fees paid by the institution during the fiscal year.

(c) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive any share of the excess.

(d) Institutions that close or that have had their authorization to operate revoked prior to the end of the fiscal year shall forfeit any share of the excess.

(2) If an institution withdraws its pending application as a new institution, renewal applicant, or a new program within 3 working days from receipt, or prior to staff review and/or a site visit then all fees assessed shall be refunded. After three days and once staff review begins the following shall apply:

(a) For in-state schools making initial application, the Commission may retain 50% of the assessed fees if staff have reviewed the submitted materials and completed appropriate reports. Once the site visit has been conducted no rebate of assessed fees is possible.

(b) For out-of-state schools making initial application, the Commission may retain 100% of the assessed fees if staff have reviewed the submitted materials and completed appropriate reports.

(c) For any school that voluntarily or involuntarily deferred an application before the Committee and failed to complete the application process in the established time deadline given under Institutional Applications (1540-1-2-.07) shall forfeit all fees paid.

(d) Any other fee collected is nonrefundable once Commission staff have performed the associated review or work related to that fee.

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