

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 07-23-14
Rule ID(s): 5772
File Date: 7/25/14
Effective Date: 10/23/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Professional Soil Scientist Licensing Program
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Ellery Richardson, Assistant General Counsel
Address:	Professional Soil Scientist Licensing Program 500 James Robertson Parkway, 5 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3611
Email:	Ellery.Richardson@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0780-05-06	Soil Scientists
Rule Number	Rule Title
0780-05-06-.02	Definitions
0780-05-06-.04	Application Requirements
0780-05-06-.05	Renewal Requirements
0780-05-06-.06	Retired or Inactive Status Exemptions
0780-05-06-.08	Seals
0780-05-06-.09	Civil Penalties
0780-05-06-.10	Code of Ethics
0780-05-06-.11	Continuing Education
0780-05-06-.12	Reciprocity

Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

Amendments

Rule 0780-05-06-.04 Application Requirements is amended by deleting subparagraph (1)(a) in its entirety and substituting instead that following so that, as amended, subparagraph (1)(a) shall read:

0780-05-06.04 Applications Requirements.

- (1) Any person who desires to obtain a license as a professional soil scientist shall submit an application to the commissioner, along with the required application fee and all required documentation, including proof that the applicant:
 - (a) Has graduated from an accredited college or university with a Bachelor of Science degree or higher in soils, agronomy or a closely related field. The applicant shall have successfully completed a minimum of fifteen (15) semester hours of course work in soil science as required by T.C.A. 62-18-208(a)(1);

Authority: T.C.A. §§ 62-18-208 and 62-18-211.

Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

New Rules

0780-05-06-.02 Definitions	0780-05-06-.09 Civil Penalties
0780-05-06-.05 Renewal Requirements	0780-05-06-.10 Code of Ethics
0780-05-06-.06 Retired or Inactive Status Exemptions	0780-05-06-.11 Continuing Education
0780-05-06-.08 Seals	0780-05-06-.12 Reciprocity

0780-05-06-.02 Definitions.

Definitions for this chapter shall be as follows:

- (1) "Inactive" means a professional soil scientist who has obtained inactive status from the commissioner and is not required to comply with continuing education requirements as prescribed herein. A professional soil scientist in inactive status may not engage in the practice of soil science;
- (2) "Retired" means a professional soil scientist who has obtained retired status from the commissioner and is not required to comply with continuing education or renewal requirements or pay renewal fees as prescribed herein. A retired professional soil scientist may not engage in the practice of soil science and a license in retired status may not be reactivated.

Authority: T.C.A. § 62-18-211.

0780-05-06-.05 Renewal Requirements.

- (1) A professional soil scientist license issued pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on that date unless renewed.
- (2) In order to renew his or her license, a licensee shall submit a renewal application with the appropriate renewal fee and any other prerequisites for renewal.

- (3) A licensee who fails to pay the renewal fee or fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have six (6) months after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of twenty-five dollars (\$25.00) for each month or fraction of a month that renewal is late, and submission of proof of compliance with any other prerequisites to renewal.
- (4) Any person seeking renewal of a license more than six (6) months after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure.

Authority: T.C.A. § 62-18-211.

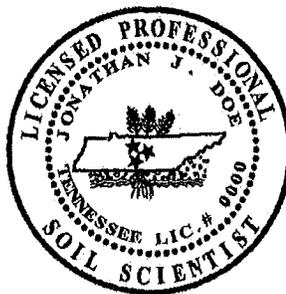
0780-05-06-.06 Retired or Inactive Status Exemptions.

- (1) A licensee may request to place his or her license in inactive or retired status by:
 - (a) Submitting a written request to place his or her license in inactive or retired status to the commissioner; and
 - (b) Paying an inactive or retirement fee.
- (2) A licensee may request to have his or her license reinstated after it has been placed in inactive status by:
 - (a) Submitting a written request to have his or her license returned to active status;
 - (b) Paying a reinstatement fee; and
 - (c) Submitting evidence satisfactory to the commissioner that the licensee has completed twelve (12) hours of continuing education in the two (2) years immediately preceding the date of the request for reinstatement.
- (3) A retired professional soil scientist may not engage in the practice of soil science and a license in retired status may not be reinstated.

Authority: T.C.A. § 62-18-211.

0780-05-06-.08 Seals.

- (1) The design of a licensee's seal required by T.C.A. §62-18-211(2) shall be two inches in diameter and, regardless of whether it is applied to documentation through physical or electronic means, shall appear as follows:



- (2) The licensee shall affix his or her seal to all original sheets of any bound or unbound plans, plats, drawings, reports or other soil scientist papers or documents involving soil science work developed by the licensee or under the licensee's responsible charge of work.
- (3) The licensee shall superimpose his or her signature and date of signature across the face and beyond the circumference of the seal on the documents listed in subsection (2) above.

- (4) Any portions of plans, plats, drawings, reports, or other soil science papers or documents involving soil science work prepared in part by a licensee operating as a consultant on a project shall place his or her signature on the pages of the document for which the licensee is responsible.
- (5) No licensee shall affix his or her seal or signature to plans, plats, drawings, reports or other soil science papers or documents developed by others not under the licensee's responsible charge of work as defined by T.C.A. §62-18-203(6).
- (6) Responsible Charge of Work.
 - (a) Plans, plats, drawings, reports or other soil science papers or documents involving soil science work prepared in part or in whole by a licensee or the licensee's subordinate will be deemed to have been prepared under the responsible charge of the licensee only when:
 - 1. The client or employer requesting preparation of plans, plats, drawings, reports or other soil science papers or documents makes the request directly to the licensee or to the licensee's subordinate at the time initial client or employer contact is made, so long as the licensee has the right to control and direct the subordinate in the material detail of how the work is to be performed;
 - 2. The licensee supervises and is involved in the preparation and approval of the plans, plats, drawing, reports or other soil science papers or documents and has input into and full knowledge of their preparation prior to their completion;
 - 3. The licensee reviews the final plans, plats, drawings, reports or other soil science papers or documents; and
 - 4. The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, plats, drawings, reports or other soil science papers or documents.
 - (b) Any changes made to the final plans, plats, drawings, reports or other soil science papers or documents after final revision and sealing by the licensee are prohibited by any person other than the licensee.
 - (c) The mere review of work prepared by another person, even if that person is the licensee's subordinate, does not constitute responsible charge of work unless the licensee has met the criteria set out above.

Authority: T.C.A. § 62-18-211.

0780-05-06-.09 Civil Penalties.

- (1) With respect to any licensed professional soil scientist, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against a licensee for each separate violation of a statute, rule, or commissioner's order pertaining to licensed professional soil scientists, in accordance with the following schedule:

Violation	Penalty
<u>(a)</u> T.C.A. §62-18-207	\$100 - \$1,000
<u>(b)</u> T.C.A. §62-18-217	\$100 - \$1,000
<u>(c)</u> Rule 0780-05-06-.08	\$100 - \$1,000
<u>(d)</u> Rule 0780-05-06-.10	\$100 - \$1,000
<u>(e)</u> Commissioner's order	\$100 - \$1,000

- (2) With respect to any other person required to be licensed in this state as a licensed professional soil scientist, the commissioner may assess a civil penalty against such person for each separate violation of statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. §62-18-204	\$100 - \$1,000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any civil penalty to be assessed pursuant to this rule, the commissioner may consider factors including, but not limited to, the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to public;
 - (d) The economic benefits gained by the violator as a result of noncompliance; and
 - (e) The interest of the public.

Authority: T.C.A. §§ 62-18-211 and 62-18-219.

0780-05-06-.10 Code of Ethics.

- (1) Licensees shall uphold the public health, safety and welfare in the performance of professional services.
- (2) Licensees shall observe and comply with all federal, state and local building, fire, safety, real estate, or mining codes, as well as other laws, codes, ordinances, or regulations pertaining to the practice of soil science.
- (3) Licensees shall not undertake any type of work that he or she is not competent to undertake unless the licensee discloses his or her lack of training, experience, or education in writing to all appropriate parties prior to undertaking the work.
- (4) Licensees shall not affix their signatures and/or seal any plans, plats, drawings, reports, or other soil science papers or documents with subject matter in which they lack competence acquired through education or experience, nor shall licensees affix their signatures and/or seal plans, plats, drawings, reports or other soil science papers or documents that were not prepared or reviewed by the licensee or the licensee's subordinate and approved by the licensee.
- (5) Opinions expressed by licensees for any purpose in the course of his or her professional practice shall only be based on their education and experience.
- (6) Licensees shall not disclose any information about the lawful business affairs or technical processes of a client or employer without the approval of the client or employer, or the client's/employer's designated representative, unless required by subpoena or in response to a complaint filed by the commissioner.
- (7) Licensees shall not participate in any illegal activities, or knowingly permit the publication of his or her plans, plats, drawings, reports, or other soil science papers or documents for illegal purposes.
- (8) Licensees shall not issue false or misleading information or statements to a client.
- (9) No licensee shall accept compensation or any other consideration from more than one (1) interested party for the same service without the written consent of all interested parties.

- (10) No licensee shall accept or offer commissions or allowances, directly or indirectly, from third parties dealing with the client or employer in connection with work for which the licensee is in responsible charge.
- (11) Before the execution of a contract to perform soil science services, a licensee shall disclose to the client or employer any actual or potential conflicts of interest that might affect the licensee's ability to serve the client or employer.
- (12) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.
- (13) Licensees shall respond to all of the commissioner's written requests for information within the time frame specified on the written request.

Authority: T.C.A. §§ 62-18-211 and 62-18-215.

0780-05-06-.11 Continuing Education.

- (1) "Continuing education hours" means an hour consisting of not less than fifty (50) minutes of instruction or presentation acceptable to the commissioner or as otherwise noted in this rule. Continuing education hours received through post-secondary education institutions will be awarded according to the following table:
 - (a) One (1) university semester hour of credit..... 15 continuing education hours
 - (b) One (1) university quarter hour of credit..... 10 continuing education hours
- (2) A licensee seeking regular biennial renewal shall, as a prerequisite for renewal, show that he or she has completed no less than twelve (12) hours of continuing education during the two (2)-year period immediately preceding renewal.
- (3) One (1) of the twelve (12) continuing education hours each licensee obtains for renewal shall be in ethics.
- (4) Activities eligible for continuing education hours include:
 - (a) Professional meetings (no maximum), including short courses, workshops, clinics, conferences, symposia, seminars, field days, scientific presentations and distance education.
 - (b) Self-directed study, including reading of scientific journals and books with a 2,500-word professional article equaling one continuing education hour. Self-directed study may account for a maximum of three (3) continuing education hours per two (2)-year period.
 - (c) Soil science-related community service (2 continuing education hours maximum per renewal period), including serving on committees and community service related to the profession of soil science. Such service shall be deemed to be equal to two (2) continuing education hours per two (2)-year period.
 - (d) Authoring or preparation of educational materials; this credit may be claimed only on the renewal period on which the educational materials are initially prepared and/or presented. Such work shall be deemed to be equal to two (2) continuing education hours per two (2)-year period.
- (5) Each licensee shall, when making application for renewal, submit on the prescribed form a signed statement setting forth the number of continuing education hours that he or she has completed during the reporting period. Licensees shall retain documentation evidencing their continuing education hours for at least five (5) years subsequent to the date of submission.

- (6) The commissioner may verify information licensees submit under this rule at the commissioner's discretion upon written notice to the licensee.
- (7) If any continuing education hours claimed in a statement submitted by a licensee pursuant to paragraph (5) of this rule are disapproved, the commissioner shall notify the licensee of the reason for disapproval. The commissioner may allow a specified period of time, up to six (6) months, for correction of the deficiencies noted.

Authority: T.C.A. § 62-18-211.

0780-05-06-.12 Reciprocity.

Pursuant to T.C.A. § 62-18-212, the commissioner may grant a license as a professional soil scientist to an individual who holds a like, unexpired license as a professional soil scientist issued by another state, territory, or possession of the United States, the District of Columbia, or any foreign country if such jurisdiction's examination and requirements for licensure are of a standard substantially equal to those required by the commissioner for initial licensure in Tennessee. Such applicant shall file with the commissioner the required application and fee, along with proof that the applicant holds a current, valid license as a professional soil scientist and the requirements necessary for obtaining such license.

Authority: T.C.A. § 62-18-211.

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

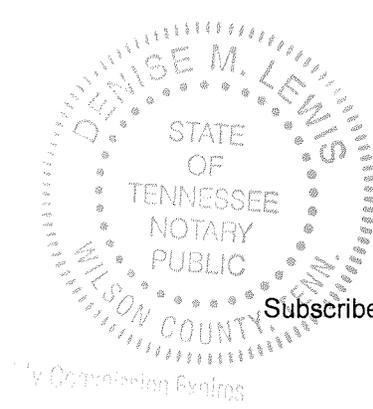
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on behalf of the Tennessee Professional Soil Scientist Program on 10/29/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/29/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 10/29/2013



Date: 6-23-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Tennessee Department of Commerce and Insurance

Subscribed and sworn to before me on: 6-23-14

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/2016

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

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

7-15-14
Date

Department of State Use Only

Filed with the Department of State on: 7/25/14

Effective on: 10/23/14

Tre Hargett
Tre Hargett
Secretary of State

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 SECRETARY OF STATE

Public Hearing Comments

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

There were no written or oral comments offered at the rulemaking hearing.

Regulatory Flexibility Addendum

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

1. Types and estimated number of small businesses directly affected:

These amendments would not impact small businesses because the Program licenses only individuals.

2. Projected reporting, recordkeeping, and other administrative costs:

Small businesses employing professional soil scientists required to be licensed may experience negligible recordkeeping issues, but this is unlikely and any expense would be minimal.

3. Probable effect on small businesses:

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

4. Less burdensome, intrusive, or costly alternative methods:

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

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules relative to small businesses.

Impact on Local Governments

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

The Tennessee Professional Soil Scientist Licensing Program licenses only individuals and foresees no financial impact on any local governments; nor does the Program exercise jurisdiction over 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;

Rule 0780-05-06-.04 Applications Requirements is amended to reflect the statutory language in Tenn. Code Ann. § 62-18-208.

New rule 0780-05-06-.02 Definitions is added as a new rule to define "inactive" and "retired" license statuses.

New rule 0780-05-06-.05 Renewal Requirements is added to delineate renewal requirements.

New rule 0780-05-06-.06 Retired or Inactive Status is added to establish requirements for placing an active license in "inactive" or "retired" status and provides the procedure for reactivating an inactive license.

New rule 0780-05-06-.08 Seals is added to establish the official form and use of a licensee's seal and the conditions of "responsible charge" necessary for the licensee to properly affix his or her professional seal to documents.

New rule 0780-05-06-.09 Civil Penalties is added to establish a civil penalty range for each disciplinary offense and guidelines for conditions that may be considered when assessing a civil penalty.

New rule 0780-05-06-.10 Code of Professional Conduct is added to establish the standards by which a licensed professional soil scientist is expected to conduct him or herself in the course of his or her professional practice.

New rule 0780-05-06-.11 Continuing Education is added to specify the types and amounts of continuing education required of licensees.

New rule 0780-05-06-.12 Reciprocity is added to establish the criteria by which the commissioner will grant a license to a person who currently holds a valid, unexpired license as a soil scientist in another recognized jurisdiction.

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

The proposed amendments to the rules of the Tennessee Professional Soil Scientist Licensing Program are made pursuant to Tenn. Code Ann. §§ 62-18-208, 62-18-211(1), 62-18-215 and 62-18-219(b).

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

These amendments to the rules of the Tennessee Professional Soil Scientist Licensing Program will affect holders in good standing of registration certificates in soil science. There were not written or oral comments offered by the public relative to these rules.

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

I am unaware of any opinion of the attorney general or any judicial ruling which directly relates to these rules.

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

These rules are expected to have no fiscal impact on the Department.

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

Donna Moulder, Administrative Director of the Tennessee Professional Soil Scientist Program, and I as attorney for the agency have substantial knowledge and understanding of these rules.

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

Ms. Moulder, a designated advisory committee member or I will explain the rules at any scheduled meeting of the Government Operations Committee.

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

I may be reached at the Department of Commerce and Insurance, Office of Legal Counsel, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-8689.

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

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Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Ellery Richardson, Assistant General Counsel
Address:	Professional Soil Scientist Licensing Program 500 James Robertson Parkway, 5 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3611
Email:	Ellery.Richardson@tn.gov

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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)

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Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

Amendments

Rule 0780-05-06-.04 Application Requirements is amended by deleting subparagraph (1)(a) in its entirety and substituting instead that following so that, as amended, subparagraph (1)(a) shall read:

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 - (a) Has graduated from an accredited college or university with a Bachelor of Science degree or higher in soils, agronomy or a closely related field. The applicant shall have successfully completed a minimum of fifteen (15) semester hours of course work in soil science as required by T.C.A. 62-18-208(a)(1);

Authority: T.C.A. §§ 62-18-208 and 62-18-211.

Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

New Rules

0780-05-06-.02 Definitions

0780-05-06-.05 Renewal Requirements

0780-05-06-.06 Retired or Inactive Status Exemptions

0780-05-06-.08 Seals

0780-05-06-.09 Civil Penalties

0780-05-06-.10 Code of ~~Professional Conduct~~ Ethics

0780-05-06-.11 Continuing Education

0780-05-06-.12 Reciprocity

0780-05-06-.02 Definitions.

~~Reserved.~~ Definitions for this chapter shall be as follows:

- (1) "Inactive" means a professional soil scientist who has obtained inactive status from the commissioner and is not required to comply with continuing education requirements as prescribed herein. A professional soil scientist in inactive status may not engage in the practice of soil science;
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- (3) A licensee who fails to pay the renewal fee or fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have six (6) months after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of twenty-five dollars (\$25.00) for each month or fraction of a month that renewal is late, and submission of proof of compliance with any other prerequisites to renewal.
- (4) Any person seeking renewal of a license more than six (6) months after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure.

Authority: T.C.A. § 62-18-211.

0780-05-06-.06 Retired or Inactive Status Exemptions.

~~Reserved.~~

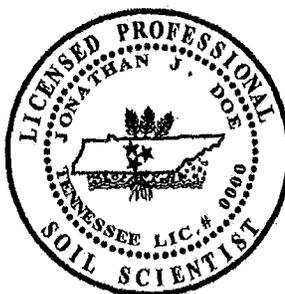
- (1) A licensee may request to place his or her license in inactive or retired status by:
 - (a) Submitting a written request to place his or her license in inactive or retired status to the commissioner; and
 - (b) Paying an inactive or retirement fee.
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 - (a) Submitting a written request to have his or her license returned to active status;
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Authority: T.C.A. § 62-18-211.

0780-05-06-.08 Seals.

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- (1) The design of a licensee's seal required by T.C.A. §62-18-211(2) shall be two inches in diameter and, regardless of whether it is applied to documentation through physical or electronic means, shall appear as follows:



- (2) The licensee shall affix his or her seal to all original sheets of any bound or unbound plans, plats, drawings, reports or other soil scientist papers or documents involving soil science work developed by the licensee or under the licensee's responsible charge of work.
- (3) The licensee shall superimpose his or her signature and date of signature across the face and beyond the circumference of the seal on the documents listed in subsection (2) above.
- (4) Any portions of plans, plats, drawings, reports, or other soil science papers or documents involving soil science work prepared in part by a licensee operating as a consultant on a project shall place his or her signature on the pages of the document for which the licensee is responsible.
- (5) No licensee shall affix his or her seal or signature to plans, plats, drawings, reports or other soil science papers or documents developed by others not under the licensee's responsible charge of work as defined by T.C.A. §62-18-203(6).
- (6) Responsible Charge of Work.
 - (a) Plans, plats, drawings, reports or other soil science papers or documents involving soil science work prepared in part or in whole by a licensee or the licensee's subordinate will be deemed to have been prepared under the responsible charge of the licensee only when:
 - 1. The client or employer requesting preparation of plans, plats, drawings, reports or other soil science papers or documents makes the request directly to the licensee or to the licensee's subordinate at the time initial client or employer contact is made, so long as the licensee has the right to control and direct the subordinate in the material detail of how the work is to be performed;
 - 2. The licensee supervises and is involved in the preparation and approval of the plans, plats, drawing, reports or other soil science papers or documents and has input into and full knowledge of their preparation prior to their completion;
 - 3. The licensee reviews the final plans, plats, drawings, reports or other soil science papers or documents; and
 - 4. The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, plats, drawings, reports or other soil science papers or documents.
 - (b) Any changes made to the final plans, plats, drawings, reports or other soil science papers or documents after final revision and sealing by the licensee are prohibited by any person other than the licensee.
 - (c) The mere review of work prepared by another person, even if that person is the licensee's subordinate, does not constitute responsible charge of work unless the licensee has met the criteria set out above.

Authority: T.C.A. § 62-18-211.

0780-05-06-.09 Civil Penalties.

~~Reserved.~~

- (1) With respect to any licensed professional soil scientist, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against a licensee for each separate violation of a statute, rule, or commissioner's order pertaining to licensed professional soil scientists, in accordance with the following schedule:

<u>Violation</u>	<u>Penalty</u>
(a) <u>T.C.A. §62-18-207</u>	<u>\$100 - \$1,000</u>
(b) <u>T.C.A. §62-18-217</u>	<u>\$100 - \$1,000</u>
(c) <u>Rule 0780-05-06-.08</u>	<u>\$100 - \$1,000</u>
(d) <u>Rule 0780-05-06-.10</u>	<u>\$100 - \$1,000</u>
(e) <u>Commissioner's order</u>	<u>\$100 - \$1,000</u>

- (2) With respect to any other person required to be licensed in this state as a licensed professional soil scientist, the commissioner may assess a civil penalty against such person for each separate violation of statute in accordance with the following schedule:

<u>Violation</u>	<u>Penalty</u>
(a) <u>T.C.A. §62-18-204</u>	<u>\$100 - \$1,000</u>

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any civil penalty to be assessed pursuant to this rule, the commissioner may consider factors including, but not limited to, the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to public;
 - (d) The economic benefits gained by the violator as a result of noncompliance; and
 - (e) The interest of the public.

Authority: T.C.A. §§ 62-18-211 and 62-18-219.

0780-05-06-.10 Code of Professional Conduct Ethics.

Reserved.

- (1) Licensees shall uphold the public health, safety and welfare in the performance of professional services.
- (2) Licensees shall observe and comply with all federal, state and local building, fire, safety, real estate, or mining codes, as well as other laws, codes, ordinances, or regulations pertaining to the practice of soil science.
- (3) Licensees shall not undertake any type of work that he or she is not competent to undertake unless the licensee discloses his or her lack of training, experience, or education in writing to all appropriate parties prior to undertaking the work.
- (4) Licensees shall not affix their signatures and/or seal any plans, plats, drawings, reports, or other soil science papers or documents with subject matter in which they lack competence acquired through education or experience, nor shall licensees affix their signatures and/or seal plans, plats, drawings, reports or other soil science papers or documents that were not prepared or reviewed by the licensee or the licensee's subordinate and approved by the licensee.
- (5) Opinions expressed by licensees for any purpose in the course of his or her professional practice shall only be based on their education and experience.
- (6) Licensees shall not disclose any information about the lawful business affairs or technical processes of a client or employer without the approval of the client or employer, or the

client's/employer's designated representative, unless required by subpoena or in response to a complaint filed by the commissioner.

- (7) Licensees shall not participate in any illegal activities, or knowingly permit the publication of his or her plans, plats, drawings, reports, or other soil science papers or documents for illegal purposes.
- (8) Licensees shall not issue false or misleading information or statements to a client.
- (9) No licensee shall accept compensation or any other consideration from more than one (1) interested party for the same service without the written consent of all interested parties.
- (10) No licensee shall accept or offer commissions or allowances, directly or indirectly, from third parties dealing with the client or employer in connection with work for which the licensee is in responsible charge.
- (11) Before the execution of a contract to perform soil science services, a licensee shall disclose to the client or employer any actual or potential conflicts of interest that might affect the licensee's ability to serve the client or employer.
- (12) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.
- (13) Licensees shall respond to all of the commissioner's written requests for information within the time frame specified on the written request.

Authority: T.C.A. §§ 62-18-211 and 62-18-215.

0780-05-06-.11 Continuing Education.

Reserved.

- (1) "Continuing education hours" means an hour consisting of not less than fifty (50) minutes of instruction or presentation acceptable to the commissioner or as otherwise noted in this rule. Continuing education hours received through post-secondary education institutions will be awarded according to the following table:
 - (a) One (1) university semester hour of credit..... 15 continuing education hours
 - (b) One (1) university quarter hour of credit..... 10 continuing education hours
- (2) A licensee seeking regular biennial renewal shall, as a prerequisite for renewal, show that he or she has completed no less than twelve (12) hours of continuing education during the two (2)-year period immediately preceding renewal.
- (3) One (1) of the twelve (12) continuing education hours each licensee obtains for renewal shall be in ethics.
- (4) Activities eligible for continuing education hours include:
 - (a) Professional meetings (no maximum), including short courses, workshops, clinics, conferences, symposia, seminars, field days, scientific presentations and distance education.
 - (b) Self-directed study, including reading of scientific journals and books with a 2,500-word professional article equaling one continuing education hour. Self-directed study may account for a maximum of three (3) continuing education hours per two (2)-year period.
 - (c) Soil science-related community service (2 continuing education hours maximum per renewal period), including serving on committees and community service related to the profession of soil science. Such service shall be deemed to be equal to two (2)

continuing education hours per two (2)-year period.

- (d) Authoring or preparation of educational materials; this credit may be claimed only on the renewal period on which the educational materials are initially prepared and/or presented. Such work shall be deemed to be equal to two (2) continuing education hours per two (2)-year period.
- (5) Each licensee shall, when making application for renewal, submit on the prescribed form a signed statement setting forth the number of continuing education hours that he or she has completed during the reporting period. Licensees shall retain documentation evidencing their continuing education hours for at least five (5) years subsequent to the date of submission.
- (6) The commissioner may verify information licensees submit under this rule at the commissioner's discretion upon written notice to the licensee.
- (7) If any continuing education hours claimed in a statement submitted by a licensee pursuant to paragraph (5) of this rule are disapproved, the commissioner shall notify the licensee of the reason for disapproval. The commissioner may allow a specified period of time, up to six (6) months, for correction of the deficiencies noted.

Authority: T.C.A. § 62-18-211.

0780-05-06-.12 Reciprocity.

~~Reserved.~~

Pursuant to T.C.A. § 62-18-212, the commissioner may grant a license as a professional soil scientist to an individual who holds a like, unexpired license as a professional soil scientist issued by another state, territory, or possession of the United States, the District of Columbia, or any foreign country if such jurisdiction's examination and requirements for licensure are of a standard substantially equal to those required by the commissioner for initial licensure in Tennessee. Such applicant shall file with the commissioner the required application and fee, along with proof that the applicant holds a current, valid license as a professional soil scientist and the requirements necessary for obtaining such license.

Authority: T.C.A. § 62-18-211.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on behalf of the Tennessee Professional Soil Scientist Program on 10/29/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/29/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 10/29/2013

Date: _____

Signature: _____

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Tennessee Department of Commerce and Insurance

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

There were no written or oral comments offered at the rulemaking hearing.

Regulatory Flexibility Addendum

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

1. Types and estimated number of small businesses directly affected:

These amendments would not impact small businesses because the Program licenses only individuals.

2. Projected reporting, recordkeeping, and other administrative costs:

Small businesses employing professional soil scientists required to be licensed may experience negligible recordkeeping issues, but this is unlikely and any expense would be minimal.

3. Probable effect on small businesses:

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

4. Less burdensome, intrusive, or costly alternative methods:

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

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules relative to small businesses.

Impact on Local Governments

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

The Tennessee Professional Soil Scientist Licensing Program licenses only individuals and foresees no financial impact on any local governments; nor does the Program exercise jurisdiction over 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;

Rule 0780-05-06-.04 Applications Requirements is amended to reflect the statutory language in Tenn. Code Ann. § 62-18-208.

New rule 0780-05-06-.02 Definitions is added as a new rule to define "inactive" and "retired" license statuses.

New rule 0780-05-06-.05 Renewal Requirements is added to delineate renewal requirements.

New rule 0780-05-06-.06 Retired or Inactive Status is added to establish requirements for placing an active license in "inactive" or "retired" status and provides the procedure for reactivating an inactive license.

New rule 0780-05-06-.08 Seals is added to establish the official form and use of a licensee's seal and the conditions of "responsible charge" necessary for the licensee to properly affix his or her professional seal to documents.

New rule 0780-05-06-.09 Civil Penalties is added to establish a civil penalty range for each disciplinary offense and guidelines for conditions that may be considered when assessing a civil penalty.

New rule 0780-05-06-.10 Code of Professional Conduct is added to establish the standards by which a licensed professional soil scientist is expected to conduct him or herself in the course of his or her professional practice.

New rule 0780-05-06-.11 Continuing Education is added to specify the types and amounts of continuing education required of licensees.

New rule 0780-05-06-.12 Reciprocity is added to establish the criteria by which the commissioner will grant a license to a person who currently holds a valid, unexpired license as a soil scientist in another recognized jurisdiction.

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

The proposed amendments to the rules of the Tennessee Professional Soil Scientist Licensing Program are made pursuant to Tenn. Code Ann. §§ 62-18-208, 62-18-211(1), 62-18-215 and 62-18-219(b).

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

These amendments to the rules of the Tennessee Professional Soil Scientist Licensing Program will affect holders in good standing of registration certificates in soil science. There were not written or oral comments offered by the public relative to these rules.

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

I am unaware of any opinion of the attorney general or any judicial ruling which directly relates to these rules.

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

These rules are expected to have no fiscal impact on the Department.

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

Donna Moulder, Administrative Director of the Tennessee Professional Soil Scientist Program, and I as attorney for the agency have substantial knowledge and understanding of these rules.

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

Ms. Moulder, a designated advisory committee member or I will explain the rules at any scheduled meeting of the Government Operations Committee.

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

I may be reached at the Department of Commerce and Insurance, Office of Legal Counsel, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-9461.

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