

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 09-06-15
Rule ID(s): 6019
File Date: 9/4/15
Effective Date: 12/3/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission: Department of Economic and Community Development ("ECD")
Division: Strategy
Contact Person: Sharon Kolb, ECD General Counsel
Address: 312 Rosa L. Parks Ave., 27th Floor, Nashville, TN
Zip: 37243
Phone: 615-532-8988
Email: Sharon.Kolb@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
0500-08-01	TNInvestco Program
Rule Number	Rule Title
0500-08-01-.01	Definitions
0500-08-01-.02	Timely Funding of Investments
0500-08-01-.03	Documentation of Delivery of Qualified Investment Funds
0500-08-01-.04	Investment Confirmation Letters
0500-08-01-.05	Certificates of Ownership
0500-08-01-.06	Notice Following Material Adverse Change
0500-08-01-.07	Notice Following Liquidity Event
0500-08-01-.08	Return of Proceeds Following Liquidity Event
0500-08-01-.09	Submission of Documents and Fees
0500-08-01-.10	Annual Audit Report, Examination Review, and Cure Period

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Proposed Rules
of the
Tennessee Department of Economic and Community Development

Chapter 0500-08-01
TNInvestco Program

Table of Contents

0500-08-01-.01 Definitions.
0500-08-01-.02 Timely Funding of Investments.
0500-08-01-.03 Documentation of Delivery of Qualified Investment Funds.
0500-08-01-.04 Investment Confirmation Letters.
0500-08-01-.05 Certificates of Ownership.
0500-08-01-.06 Notice Following Material Adverse Change.
0500-08-01-.07 Notice Following Liquidity Event.
0500-08-01-.08 Return of Proceeds Following Liquidity Event.
0500-08-01-.09 Submission of Documents and Fees.
0500-08-01-.10 Annual Audit Report, Examination Review, and Cure Period.

0500-08-01-.01 Definitions.

(1) As used in these rules, the following terms are defined as follows:

- (a) "Day" means a calendar day.
- (b) "Dissolution" means the winding down of a company, whether voluntary or compulsory; approval or execution of a plan of dissolution; filing of a certificate of dissolution; liquidation or redistribution of substantially all of its assets; or its ceasing to carry on its business or operations, or to provide substantial employment.
- (c) "ECD" means the State of Tennessee Department of Economic and Community Development.
- (d) "Investment Confirmation Letter" means a letter certified by the Principal Officer of a Qualified Business noticing ECD of the date and dollar amount of a Qualified Investment by a specific TNInvestco.
- (e) "Investment Request" means a request made by a TNInvestco pursuant to T.C.A. § 4-28-106(b) for a written determination by ECD that a proposed investment qualifies as a Qualified Investment.
- (f) "Liquidity Event" means the merger, sale, or spinoff or other transaction of a Qualified Business, by which some or all of the investment held by a TNInvestco is monetized or otherwise converted to cash, securities, assets, distributions, or other proceeds.
- (g) "Material Adverse Change" means any change, effect, event, occurrence, or state of facts that, individually or in the aggregate is, or is reasonably expected to be, materially adverse to the business, results of operations, condition (financial or otherwise), or prospects of a Qualified Business and its consolidated subsidiaries, if any taken as a whole. The term "Material Adverse Change" includes the following:
 - 1. The Dissolution of the Qualified Business;
 - 2. The initiation of bankruptcy, insolvency, reorganization, or similar proceedings or actions by, on behalf of, or against the Qualified Business;
 - 3. A felony conviction or plea of "nolo contendere" resulting in a prison sentence to be served

by an executive, member, or managing partner of the Qualified Business; or a conviction or plea of "nolo contendere" for an act that reflects adversely on his or her honesty, trustworthiness, or fitness as an executive, member, or managing partner of the Qualified Business, including conduct involving dishonesty, fraud, deceit, misrepresentation, or the improper influence of a government agency or official on behalf of, or for the benefit of, the Qualified Business; or

4. A period of ninety (90) Days in which regular communications have ceased between the Qualified Business and a TNInvestco with an ownership interest.

(h) "Principal Officer" means the top officer of a company, including such positions as president, chief executive officer, or managing partner.

(i) "Qualified Business" shall have the meaning assigned to it at T.C.A. § 4-28-102(11).

(j) "Qualified Investment" shall have the meaning assigned to it at T.C.A. § 4-28-102(13).

(k) "Qualified Investment Funds" shall mean all funds received by a TNInvestco pursuant to an Investment Request approved by ECD or deemed approved under T.C.A. § 4-28-106(b) for purposes of making a Qualified Investment in a specific Qualified Business.

(l) "TNInvestco" shall have the meaning assigned to it at T.C.A. § 4-28-102(17).

Authority: T.C.A. §§ 4-28-102(11); 4-28-102(13); 4-28-102(17); 4-28-106; and 4-28-111(d).

0500-08-01-.02 Timely Funding of Investments.

(1) After an Investment Request is approved by ECD or the proposed investment is otherwise deemed a Qualified Investment, one hundred percent (100%) of the Qualified Investment Funds shall be disbursed to the Qualified Business within sixty (60) Days after the date of delivery of the Qualified Investment Funds to the TNInvestco. In the event the TNInvestco is unable to disburse the Qualified Investment Funds to the Qualified Business within sixty (60) Days, the TNInvestco shall return the Qualified Investment Funds. A TNInvestco is prohibited from holding any amount of Qualified Investment Funds for more than sixty (60) Days, including for purposes of making a Qualified Investment in tranches.

(2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.03 Documentation of Delivery of Qualified Investment Funds.

(1) The TNInvestco shall submit to ECD documentation of the delivery of Qualified Investment Funds to a Qualified Business within sixty (60) Days of delivery.

(2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.04 Investment Confirmation Letters.

(1) Within sixty (60) Days after the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD an Investment Certification Letter certified by the Principal Officer of the Qualified Business.

(2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.05 Certificates of Ownership.

- (1) After the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD each original certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Qualified Investment within thirty (30) Days after the date of delivery of the certificate of ownership to the TNInvestco. In the event no certificate of ownership is issued by the Qualified Business, within thirty (30) Days after the delivery of the Qualified Investment Funds to the Qualified Business the TNInvestco shall provide written notification to the State that no certificate of ownership is available.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.06 Notice Following Material Adverse Change.

- (1) In the event of a Material Adverse Change in a Qualified Business, each TNInvestco with an ownership interest shall provide written notice to ECD within ten (10) Days after the TNInvestco receives notice of, or its Principal Officer has actual knowledge of, the Material Adverse Change. The written notice required by this rule shall include documentation explaining the circumstances of the Material Adverse Change.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-102(11) and 4-28-111(d).

0500-08-01-.07 Notice Following Liquidity Event.

- (1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall:
 - (a) Provide written notice of the Liquidity Event to ECD within thirty (30) Days after the date of the Liquidity Event;
 - (b) Within thirty (30) Days after the date of the Liquidity Event, provide adequate documentation to ECD that details the transaction and any proceeds generated. Documentation is adequate if it provides all information necessary to determine the State's ownership interest in the proceeds of the Liquidity Event; and
 - (c) If the Liquidity Event results in ownership of a security, submit to ECD each original certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Liquidity Event within thirty (30) Days after the date of delivery of the certificate to the TNInvestco.
- (2) In the event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d).

0500-08-01-.08 Return of Proceeds Following Liquidity Event.

- (1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall return to the State one hundred percent (100%) of the proceeds of the Liquidity Event within thirty (30) Days after the date of delivery of the proceeds to the TNInvestco.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d).

0500-08-01-.09 Submission of Documents and Fees.

- (1) Each TNInvestco shall submit all required statutory and programmatic documents and fees on or before their assigned due dates. Mandatory documents and fees include the following:
 - (a) "Fiduciary Duty and Ethics, Waste, Fraud & Abuse Policy Acknowledgment for TNInvestco Program" form due January 31st each year;
 - (b) "Report on Remaining Designated Capital" due January 31st each year;
 - (c) Annual review fee due January 31st each year;
 - (d) Annual certification fee due April 1st each year;
 - (e) Scorecard due April 30th each year; and
 - (f) Annual Audit Report and Examination Review due April 30th each year.
- (2) In the event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day for each document or fee shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-110; 4-28-111(a); 4-28-111(d); and 4-28-113.

0500-08-01-.10 Annual Audit Report, Examination Review, and Cure Period.

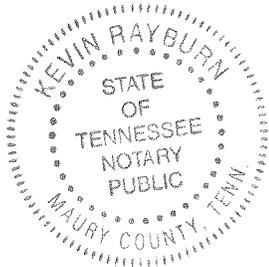
- (1) Each TNInvestco shall submit to ECD its annual audited financial statements (the "Annual Audit Report"), together with an examination review of follow-on capital, jobs data, and pacing requirement compliance (the "Examination Review"), prepared in accordance with all relevant statutory and programmatic requirements, including T.C.A. § 4-28-110(a)(4), the "Updated Program Policies" memorandum dated February 27, 2013, and the "2014 Guidelines for Preparing Schedules" memorandum dated November 13, 2014, as they may be revised from time to time, as well as any other applicable process memoranda issued by ECD or the Office of the Comptroller of the Treasury. A TNInvestco shall:
 - (a) Cure any disclaimer, adverse or qualified opinion, finding, material weakness, significant deficiency, or other deficiency relating to the internal controls, accounting standards, and financial statements and notes of the TNInvestco ("Audit and Control Deficiencies") identified in the Annual Audit Report within forty-five (45) Days after the date ECD notifies the TNInvestco;
 - (b) Cure any disclaimer, adverse or qualified opinion, material noncompliance, error, omission, deviation from relevant policies and procedures, or other deficiency relating to the pacing requirements schedule, jobs and follow-on capital schedule, and schedule of investments ("Schedule and Compliance Deficiencies") identified in the Examination Review within forty-five (45) Days after the date ECD notifies the TNInvestco;
 - (c) Cure any additional Audit and Control Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco; and
 - (d) Cure any additional Schedule and Compliance Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco.
- (2) In each event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured. Penalties assessed pursuant to subparagraph (1)(b) of this rule shall not exceed a maximum of \$1,000 per Day per schedule. Penalties assessed pursuant to subparagraph (1)(d) of this rule shall not exceed a maximum of \$1,000 per Day per schedule. Notwithstanding the foregoing, if the noncompliance results in the assessment of a mandatory penalty of \$10,000 pursuant to T.C.A. § 4-28-111(b), an additional penalty shall not be assessed pursuant to this rule for the noncompliance.

Authority: T.C.A. §§ 4-28-110; 4-28-111; and 4-28-113.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not applicable.					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Economic and Community Development on 08/17/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 8/17/2015

Signature: _____

Name of Officer: Randy Boyd

Title of Officer: Commissioner

Subscribed and sworn to before me on: 8/17/15

Notary Public Signature: Kevin Rayburn

My commission expires on: 1/19/16

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
9/2/2015
Date

Department of State Use Only

RECEIVED
2015 SEP -4 AM 9:27
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/4/15

Effective on: 12/3/15

Tre Hargett

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.

The Department of Economic and Community Development ("ECD") conducted a review of whether Chapter 0500-08-01 affects small businesses.

- (1) Chapter 0500-08-01 may minimally impact the ten (10) existing TNInvestcos by subjecting them to penalty assessments under the rules. However, T.C.A. 4-28-111(d) limits assessments to ten thousand dollars (\$10,000) per incidence for failure to comply with the requirements of T.C.A. § 4-28-101 *et seq.* (the "Tennessee Small Business Investment Company Credit Act").
- (2) No additional reporting, recordkeeping, and other administrative costs or professional skills are required for compliance with Chapter 0500-08-01. Penalties may only be assessed for failures to comply with requirements already established in the Tennessee Small Business Investment Company Credit Act.
- (3) Chapter 0500-08-01 is projected to have no effect on consumers. The probable effect on impacted small businesses is minimal.
- (4) ECD is not aware of any less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of Chapter 0500-08-01.
- (5) There is no federal or state counterpart to Chapter 0500-08-01.
- (6) Exempting impacted small businesses from all or any part of the requirements contained in Chapter 0500-08-01 would compromise the intent of the rules to ensure that those specific impacted small businesses, the TNInvestcos, comply with the requirements of the Tennessee Small Business Investment Company Credit Act.

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)

Chapter 0500-08-01 is not projected to impact 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;

Chapter 0500-08-01 is promulgated to ensure compliance with the requirements of T.C.A. § 4-28-101 *et seq.* by authorizing the Department of Economic and Community Development ("ECD") to assess monetary penalties for compliance failures by TNInvestcos. The rules do not effectuate any relevant changes in previous regulations.

- (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;

Promulgation of Chapter 0500-08-01 is permitted but not mandated by T.C.A. § 4-28-111(d). No federal law or regulation mandates or establishes guidelines relevant to the promulgation of the rules.

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

Chapter 0500-08-01 would most directly affect TNInvestcos subject to penalty assessments under these rules. TNInvestcos have urged neither adoption nor rejection of these rules.

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

ECD is unaware of any attorney general and reporter opinions or judicial rulings that directly relate to Chapter 0500-08-01.

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

The probable fiscal impact, if any, of Chapter 0500-08-01 on state or local government revenues or expenditures is estimated to be minimal.

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

ECD General Counsel, Sharon Kolb and Assistant Commissioner of Strategy, Alice Rolli

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

ECD General Counsel, Sharon Kolb

- (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

Sharon Kolb, 312 Rosa L. Parks Ave., 27th Floor, Nashville, TN 37243; 615-532-8988; Sharon.Kolb@tn.gov

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

Not applicable.