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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Environment and Conservation  |
| <b>Division:</b>                | J. R. Fleming Training Center   |
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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. Please enter only ONE Rule Number/RuleTitle per row)**

| Chapter Number | Chapter Title   |
|----------------|---|
| 1200-05-03     | Rules Governing Water and Waste Water Operator Certification  |
| Rule Number    | Rule Title  |
| 1200-05-03-.01 | Application for Certification   |
| 1200-05-03-.03 | Fees  |
| 1200-05-03-.05 | Definitions   |
| 1200-05-03-.07 | Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators         |
| 1200-05-03-.09 | Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators |

(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>)

Chapter 1200-05-03  
Rules Governing Water and Waste Water Operator Certification

Amendments

Part 2 of subparagraph (b) of paragraph (1) of Rule 1200-05-03-.01 Application for Certificate is amended by deleting the part and substituting the following so that, as amended, part 2 shall read as follows:

2. Payment of a non-refundable \$100.00 fee for each application for examination.

Subparagraph (d) of paragraph (1) of Rule 1200-05-03-.01 Application for Certification is amended by adding the word "Rules" between the words "of" and "1200" in the first sentence so that, as amended, subparagraph (d) shall read as follows, while retaining all its parts:

- (d) Applications will be reviewed for completeness and for compliance with the requirements of Rules 1200-05-03-.07 and 1200-05-03-.09 for education and experience by staff of the Board under the supervision of the Secretary. The operating experience of an applicant will be determined through the end of the month in which the examination for the operator classification desired is given.

Part 2 of subparagraph (b) of paragraph (2) of Rule 1200-05-03-.01 Application for Certificate is amended by deleting the part and substituting the following so that, as amended, part 2 shall read as follows:

- 2. Payment of a non-refundable \$100.00 for each application for reciprocity.

Subparagraph (d) of paragraph (2) of Rule 1200-05-03-.01 Application for Certification is amended by adding the word "Rules" between the words "of" and "1200" in the sentence so that, as amended, subparagraph (d) shall read as follows, while retaining all its parts:

- (d) Applications will be reviewed for completeness and for compliance with the requirements of Rules 1200-05-03-.07 and 1200-05-03-.09 for education and experience by staff of the Board under the supervision of the Secretary.

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-201 et seq., 68-221-906, and 68-221-910.

Rule 1200-05-03-.03 of Rule Chapter 1200-05-03 Rules Governing Water and Wastewater Operator Certification is amended by deleting it in its entirety and substituting the following to read as follows:

1200-05-03-.03 Fees.

(1) Fees for Certification

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

- 1. Application fee for each operator examination or reciprocity request applied for..... \$100.00
- 2. Discount annual renewal fee for each operator certificate:  
(Payment prior to February 1)..... \$ 30.00
- 3. Standard annual renewal fee for each operator certificate:  
(Payment from February 1 through June 30.)..... \$ 60.00

- (b) No application fee will be returned.

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

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

(2) Fees for Cross Connection Control Training Registration

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

1. Registration fee for a Cross Connection Control Basic Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt).....\$275.00
2. Registration fee for a Cross Connection Control Renewal Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt).....\$110.00

(b) No registration fee will be returned.

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

(3) Fees for Cross Connection Control Testing Application

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

1. Application for a Cross Connection control Basic Test (Department employees who assist with cross connection control training or testing are exempt).....\$60.00
2. Application fee for Cross Connection Control Renewal Test (Department employees who assist with cross connection control training or testing are exempt).....\$60.00

(b) Application fees are not refundable or transferable.

(c) The application for testing conducted by the Department must be received a minimum of thirty (30) days in advance of the test he/she wishes to take, however, applications from private institutions may be received the day the test materials are submitted to the Fleming Training Center.

(d) Prior to sitting for a test, an applicant must present proof of completion of training accepted by the Department for the appropriate test. Basic training may be accepted by the Department if it has a minimum class length of 480 minutes (300 minutes minimum in classroom), including but not limited to the following topics: hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and

actions in a cross connection control program and mechanical equipment for cross connection control. Acceptable training must also provide a minimum of one working practice station and test kit for each three students. Renewal training may be accepted by the Department if it has a minimum class length of 300 minutes (180 minutes minimum in classroom) including but not limited to the following topics: hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and actions in a cross connection control program and mechanical equipment for cross connection control. Acceptable training must also provide a minimum of one working station and test kit for each three students.

- (e) An applicant must take the test within twelve months of receipt of the training certificate.

Authority: T.C.A. §§ 4-5-201 et seq., 68-203-101 et seq., 68-221-906, and 68-221-910.

Paragraph (1) of Rule 1200-05-03-.05 Definitions is amended by placing a period at the end of the sentence so that, as amended, paragraph (1) shall read as follows:

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

Authority: T.C.A. §§ 4-5-201 et seq., 68-221-903, 68-221-904, 68-221-906, 68-221-909, and 68-221-912.

Subparagraph (b) of paragraph (2) of Rule 1200-05-03-.07 Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators is amended by deleting from the second sentence "(2)(b)" immediately following the word "subparagraph" so that, as amended, subparagraph (b) shall read as follows:

- (b) The reclassification of a water treatment plant or a water distribution system that immediately occurs as a result of this chapter of rules shall raise the operator classification of a certified operator then employed at that plant or system to a higher operator classification equivalent with the new classification of the plant or system. This subparagraph shall apply only to a certified operator whose operator classification, immediately prior to reclassification of the plant or system pursuant to this chapter of rules, is at least equivalent with the classification of the plant or system at which he/she is employed.

Subparagraph (a) of paragraph (3) of Rule 1200-05-03-.07 Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators is amended by deleting the word "subparagraph" from the sentence so that, as amended, subparagraph (a) shall read as follows:

- (a) For part (1)(a)2 of this rule, the Board may approve for each two semester hours, or three quarter hours, of academic study satisfactorily completed at an accredited college or university in related science or engineering courses as equal to one month of the operating experience required as a qualification of a certified water treatment plant operator.

Subparagraph (b) of paragraph (3) of Rule 1200-05-03-.07 Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators is amended by deleting "subparagraph parts (1)(a)2, (1)(b)1, (1)(c)1, (1)(d)1, and (1)(f)1" from the sentence and replacing it with "parts (1)(a)2, (1)(b)1, (1)(c)1, (1)(d)1, and (1)(f)1" so that, as amended, subparagraph (b) shall read as follows:

- (b) For parts (1)(a)2, (1)(b)1, (1)(c)1, (1)(d)1, and (1)(f)1 of this rule, each day of Board sanctioned comprehensive training, satisfactorily completed, through schools for operators, correspondence courses, or other special training programs may be equal to one month of the operating experience required as a qualification of a certified water treatment plant operator.

Subparagraph (a) of paragraph (4) of Rule 1200-05-03-.07 Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators is amended by deleting the word "subparagraph" from the sentence so that, as amended, subparagraph (a) shall read as follows:

- (a) The Board may approve the water treatment operating experience required in parts (1)(a)1, (1)(a)2, (1)(b)1, (1)(c)1, and (1)(d)1 of this rule in two or more of the following work experience duties:

Operation and/or maintenance of:

- Pretreatment systems
- Coagulant feed systems
- Filtration systems
- Fluoride feed systems
- Stabilization feed systems
- Hypochlorination systems
- Gas chlorination systems
- Pumps and/or motors
- Laboratory Control Tests
- Interpretation and plant adjustments

Subparagraph (c) of paragraph (4) of Rule 1200-05-03-.07 Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators is amended by deleting the word "subparagraph" from the sentence so that, as amended, subparagraph (c) shall read as follows:

- (c) The Board may approve the distribution system operating experience required in part (1)(f)1 of this rule in two or more of the following work experience duties:

Operation and/or maintenance of:

- Pumps
- Booster stations
- Fire hydrants
- Valves
- Storage tanks
- Distribution systems flushing
- Pipeline installation
- Tap installation
- Leak detection
- Leak repairs
- Cross connection control

Authority: T.C.A. §§ 4-5-201 et seq., 68-203-101 et seq., 68-203-103, and 68-221-906 through 68-221-910.

Subparagraph (a) of paragraph (1) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting "subparagraph part (1)(a)1 or (1)(a)2 of this rule" from the end of the sentence and replacing it with "parts 1 or 2 of this subparagraph" so that, as amended, subparagraph (a) shall read as follows, while retaining all its parts:

- (1) (a) Grade IV Wastewater Treatment Plant Operator

Certification as an operator in this classification will be made only upon the satisfactory completion by the applicant of the requirements of either parts 1 or 2 of this subparagraph.

Subparagraph (b) of paragraph (2) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting from the second

sentence "(2)(b)" immediately following the word "subparagraph" so that, as amended, subparagraph (b) shall read as follows:

- (b) The reclassification of a wastewater treatment plant or a wastewater collection system that immediately occurs as a result of this chapter of rules shall raise the operator classification of a certified operator then employed at that plant or system to a higher operator classification equivalent with the new classification of the plant or system. This subparagraph shall apply only to a certified operator whose operator classification, immediately prior to reclassification of the plant or system pursuant to this chapter of rules, is at least equivalent with the classification of the plant or system at which he/she is employed.

Subparagraph (a) of paragraph (3) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting the word "subparagraph" from the sentence and adding the word "as" after the word "courses" and before the word "equal" so that, as amended, subparagraph (a) shall read as follows:

- (a) For part (1)(a)2 of this rule, the Board may approve for each two semester hours, or three quarter hours, of academic study satisfactorily completed at an accredited college or university in related science or engineering courses as equal to one month of the operating experience required as a qualification of a certified wastewater treatment plant operator.

Subparagraph (b) of paragraph (3) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting "subparagraph parts (1)(a)2, (1)(b)(1), (1)(c)(1), (1)(d)(1), (1)(e)(1), and (1)(f)(1)" from the sentence and replacing it with "parts (1)(a)2, (1)(b)1, (1)(c)1, (1)(d)1, (1)(e)1, and (1)(f)1" so that, as amended, subparagraph (b) shall read as follows:

- (b) For parts (1)(a)2, (1)(b)1, (1)(c)1, (1)(d)1, (1)(e)1, and (1)(f)1 of this rule, each day of Board sanctioned comprehensive training, satisfactorily completed, through schools for operators, correspondence courses, or other special training programs may be equal to one month of the operating experience required as a qualification of a certified wastewater treatment plant operator.

Subparagraph (a) of paragraph (4) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting the word "paragraph" from the sentence and replacing it with the word "parts" and under the heading "Operation of" by deleting the phrase "Chlorine feed rates" and replacing it with the phrase "Disinfection system feed rates" so that, as amended, subparagraph (a) shall read as follows:

- (a) The Board may approve the wastewater treatment operating experience required in parts (1)(a)1, (1)(a)2, (1)(a)3, (1)(b)1, (1)(c)1, (1)(d)1, and (1)(e)1 of this rule in two or more of the following work experience duties:

Control of:

- Solids pumping from clarifiers
- Scum removal in clarifiers
- Return and waste sludge rates
- Aeration rates
- Recirculation rates to trickling filter or rotating biological contactor (RBC)

Operation of:

- Disinfection system feed rates
- Digesters and/or solids conditioning processes

Performance of:

- Calculations and plant control
- Interpretation of laboratory test results
- Interpretation of process control data
- Cleaning and maintenance of preliminary treatment
- Adjustment of wastewater levels or flow through lagoon system

Subparagraph (c) of paragraph (4) of Rule 1200-05-03-.09 Classifications and Qualifications of Wastewater Treatment Plant Operators and Wastewater Collection System Operators is amended by deleting the word "paragraph" from the sentence and replacing it with the word "part" so that, as amended, subparagraph (c) shall read as follows:

- (c) The Board may approve the collection system operating experience required in part (1)(f)1 of this rule in two or more of the following work experience duties:

Operation and/or maintenance of:

- Pumps
- Lift stations
- Valves
- Lines and equipment
- Pipeline installation
- Service connection installation
- Leak detection
- TV crew activities
- Line repairs
- Line cleaning
- Manhole maintenance
- Pretreatment

Authority: T.C.A. §§ 4-5-201 et seq., 68-221-906, and 68-221-907.

\* 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)   |
|--------------------|-----|----|---------|--------|---------------------------|
| Randal Braker      | X   |    |         |        | <i>Randal Braker</i>      |
| Alan Cranford      | X   |    |         |        | <i>Alan Cranford</i>      |
| J. Darryl Green    | X   |    |         |        | <i>J. Darryl Green</i>    |
| Dr. Larry W. Moore | X   |    |         |        | <i>Dr. Larry W. Moore</i> |
| Sherwin Smith      | X   |    |         |        | <i>Sherwin Smith</i>      |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Water and Wastewater Operator Certification Board on 09/02/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/29/09

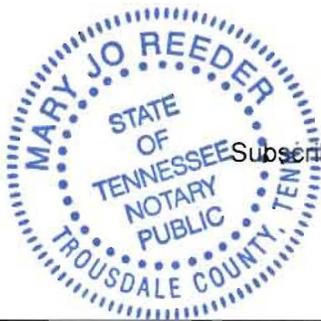
Rulemaking Hearing(s) Conducted on: (add more dates). 08/17/09, 08/18/09, and 08/19/09

Date: September 2, 2009

Signature: *J. Darryl Green*

Name of Officer: J. Darryl Green

Title of Officer: Chairman



Subscribed and sworn to before me on: September 2, 2009

Notary Public Signature: *Mary Jo Reeder*

My commission expires on: April 30, 2011

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

9-9-09  
 Date

**Department of State Use Only**



Filed with the Department of State on: 9-9-09

Effective on: 12-8-09

*Tre Hargett*  
 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.

Comment: Rule 1200-05-03-.03(3)(c) states: "The application must occur a minimum of thirty (30) days in advance of the test he/she wishes to take." It is suggested that the Department allow private training organizations to submit payment for testing up to the day the test materials are submitted to the Fleming Training Center.

Response: The Board agrees and the regulations have been changed as suggested.

Comment: In 2008, the Fleming Training Center had set a goal to monitor all cross connection control tests, those offered both by the Training Center and by private training organizations. The sixty dollar (\$60) test fee was to offset the cost associated with this activity. The Training Center presently monitors only its own cross connection control tests. We ask that the test fee to private training organizations be reduced to twenty (\$20) dollars.

Response: It was never the intent of the Fleming Training Center to monitor all cross-connection control tests. The Board has looked at the time and costs associated with receipt of the fees, exam generation and development, conducting, grading and transferring scores, issuance of certificates and maintenance of the cross connection control database. The Board has determined that the proposed sixty (\$60) test fee is reasonable for all who offer cross connection control testing.

Comment: The proposed fee increases vary from 20% (annual renewals) to 54% (application for examination/reciprocity). A 20% increase may be acceptable; a 54% increase is not. What is the basis for this increase?

Response: The Board believes the proposed fee amounts are justified. The basis for the fee increase for examination and reciprocity applications is the cost, labor and material, associated with receiving and processing the fees, examination development, generation, conduct, grading, transfer of scores, and handling of all associated correspondence. Additionally, the Board has looked at application fees of southeastern states for comparable services and found that Tennessee had one of the lowest fees. Even with proposed fee increase, Tennessee's fees will still be lower than most nearby states.

Comment: How is the sales tax money being used that is collected from our customers now?

Response: In regard to the Sales Tax that citizens pay, those funds go directly to the General Fund and are appropriated by the Legislature. Sales Tax revenues are the foundation of the state's base budget each year. The Governor uses the revenues from Sales Tax collections as part of the budget he recommends to the Legislature every February.

Comment: As a customer, when taxes are paid on water and sewer services, taxpayers expect that money be used to fund the programs and training necessary to insure a quality product.

Response: The taxes that are collected when an individual pays their water or sewer bill goes to the general fund, presumably to offset the costs associated with providing those services. These funds are allocated as the state legislature deems necessary. The Department of Environment & Conservation does not control how these funds are utilized.

Comment: A commenter would like to see training and continuing education classroom fees rates based on population served – most other fees are based on population served. A small utility with eight employees is going to pay \$550 for a water treatment class as opposed to a water company or utility that has 250 employees.

Response: The training and continuing education classroom fees are not within the scope of this proposed rulemaking.

Comment: Any proposed fees should be temporary and sunset on June 30, 2012, reverting back to the amounts charged on June 30, 2009.

Response: The Board does not agree that the proposed fees should sunset. The State's budget is prepared and adopted on a recurring basis. While circumstances may change, the State cannot prepare a budget anticipating changes in revenue.

Comment: What sources fund the training center? Please list the funding source and amount received from each source.

Response: The Certification Program received a total amount of \$202,480 from July 1, 2009 to June 30, 2009 in fees. Sources/amounts of fees are: \$58,150 in Application/licensing fees and \$144,330 in Annual Maintenance fees/renewal fees.

The program also received approximately \$12,000 from a federal Expense Reimbursement Grant for operators of water systems that serve 3,300 customers or less. This grant will end in 2011.

The Cross-Connection program generated no revenue in FY 08-09.

Comment: How many positions staff the training center?

Response: The Certification Program is staffed by an Environmental Specialist 5, the Certification Program Coordinator, and an Administrative Secretary. The Cross-Connection program is staffed by an Environmental Specialist 3 and an Administrative Secretary who dedicates half of her time to the cross-connection program. There are no vacancies in either program.

Comment: What was the beginning and ending EPF balance for the certification program in FY08-09?

Response: The beginning and ending EPF balance for the Certification Program in FY08-09 was \$77,029 and \$142,372, respectively.

Comment: What will happen if the fee increases are not permanently adopted?

Response: The additional fees are necessary to maintain the current level of services.

Comment: How will the fee increase benefit services to municipalities?

Response: The proposed fees help replace the cuts in state revenue. The proposed fees are necessary to maintain the current level of services, not provide additional services.

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

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

The Certification fee increase will impact all 532 small community water systems. It is estimated that about half, or 266 of small community water systems are small businesses.

The cross connection control fees will impact community water systems, plumbing, lawn irrigation and fire protection businesses that employ staff responsible for testing backflow preventers. Cross connection control fees will impact approximately 350 new testers and 200 currently certified testers. Since the same employer employs some of these, it is estimated that this would involve a total of 360 employers. Of these, it is estimated that 240 are 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:

For those small businesses that need to have their employees trained in cross connection control, including hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and actions in a cross connection control program and mechanical equipment for cross connection control, there is a minimal administrative cost associated with completing a registration form and testing application. The cost is minimal and no special professional skills are necessary for the preparation of the registration form or the application.

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

Certification fees are expected to impact small businesses as follows. A federal grant currently provides for certification renewal fees to be reimbursed. If the small water system operators take advantage of this provision, the increase in renewal fees will not impact them. About 50 new examinees take the small water certification exam each year. The costs on the small business portion of these systems will be \$1,750.

Cross connection control fees are expected to impact small businesses as follows. Annually, of the estimated 240 small businesses, about 154 or 64% will attend the basic class and test, and will be charged \$335 each for a total of \$51,590. About 87 or 36% will attend the renewal class and test, and will be charged \$170 dollars each for a total of \$14,790.

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

There are no alternatives methods of achieving the purpose and objectives of the proposed rule.

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

There are no federal or state counterparts.

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

Exemption of small businesses from the proposed rule changes would eliminate their payment of additional fees. This would result in the loss of an anticipated \$135,510 to the Office of Environmental Assistance needed to cover the cost of administering the training programs.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

Tennessee Code Annotated (T.C.A.) § 68-221-904, requires the operators of water and waste water treatment systems to be certified. The Department also offers training in cross connection control, including hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and actions in a cross connection control program and mechanical equipment for cross connection control and/or certification testing in these disciplines. In accordance with T.C.A. § 68-221-906(a)(8), the Water and Wastewater Operator Certification Board ("Board") has the duty and the authority to set up a system of fees for applicants to support the expenses of the program.

The Board had previously examined the cost associated with examination and reciprocity applications and certificate renewals and found that the application and renewal fees must be increased to cover the costs of administering the training programs. In 2008, the board had attempted to raise the fees, but those rules could not be promulgated because there was a decrease in the state appropriations to the program due to the voluntary buy-out program and the law prohibited a fee increase in such circumstances. In the Omnibus Budget bill (HB 2389 / SB 2357) that passed as part of the budget package this year, the prohibition on raising fees in a year in which the appropriation was decreased was suspended for three years.

In order for the program to maintain and improve its performance in carrying out its duties, the Board again finds the fee increase is necessary to cover the costs associated with receiving the fees, the examination development, generation, conduct, grading and transfer of scores, and the handling associated with all relevant correspondence. The Board has also examined the cost associated with administering the training programs and has found that fees must be established to cover the costs of providing cross connection control training to community water systems and plumbing, lawn irrigation and fire protection businesses that employ staff responsible for testing backflow preventers. These costs must be covered in order to retain a quality staff and for ensuring the performance of training program.

Specific changes to the existing fees for water and wastewater operators include:

- (a) Changes the fee for examination application from \$65.00 to \$100.00;
- (b) Changes the fee for reciprocity application from \$65.00 to \$100.00;
- (c) Changes the discount annual renewal fee for each operator certificate from \$25.00 to \$30.00;
- (d) Changes the standard annual renewal fee for each operator certificate from \$50.00 to \$60.00.

The following new training fees or requirements include:

- (a) A registration fee of \$275.00 for a Cross Connection Control Basic Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt);
- (b) A registration fee of \$110.00 for a Cross Connection Control Renewal Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt);
- (c) A requirement that registration fees are not refundable or transferable and must be received 30 days in advance of the class the student wishes to take;
- (d) An application fee of \$60.00 for a Cross Connection Control Basic Test (Department employees who assist with cross connection control training or testing classes are exempt);
- (e) An application fee of \$60.00 for Cross Connection Control Renewal Test; (Department employees who

assist with cross connection control training or testing classes are exempt);

- (f) A requirement that application fees are not refundable or transferable and that applications for testing by the Department must be received 30 days in advance of the test the examinee wishes to take, however, applications from private training institutions may be received the day the testing materials are submitted to the Fleming Training Center; and
- (g) Other requirements associated with administering a training program include:
  - 1. Prior to sitting for a test, an applicant must present proof of completion of training accepted by the Department for the appropriate test, provided this training is received within the 12 months prior to taking the exam; and
  - 2. Training, acceptable by the Department, is defined for both basic and renewal tests.

Other changes included changing the current language "Chlorine Feed Rates" to "Disinfection System Feed Rates" and correcting typographical errors in Rules 1200-05-03-.01, 1200-05-03-.05, 1200-05-03-.07 and 1200-05-03-.09.

- (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;

This rulemaking is authorized by the Tennessee Code Annotated (T.C.A.) § 68-203-101 et seq. (Tennessee Environmental Protection Fund Act), T.C.A. §§ 68-221-903, 904, 906, 909, 910, and 910 (Water and Sewerage-Water Environmental Health), and T.C.A. § 4-5-209 (Uniform Administrative Procedures Act).

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

Persons and entities most affected by these rule changes are: (1) certified operators and persons desiring to become certified; (2) municipal and utility water, distribution, wastewater and collection systems; (3) persons holding and seeking certificates for "Evaluation and Testing of Backflow Prevention Assemblies"; and (4) plumbing, lawn irrigation and fire protection businesses that employ staff responsible for testing backflow preventers.

Three public hearings were held across the State between August 17, 2009 and August 19, 2009. Affected entities and persons were notified by mail or email of the changes and the opportunity for input into the rulemaking process. Very few comments were received. Of the comments received two commenters questioned the amount of the fee increase and other commenter thought they were reasonable.

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

The Water and Wastewater Operator Certification Board is not aware of any attorney general opinions or judicial rulings related to the proposed amendments.

- (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;

Certification fees are expected to generate \$56,000 dollars of additional revenue annually. It is anticipated that 800 people will apply for the certification examinations annually. The proposed fee for application is \$100.00 (an increase of \$35.00). This should generate \$28,000 of additional revenue.

Operators holding 5,200 certificates must renew their certificates annually. The proposed discount fee for

renewal is \$30.00 (an increase of \$5.00). This should generate \$26,000 of additional revenue.

Operators holding 200 certificates fail to meet the time requirements of the discount renewal of their certificates and must pay the standard fee. The proposed standard fee for renewal is \$60.00 (an increase of \$10.00). This should generate \$2,000 of additional revenue.

Cross connection control fees are expected to generate \$78,650 of revenue annually. It is anticipated that 191 students will attend basic training classes. Of that number, two-thirds fit the requirements for fees. The proposed fee for registration is \$275.00 dollars. This should generate \$34,650.

It is anticipated that 133 students will attend renewal training classes. Of that number, two-thirds fit the requirements for fees. The proposed fee for registration is \$110.00. This should generate \$9,680.

It is anticipated that 572 applicants will take the test annually. The proposed test fee is \$60.00. This should generate \$34,320.

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

Alan Leiserson, Legal Services Director (532-0131)  
Lori Munkeboe, Director of the Fleming Training Center

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

Alan M. Leiserson  
Legal Services Director  
[Alan.Leiserson@tn.gov](mailto:Alan.Leiserson@tn.gov)  
Tennessee Department of Environment and Conservation

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

Office of General Counsel  
Tennessee Department of Environment and Conservation  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1548

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

The Water and Wastewater Operator Certification Board is not aware of any requests.