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 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
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 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

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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 (Tenn. Code Ann. § 4-5-205).*

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

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Securities
<b>Contact Person:</b>	Sarah Branch, Assistant General Counsel for Securities
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-4701
<b>Email:</b>	Sarah.Branch@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
0780-04-02	Securities Registration and Exemptions
	Table of Contents
Rule Number	Rule Title
0780-04-02-.17	Invest Tennessee Exemption

Department of Commerce and Insurance  
Division of Securities

Chapter 0780-04-02  
Securities Registration and Exemptions

Amendment

0780-04-02 Securities Registration and Exemptions is amended by adding the following language to the Table of Contents:

0780-04-02-.17 Invest Tennessee Exemption

Authority: T.C.A. §48-1-103(a)(13) and Public Act of 2013, Chapter 943.

Chapter 0780-04-02  
Securities Registration and Exemptions

New Rule

0780-04-02-.17 Invest Tennessee Exemption.

(1) Preliminary Notes.

- (a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors of all of the facts necessary to ensure that potential investors have knowledge of any and all material information necessary for a reasonable investor to determine the risks associated with the offering and all other material information upon which to base a decision as to whether or not to invest and in compliance with the antifraud provisions of the Act.
- (b) In view of the objective of this Rule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any offering which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in the statutory exemption itself or this Rule.
- (c) This exemption is not available to an issuer that is in the development stage with either no specific business plan or purpose or has indicated that its business plan or purpose is to engage in a merger or acquisition with an unidentified company or companies or another entity or person.
- (d) Nothing in this exemption shall be construed in any way to provide an exemption for offerors or sellers of securities under this exemption from the registration requirements for broker-dealers and broker-dealer agents as set forth in T.C.A. §48-1-109.

(2) Definitions.

- (a) "Accredited investor", as defined in 17 C.F.R. §230.501, and as may be amended, means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
  - 1. Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds one million dollars (\$1,000,000).
    - (i) Except as provided in subpart (2)(a)1.(ii) of this Rule, for purposes of calculating net worth under this part (2)(a)1.:
    - (I) The person's primary residence shall not be included as an asset;

- (II) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding sixty (60) days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
    - (III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;
  - (ii) Subpart (2)(a)1.(i) will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:
    - (I) Such right was held by the person on July 20, 2010;
    - (II) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and
    - (III) The person held securities of the same issuer, other than such right, on July 20, 2010.
  - 2. Any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year; and
  - 3. Any other entity or organization listed in 17 C.F.R. §230.501, including but not limited to certain banks, savings and loan associations, private development companies, non-profit organizations, and trusts.
- (b) "Investment Company" as used in T.C.A. §48-1-103(a)(13)(A)(vi) means any issuer which:
- 1. is or holds itself out as being engaged primarily, or proposed to engage primarily in the business of investing, reinvesting, or trading in securities;
  - 2. is engaged or proposed to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or
  - 3. is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding forty percent (40%) of the value of such issuer's total assets, excluding government securities and cash items, on an unconsolidated basis.
- (c) An issuer not "subject to the reporting requirements of Section 13 of the 1934 Act or Section 15(d) of the 1934 Act" as used in T.C.A. §48-1-103(a)(13)(A)(vi) means an issuer that is not required to submit periodic reports to the SEC, such as Forms 10-K, 10-Q, and 8-K, as set forth in Sections 13 and 15(d) of the 1934 Act.
- (3) Exemption. By the authority delegated to the commissioner in T.C.A. §§48-1-103(a)(13) and 48-1-116, any issuer who will offer to sell or sell a security in Tennessee and who intends to rely upon the provisions of T.C.A. §48-1-103(a)(13) to exempt such issuer from registering the security with the Division must comply, and bears the burden of proof to establish and document that it complies, with all of the terms and conditions of this Rule 0780-04-02-.17:

- (a) Intrastate Offering. The sale of the security shall meet the requirements of T.C.A. §48-1-103(a)(13)(A)(i) and the federal exemption for intrastate offerings in Section 3(a)(11) of the 1933 Act and SEC Rule 147 (17 C.F.R. §230.147), as may be amended, as follows:
1. Issuer. The issuer shall be a resident of and doing business in Tennessee.
    - (i) An issuer shall be deemed to be a Tennessee resident if it meets any of the following requirements:
      - (I) If the issuer is a corporation, limited partnership, trust, or other form of business entity organized under state law, it must be incorporated or organized in Tennessee;
      - (II) If the issuer is a general partnership or other form of business entity not organized under state law, its principal office must be located in Tennessee; or
      - (III) If the issuer is an individual, the individual's principal residence must be in Tennessee.
    - (ii) An issuer shall be deemed to be doing business in Tennessee if it meets all of the following requirements:
      - (I) The issuer derived at least eighty percent (80%) of its gross revenues and those of its subsidiaries on a consolidated basis from the operation of a business or of real property located in or from the rendering of services within Tennessee.
        - I. For its most recent fiscal year, if the first offer of any part of the issue is made during the first six (6) months of the issuer's current fiscal year; or
        - II. For the first six (6) months of its current fiscal year or during the twelve (12) month fiscal period ending with such six (6) month period, if the first offer of any part of the issue is made during the last six (6) months of the issuer's current fiscal year from the operation of a business or of real property located in or from the rendering of services within Tennessee; provided, that this provision does not apply to any issuers which have not had gross revenues in excess of five thousand dollars (\$5,000) from the sale of products or services or other conduct of its business for its most recent twelve (12) month fiscal period;
      - (II) The issuer had at the end of its most recent semi-annual fiscal period prior to the first offer of any part of the issue, at least eighty percent (80%) of its assets and those of its subsidiaries on a consolidated basis located within Tennessee;
      - (III) The issuer intends to use and uses at least eighty percent (80%) of the net proceeds to the issuer from the offering made pursuant to this Invest Tennessee Exemption in connection with the operation of a business or of real property, the purchase of real property located in, or the rendering of services within Tennessee; and
      - (IV) The issuer's principal office is located in Tennessee.
    - (iii) The issuer shall not be, either before or as a result of any offering, an investment company as defined in §3 of the Investment Company Act.
    - (iv) The issuer shall not be, either before or as a result of any offering, subject to the reporting requirements of §13 or §15(d) of the 1934 Act.

2. Investors. Offers and sales of securities exempt under this Rule shall only be made to Tennessee residents. A single offer or sale to an entity or individual who is not a Tennessee resident shall invalidate the use of this exemption for the entire offering. For purposes of determining the residence of offerees and purchasers:

- (i) A corporation, partnership, trust, or other form of business organization shall be deemed to be a Tennessee resident if, at the time of the offer and sale, it has its principal office in Tennessee.
- (ii) An individual shall be deemed to be a Tennessee resident if the individual has, at the time of the offer and sale, his or her principal residence in Tennessee.
- (iii) A corporation, partnership, trust, or other form of business organization which is organized for the specific purpose of acquiring part of an issue offered pursuant to this Rule shall not be deemed to be a Tennessee resident unless all of the beneficial owners of the organization are Tennessee residents.

Investors shall have the right to cancel investment commitments for any reason until forty-eight (48) hours before the anticipated offering deadline.

3. Offering.

- (i) Every offer and sale pursuant to the Invest Tennessee Exemption offering must meet all of the terms and conditions of this Rule.
- (ii) Integration. Offers and sales that are made twelve (12) months before the start and/or (6) six months following the completion of this exemption offering will be considered a part of the Invest Tennessee Exemption offering for all compliance purposes, including but not limited to the one million dollar (\$1,000,000) aggregate limit per twelve (12) month period. If the issuer conducts another offering during either or both of these twelve (12) and six (6) month periods, the issuer shall bear the burden of proof to establish that the offerings are separate and should not be integrated into the exemption offering.
- (iii) The following factors shall be considered in determining whether offers and sales should be integrated for purposes of the Invest Tennessee Exemption:
  - (I) Whether the sales are part of a single plan of financing;
  - (II) Whether the sales involve issuance of the same class of securities;
  - (III) Whether the sales have been made at or about the same time;
  - (IV) Whether the same type of consideration is being received; and
  - (V) Whether the sales are made for the same general purpose.

4. Limitation on resales. During the period in which securities that are part of an offering pursuant to the Invest Tennessee Exemption are being offered and sold by the issuer, and for a period of nine (9) months from the date of the last sale by the issuer, all resales of any part of the issue, by any person, shall be made only to Tennessee residents.

5. Precautions against interstate offers and sales.

- (i) The issuer shall, in connection with any securities sold by it pursuant to this exemption:
  - (I) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act

and the 1933 Act and set forth the limitations on resales contained in part (3)(a)4. of this Rule;

- (II) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities or, if the issuer transfers its own securities, make a notation in the appropriate records of the issuer; and
  - (III) Obtain a written representation from each offeree and purchaser as to such offeree's and purchaser's residence.
- (ii) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in part (3)(a)4. of this Rule, take the steps required by subpart (3)(a)5.(i).
  - (iii) The issuer shall, in connection with any offers or sales by it pursuant to this exemption, disclose in writing the limitations on resale contained in part (3)(a)4. and items (3)(a)5.(i)(I-II).

6. Bank or Depository Institution.

- (i) The issuer shall maintain a copy of its escrow agreement with a bank or depository institution authorized to do business in Tennessee in which the issuer will deposit all of the investor funds or cause all of the investor funds to be deposited. The bank or depository institution in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person.
- (ii) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement.
- (iii) In addition to the forty-eight (48) hour right of cancellation set forth in part (3)(a)2.above, an investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement.

(b) Filing Requirement. Before offering to sell any security, the issuer shall file with the Division a notice on the Notice of Intention to Offer or Sell Securities Pursuant to the Invest Tennessee Exemption Form providing the information set forth in T.C.A. §48-1-103(a)(13)(A)(v). In conjunction with the notice filing requirements set forth in this subparagraph (3)(b), the issuer shall also be required to:

1. File with the Division Form U-2 Uniform Consent to Service of Process;
2. If the issuer is a corporation, file with the Division Form U-2A Uniform Form of Corporate Resolution;
3. Provide the Division with a copy of the fully executed escrow agreement between the issuer and a bank or depository institution authorized to do business in Tennessee in which the issuer states that it will deposit all of the investor funds or cause all of the investor funds to be deposited, the target offering amount to be raised by the offering plus the minimum aggregate amount before escrowed funds may be accessed by the issuer, and the time limit (to be expressed as a date certain) by which the target offering amount must be reached;
4. Provide the Division with a signed acknowledgement requiring the issuer to notify the commissioner immediately upon the issuance of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, or similar order entered or issued by any regulatory authority or by any court, concerning the securities

covered by the notice or other securities offered or sold by the issuer or any order, judgment, decree, or conviction listed in T.C.A. §48-1-103(a)(13)(C)(iii);

5. Provide the Division with a signed statement of whether or not the issuer, an officer, director, partner, or trustee of the issuer, or an individual occupying similar status or performing similar functions for the issuer, or an individual owning ten percent (10%) or more of the outstanding shares of any class or classes of securities issued by the issuer is or has ever been the subject of any order described in subpart (3)(b)4. or any order, judgment, decree, or conviction listed in T.C.A. §48-1-103(a)(13)(C)(iii);
  6. Pay the Division a non-refundable filing fee in the amount of one hundred dollars (\$100); and
  7. Promptly provide any additional information requested by the Division.
- (c) Amendment. The issuer shall amend its notice filing required by subparagraph (3)(b) as is necessary to correct any material change relating to the issuer, the persons acting on behalf of the issuer, or the bank or depository institution in which proceeds from the sale of the security will be deposited. No fee shall be charged to amend the notice filing.
- (4) Solicitation via the Internet. An issuer shall not use the Internet to offer or sell securities pursuant to this exemption unless access to the issuer's website where the offering of securities pursuant to this exemption may be viewed is only available to Tennessee residents, as defined in this Rule, and the issuer can establish that the offering cannot be viewed by residents of other states. The issuer bears the burden of proof and shall keep documentation to prove that no person or entity that is a resident of a state other than Tennessee has accessed the website regarding this intrastate offering.

Authority: T.C.A. §§48-1-103(a)(13), 48-1-115, 48-1-116, 48-1-124(e), Public Acts of 2014, Chapter 943, 17 C.F.R. §230.500(f), and 17 C.F.R. §230.504(a)(3). Administrative History: Original rule filed \_\_\_\_\_

\* 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 the Department of Commerce and Insurance on 8/4/15 (mm/dd/yyyy), 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: 02/26/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 04/22/2015

Date: 8/4/15

Signature: Julie Mix McPeak

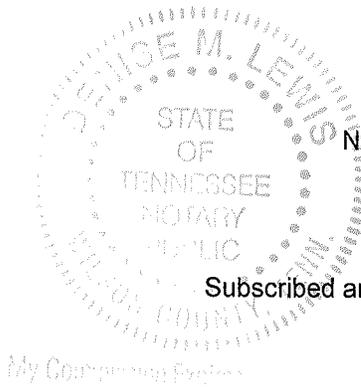
Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 8/4/15

Notary Public Signature: Neville M Lewis

My commission expires on: 2/15/16



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

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter

9/2/2015  
Date

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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 1**

In Section 3(a)(1)(i), insert "deemed to be" after "An issuer shall be ..." to be consistent with the language of 17 C.F.R. Section 230.147.

### **Agency Response to Comment 1**

The Division has included the suggested language in the proposed rule.

### **Comment 2**

Strike Section 4 and replace it with language that is more consistent with the Compliance and Disclosure Interpretations released by the Securities and Exchange Commission ("SEC") on October 2, 2014. The SEC stated that an offeror can advertise an offering on a website and still qualify for an intrastate securities offering exemption if the website has adequate measures in place to ensure that the offers of securities are made only to persons resident in the relevant state. The SEC discussed the use of Internet Protocol ("IP") addresses as a way to track and limit access to a state-only website.

### **Agency Response to Comment 2**

The Division discussed this comment with its IT personnel and is concerned that IP addresses can be easily circumvented and that the proposed language which focuses on the origination of IP addresses would not adequately protect Tennessee investors against fraud. Therefore, the Division declines to adopt the proposed language.

### **Comment 3**

With respect to the established authority set forth at the end of the proposed rule, strike all references to federal regulations, which provide no source of state rulemaking authority.

### **Agency Response to Comment 3**

The State Attorney General's Office has conducted an initial review of the proposed rule and determined that the information provided in the Authority for the proposed rule is appropriate. Therefore, the Division declines to adopt the proposed change.

### **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 Commerce and Insurance ("Department") has considered whether the proposed rule in this Rulemaking Hearing Rule will have an economic impact on small businesses (businesses with fifty (50) or fewer employees) and determined that it is not anticipated to have a significant economic impact on small businesses. Chapter 943 of the Public Acts of 2014 authorizes the Commissioner to promulgate rules to implement T.C.A. § 48-1-103(a)(13), known as the Invest Tennessee Exemption, which permits Tennessee entities to offer and sell securities to Tennessee residents without registering those securities with the Department for up to a maximum aggregate offering of one million dollars (\$1,000,000) during a twelve (12) month rolling period. These rules clarify the requirements that Tennessee entities' offerings must meet in order to qualify for the Invest Tennessee Exemption from securities registration requirements.

The outcome of the analysis set forth in T.C.A. § 4-5-403 is as follows:

- (1) The proposed rule will only apply to Tennessee entities seeking to offer and sell securities pursuant to the Invest Tennessee Exemption.
- (2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule is not anticipated to place any substantial burden on any small business engaged in raising capital pursuant to the Invest Tennessee Exemption.
- (3) The effect of this proposed rule on small businesses and consumers is negligible. The rule will only affect Tennessee entities that want to raise capital pursuant to the Invest Tennessee Exemption.
- (4) There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.
- (5) This proposed rule is based on federal securities regulations and is substantially similar to other states' regulations regarding intrastate securities registration exemptions.
- (6) The exemption of small businesses from the requirements of this proposed rule would undermine the ability of the Department to protect Tennessee investors from securities fraud.

### **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)

This rule will not have an impact on local governments.

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

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

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

The proposed rule implements T.C.A. § 48-1-103(a)(17), providing details regarding eligibility for and compliance with the new securities registration exemption, the Invest Tennessee Exemption. The Invest Tennessee Exemption permits Tennessee entities to conduct an offering of securities to Tennessee investors of up to one million dollars (\$1,000,000) over a twelve (12) month rolling period without being required to register those securities with the Securities Division of the Department of Commerce and Insurance.

- (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;

T.C.A. §§ 48-1-103(a)(13), 48-1-115, 48-1-116, 48-1-124(e), and Public Acts of 2014, Chapter 943 authorize the Commissioner to promulgate rules to implement the Invest Tennessee Exemption. 17 C.F.R. §230.500(f) and 17 C.F.R. § 230.504(a)(3) establish guidelines for compliance with federal securities law.

- (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;

This rule will apply to Tennessee entities that want to raise capital from Tennessee investors pursuant to the Invest Tennessee Exemption. The Department received one letter supporting the adoption of this rule. The Department is not aware of anyone who urges rejection of this rule.

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

None.

- (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;

None.

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

Daphne D. Smith, Assistant Commissioner for Securities.

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

Sarah Branch, Assistant General Counsel for Securities, Tony Greer, Chief Counsel for Securities.

- (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

500 James Robertson Parkway, Nashville, TN 37243; 615-253-4701; Sarah.Branch@tn.gov

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

None.