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Sequence Number: 10-16-12
Rule ID(s): 5328-5329
File Date: 10/16/12
Effective Date: 1/14/13

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Tom Moss
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Revision Type (check all that apply):

___ Amendment
X New
X 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**
0400-45-04	Regulations Governing the Waterworks Construction Loan Act
Rule Number	**Rule Title**
0400-45-04-.01	Purpose
0400-45-04-.02	Definitions
0400-45-04-.03	General
0400-45-04-.04	Eligible Applicants
0400-45-04-.05	Applications
0400-45-04-.06	Determination of Eligibility
0400-45-04-.07	General Criteria for Evaluation of Eligible Applications

Chapter Number	**Chapter Title**
1200-05-04	Regulations Governing the Waterworks Construction Loan Act
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1200-05-04-.01	Purpose
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1200-05-04-.03	General
1200-05-04-.04	Eligible Applicants
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1200-05-04-.07	General Criteria for Evaluation of Eligible Applications

(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)

Repeal

Chapter 1200-04-04 Regulations Governing the Waterworks Construction Loan Act is repealed.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-45-04
Regulations Governing the Waterworks Construction Loan Act

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0400-45-04-.01 Purpose
0400-45-04-.02 Definitions
0400-45-04-.03 General
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0400-45-04-.07 General Criteria for Evaluation of Eligible Applications

0400-45-04-.01 Purpose.

The primary purpose of "The Waterworks Construction Loan Act of 1974" is to provide loans to local units of government to stimulate the construction and improvements of needed water supply systems in order to provide the citizens of Tennessee, as well as visitors to the State, an adequate supply of safe water. In making these loans available, the State is in no way attempting to assume responsibilities of local government units to provide adequate water service to the people. As the funds available are sufficient to meet only a part of the total need, in making loans the State must place great emphasis on:

(1) Providing an adequate and safe supply of water for the area to be served;

(2) The availability of grants and loans from other sources;

(3) The creation of efficient systems of regional water supply; and

(4) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.02 Definitions.

Pursuant to § 68-221-502 of "The Waterworks Construction Loan Act of 1974" and within the scope of this Act, the following definitions will be used unless the context requires otherwise:

"Act" shall mean "The Waterworks Construction Loan Act of 1974", same being T.C.A §§ 68-221-501 et seq.

"Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of waterworks, preliminary planning to determine the economic and engineering feasibility of waterworks, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of waterworks, and the inspection and supervision of the construction of waterworks.

"Construction Cost" shall mean the actual cost of construction of the eligible portions of any project for which a loan is made under the Act, including engineering, legal, fiscal, contingency costs, cost of real property, service connections, meters and meter installations, for water supply systems, or alterations to existing systems. No cost

shall be eligible for recurring annual expenditures for administration, repairs, operation and maintenance of any water supply system.

"Department" means the Tennessee Department of Environment and Conservation.

"Eligible Project" means a project for the construction of waterworks for which approval is required under T.C.A §§ 68-221-501 et seq., which conforms with the applicable rules and regulations of the department, and which in the judgment of the department is economically feasible.

"Law" includes any act or statute, general, special, or local, and the charter of any incorporated town or city or metropolitan government of this state.

"Municipality" means any county, metropolitan government, incorporated town or city, or special district of this state empowered to provide water services, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

"Regional Water Supply System" shall mean a municipality that has the capability to provide water service to an area, either by extension of water service into an area outside its own boundaries or the boundaries of another municipality, or by the acquisition of an existing system, and is permitted, by law, to serve the area; and will make a commitment satisfactory to the Department to extend such services; will minimize the cost of integration with other system(s) where proximity of such system(s) indicate the integration is or may become economically feasible; and the system is administered by a common management.

"Waterworks" shall be constructed to include all or any part of the following: source of supply, pumping facilities, purification works, collection and storage facilities and distribution system for water, together with all necessary parts and appurtenances for proper operation.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.03 General.

Subject to the provisions governing the allocations of funds set forth in the Act, the department will enter into contract with municipalities to make loans for the construction of new or improvement of existing water systems. Applications for the funds will be filed in accordance with Rule 0400-45-04-.05. Pursuant to T.C.A § 68-221-102, the plans and specifications for the work proposed to be constructed shall be approved in writing by the department prior to the initiation of any construction. The facilities shall be operated in accordance with rules and regulations. The staff of the Division of Water Resources will do a detailed review of the economic analysis submitted with the application in order to ascertain the economic feasibility of the proposed project.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.04 Eligible Applicants

(1) Only municipalities as defined in these rules and regulations and the Act shall be eligible to apply for loans to assist in the financing of the cost of construction of new of the improvement or expansion of existing water supply system projects.

(2) No applicant shall be eligible for the award of a loan unless the applicant demonstrates to the satisfaction of the Division of Water Resources that:

(a) The applicant is a municipality as defined in these rules and regulations and the Act.

(b) The applicant has the financial capacity to provide its share of the project costs. To the extent that the costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or may be expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify, that the additional debt, together with the applicant's existing debt, is within the debt limitation provisions of the general laws of the State.

(c) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances of the State.

(d) The estimated revenues to be derived from the project under the applicant's proposed schedule of fees and charges will be adequate to provide for proper operation, maintenance, and administration, reasonable expansion of the system and repayment of present and proposed indebtedness, as determined from the detailed engineering report and other available information, and will comply with T.C.A. §§ 68-221-512 and 68-221-513. For this purpose, if the project described in the application is to be an integral part of an existing system, the revenues to be derived from operation of the entire system shall be utilized in determining the adequacy of the applicant's proposed schedule of fees and charges.

(e) The applicant has attempted, without success to obtain the necessary financial assistance from other State, Federal, or private sources at a lesser cost.

(f) The proposed project will be placed under construction within the fiscal year in which the loan is received. The repayment period may be determined by the applicant, but in no case shall the period exceed thirty (30) years. Also, repayment shall begin no later than one month after completion of the project. Each municipality after entering into a loan agreement shall remit to the Tennessee Local Development Authority such amounts and at such times as shown in the amortization schedule established by the Tennessee Local Development Authority and the Department.

(3) Eligible Project Costs – Eligible project costs shall include the actual cost of construction of facilities, and the cost of equipment and appurtenances, for any project for which a loan is made under the Act, and the actual cost of necessary engineering, legal, and fiscal services related to the project for which a loan is made. Eligible costs also include the cost of purchase of acquisition of real property or interest therein. Costs incurred prior to approval of the application will be eligible with the exception of those costs involved in completing the documents for the application.

(4) Limitations on Eligible Costs – Eligible costs are limited to the extent that any one project shall not be awarded a loan which exceeds 25% of the total funds appropriated by the Legislation.

(5) Exclusion from Eligible Costs – Eligible costs do not include recurring annual expenditures for administration, repairs, operation and maintenance of any water supply systems project, and these costs must be excluded from the applicant's share of the total construction costs.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.05 Applications

(1) Applications for project grants for the construction of new or the expansion or improvement of existing water supply systems shall be submitted on the appropriate form, and shall be accompanied by all documentation, assurances, and other information called for in the instructions for completing and filing of applications.

(2) All applications shall be complete and received in the Central Office of the Division of Water Resources no later than May 1 of the year preceding the fiscal year in which the funds are available.

(3) All applications for project loans of water supply shall be so identified and be forwarded directly to the Director of the Division of Water Resources. Applications and all supporting documents shall be submitted in such form and in such number as specified in the instructions for completing applications.

(4) Any application which does not contain information sufficient to permit the Division of Water Resources to determine either the eligibility of the application or the assignment of a priority, shall not be deemed as received until such information is furnished by the applicant to the Division of Water Resources.

(5) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the Division of Water Resources.

(6) An applicant may amend a pending application to include additional data or information in support of its original application at any time prior to the date on which the final priority to be assigned to application is determined.

(7) An application may be withdrawn from consideration upon request of the applicant, but if resubmitted shall be considered as a new application.

(8) The amount of the loan request in the application can be adjusted provided the funds are available and the change is not caused by the change in the project scope.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.06 Determination of Eligibility

(1) Each application and supporting documents shall be reviewed by the Division of Water Resources to determine if it contains all required information and meets the eligibility requirements of the Act and these rules and regulations.

(2) Each applicant will be notified by the Division of Water Resources within sixty (60) days of the actual date of receipt of the application as to eligibility for consideration for a project loan award.

(3) Applications from ineligible applicants will be returned to the applicant.

(4) Eligible applications will be processed for priority determination and qualifications for a project loan award in accordance with the procedures set forth in these rules and regulations.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.07 General Criteria for Evaluation of Eligible Applications.

During the review periods set forth in these rules and regulations, all eligible applicants shall be assigned a priority for loan funds. Priorities shall be assigned by the Division of Water Resources for applications for project loans for water systems based upon the following criteria:

	CRITERIA CATEGORIES	POINTS
(1)	Public Health Needs	
	If the water being conveyed to the consumer by municipal systems has been declared by the Division of Water Resources to be an actual and/or potential health hazard because of the chemical or bacteriological quality	25
	or	
	If water presently being conveyed to the consumers is from individual systems and is declared by the Division of Water Resources to be an actual and/or a potential health hazard because of the chemical or bacteriological quality	20
(2)	Financial Needs	
	One point will be given for each $100 of total (present plus proposed) indebtedness per connection up to a maximum of	20
(3)	Treatment Facility Needs (quantity)	
	Applications for systems not capable of meeting the needs (quantity) of present consumers will receive	20
	or	

	Those systems not capable of meeting the needs (quantity) of new consumers will receive	20
(4)	Regional Water System	
	If the proposed project is part of a regional system, the application will receive	20
	or	
	If the proposed project will become a part of a regional system, within two years, the application will receive	15
(5)	Distribution System	
	Applications for systems that must improve in order to meet the maximum demand of the present consumer will receive	15
	or	
	Application for systems that must be expanded to serve additional consumers will receive	10

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on _____ (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: 10/18/11

Rulemaking Hearing(s) Conducted on: (add more dates). 12/13/11, 12/14/11 and 12/16/11

Date: 8/30/12

Signature: [signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

BETH B. SMITH
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: August 30, 2012

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

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.

[signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

10-7-12
Date

Department of State Use Only

Filed with the Department of State on: 10/16/12

Effective on: 1/14/13

[signature]
Tre Hargett
Secretary of State

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PUBLIC RECORDS

Public Hearing Comments

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

There were no comments made during the public comment period.

Regulatory Flexibility Addendum

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

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

The rule changes will have no impact. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

(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.

There should be no additional costs associated with the rule compliance.

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

The rule changes will not impact small businesses or consumers. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

(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 should be no additional costs associated with the rule compliance.

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

There is no comparable federal rule.

(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.

Not applicable. This rule is for a loan program.

Impact on Local Governments

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

The Department does not anticipate 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;

These rule amendments move the rules to Chapter 0400-45-04 from Chapter 1200-05-04 and make editorial/citation corrections.

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

The Tennessee Waterworks Construction Loan Rules are under T.C.A. §§ 68-221-501 et seq., Tennessee Waterworks Construction Loan Act. There is no comparable federal rule.

(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;

The affected parties are those municipalities that provided money for bonds or notes initially to establish the loan program.

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

The Department is not aware of any.

(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;

There should be no impact from the proposed changes.

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

Tom Moss Division of Water Resources 6th Floor L & C Tower Nashville, Tennessee

(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 Office of General Counsel

(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

Office of General Counsel Tennessee Department of Environment and Conservation 20th Floor L & C Tower Nashville, Tennessee 37243-1548 (615) 532-0131 Alan.Leiserson@tn.gov

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

The Department is not aware of any.

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Revision Type (check all that apply):

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

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Repeal

Chapter 1200-04-04 Regulations Governing the Waterworks Construction Loan Act is repealed.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-45-04
Regulations Governing the Waterworks Construction Loan Act

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0400-45-04-.01 Purpose
0400-45-04-.02 Definitions
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0400-45-04-.05 Applications
0400-45-04-.06 Determination of Eligibility
0400-45-04-.07 General Criteria for Evaluation of Eligible Applications

~~1200-5-4-.01~~ 0400-45-04-.01 Purpose.

The primary purpose of "The Waterworks Construction Loan Act of 1974" is to provide loans to local units of government to stimulate the construction and improvements of needed water supply systems in order to provide the citizens of Tennessee, as well as visitors to the ~~Senate~~ State, an adequate supply of safe water. In making these loans available, the State is in no way attempting to assume responsibilities of local government units to provide adequate water service to the people. As the funds available are sufficient to meet only a part of the total need, in making loans the State must place great emphasis on:

(1) Providing an adequate and safe supply of water for the area to be served;

(2) The availability of grants and loans from other sources;

(3) The creation of efficient systems of regional water supply; and

(4) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.02~~ 0400-45-04-.02 Definitions.

Pursuant to ~~Section 2~~ § 68-221-502 of "The Waterworks Construction Loan Act of 1974" and within the scope of this Act, the following definitions will be used unless the context requires otherwise:

~~(7)~~"Act" shall mean "The Waterworks Construction Loan Act of 1974", same being ~~Chapter 671, Public Acts of 1974~~ T.C.A §§ 68-221-501 et seq.

~~(2)~~"Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of waterworks, preliminary planning to determine the economic and engineering feasibility of waterworks, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of waterworks, and the inspection and supervision of the construction of waterworks.

~~(9)~~"Construction Cost" shall mean the actual cost of construction of the eligible portions of any project for which a loan is made under the Act, including engineering, legal, fiscal, contingency costs, cost of real property, service

connections, meters and meter installations, for water supply systems, or alterations to existing systems. No cost shall be eligible for recurring annual expenditures for administration, repairs, operation and maintenance of any water supply system.

~~(3)~~"Department" means the Tennessee Department of ~~Public Health~~ Environment and Conservation.

~~(4)~~"Eligible Project" means a project for the construction of waterworks for which approval is required under ~~Chapter 20 of Title 53 Tennessee Code Annotated~~ T.C.A §§ 68-221-501 et seq., which conforms with the applicable rules and regulations of the department, and which in the judgment of the department is economically feasible.

~~(6)~~"Law" includes any act or statute, general, special, or local, and the charter of any incorporated town or city or metropolitan government of this state.

~~(5)~~"Municipality" means any county, metropolitan government, incorporated town or city, or special district of this state empowered to provide water services, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

~~(8)~~"Regional Water Supply System" shall mean a municipality that has the capability to provide water service to an area, either by extension of water service into an area outside its own boundaries or the boundaries of another municipality, or by the acquisition of an existing system, and is permitted, by law, to serve the area; and will make a commitment satisfactory to the Department to extend such services; will minimize the cost of integration with other system(s) where proximity of such system(s) indicate the integration is or may become economically feasible; and the system is administered by a common management.

~~(1)~~"Waterworks" shall be constructed to include all or any part of the following: source of supply, pumping facilities, purification works, collection and storage facilities and distribution system for water, together with all necessary parts and appurtenances for proper operation.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.03~~ 0400-45-04-.03 General.

Subject to the provisions governing the allocations of funds set forth in the Act, the department will enter into contract with municipalities to make loans for the construction of new or improvement of existing water systems. Applications for the funds will be filed in accordance with ~~Section 5~~ Rule 0400-45-04-.05 ~~of these regulations.~~ Pursuant to ~~Section 53-2002 of Tennessee Code Annotated~~ T.C.A § 68-221-102, the plans and specifications for the work proposed to be constructed shall be approved in writing by the department prior to the initiation of any construction. The facilities shall be operated in accordance with rules and regulations. The staff of the Division of Water ~~Quality Control~~ Resources will do a detailed review of the economic analysis submitted with the application in order to ascertain the economic feasibility of the proposed project.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.04~~ 0400-45-04-.04 Eligible Applicants

(1) Only municipalities as defined in these rules and regulations and the Act shall be eligible to apply for loans to assist in the financing of the cost of construction of new of the improvement or expansion of existing water supply system projects.

(2) No applicant shall be eligible for the award of a loan unless the applicant demonstrates to the satisfaction of the Division of Water ~~Quality Control~~ Resources that:

(a) The applicant is a municipality as defined in these rules and regulations and the Act.

(b) The applicant has the financial capacity to provide its share of the project costs. To the extent that the costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or may be expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify, that the additional

debt, together with the applicant's existing debt, is within the debt limitation provisions of the general laws of the State.

(c) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances of the State.

(d) The estimated revenues to be derived from the project under the applicant's proposed schedule of fees and charges will be adequate to provide for proper operation, maintenance, and administration, reasonable expansion of the system and repayment of present and proposed indebtedness, as determined from the detailed engineering report and other available information, and will comply with ~~Sections 12 and 13 of the Act~~ T.C.A. §§ 68-221-512 and 68-221-513. For this purpose, if the project described in the application is to be an integral part of an existing system, the revenues to be derived from operation of the entire system shall be utilized in determining the adequacy of the applicant's proposed schedule of fees and charges.

(e) The applicant has attempted, without success to obtain the necessary financial assistance from other State, Federal, or private sources at a lesser cost.

(f) The proposed project will be placed under construction within the fiscal year in which the loan is received. The repayment period may be determined by the applicant, but in no case shall the period exceed thirty (30) years. Also, repayment shall begin no later than one month after completion of the project. Each municipality after entering into a loan agreement shall remit to the ~~State Funding Board~~ Tennessee Local Development Authority such amounts and at such times as shown in the amortization schedule established by the ~~State Funding Board~~ Tennessee Local Development Authority and the Department.

(3) Eligible Project Costs – Eligible project costs shall include the actual cost of construction of facilities, and the cost of equipment and appurtenances, for any project for which a loan is made under the Act, and the actual cost of necessary engineering, legal, and fiscal services related to the project for which a loan is made. Eligible costs also include the cost of purchase of acquisition of real property or interest therein. Costs incurred prior to approval of the application will be eligible with the exception of those costs involved in completing the documents for the application.

(4) Limitations on Eligible Costs – Eligible costs are limited to the extent that any one project shall not be awarded a loan which exceeds 25% of the total funds appropriated by the Legislation.

(5) Exclusion from Eligible Costs – Eligible costs do not include recurring annual expenditures for administration, repairs, operation and maintenance of any water supply systems project, and these costs must be excluded from the applicant's share of the total construction costs.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.05~~ 0400-45-04-.05 Applications

(1) Applications for project grants for the construction of new or the expansion or improvement of existing water supply systems shall be submitted on the appropriate form, and shall be accompanied by all documentation, assurances, and other information called for in the instructions for completing and filing of applications.

(2) All applications shall be complete and received in the ~~Nashville~~ Central Office of the Division of Water ~~Quality Control of the Tennessee Department of Public Health~~ Resources no later than May 1 of the year preceding the fiscal year in which the funds are available~~, except for fiscal year 1975 for which a special date will be set~~.

(3) All applications for project loans of water supply shall be so identified and be forwarded directly to the Director of the Division of Water ~~Quality Control of the Tennessee Department of Public Health~~ Resources. Applications and all supporting documents shall be submitted in such form and in such number as specified in the instructions for completing applications.

(4) Any application which does not contain information sufficient to permit the Division of Water ~~Quality Control~~ Resources to determine either the eligibility of the application or the assignment of a priority, shall not be deemed as received until such information is furnished by the applicant to the Division of Water ~~Quality Control~~ Resources.

(5) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the Division of Water ~~Quality Control~~ Resources.

(6) An applicant may amend a pending application to include additional data or information in support of its original application at any time prior to the date on which the final priority to be assigned to application is determined.

(7) An application may be withdrawn from consideration upon request of the applicant, but if resubmitted shall be considered as a new application.

(8) The amount of the loan request in the application can be adjusted provided the funds are available and the change is not caused by the change in the project scope.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.06~~ 0400-45-04-.06 Determination of Eligibility

(1) Each application and supporting documents shall be reviewed by the Division of Water ~~Quality Control~~ Resources to determine if it contains all required information and meets the eligibility requirements of the Act and these rules and regulations.

(2) Each applicant will be notified by the Division of Water ~~Quality Control~~ Resources within sixty (60) days of the actual date of receipt of the application as to eligibility for consideration for a project loan award.

(3) Applications from ineligible applicants will be returned to the applicant.

(4) Eligible applications will be processed for priority determination and qualifications for a project loan award in accordance with the procedures set forth in these rules and regulations.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.07~~ 0400-45-04-.07 General Criteria for Evaluation of Eligible Applications.

During the review periods set forth in these rules and regulations, all eligible applicants shall be assigned a priority for loan funds. Priorities shall be assigned by the Division of Water ~~Quality Control~~ Resources for applications for project loans for water systems based upon the following criteria:

CRITERIA CATEGORIES	POINTS
(1) Public Health Needs	
If the water being conveyed to the consumer by municipal systems has been declared by the Division of Water ~~Quality Control~~ Resources ~~of the Tennessee Department of Public Health~~ to be an actual and/or potential health hazard because of the chemical or bacteriological quality	25
or	
If water presently being conveyed to the consumers is from individual systems and is declared by the Division of Water ~~Quality Control~~ Resources ~~of the Tennessee Department of Public Health~~ to be an actual and/or a potential health hazard because of the chemical or bacteriological quality	20
(2) Financial Needs	

	One point will be given for each $100 of total (present plus proposed) indebtedness per connection up to a maximum of	20
(3)	Treatment Facility Needs (quantity)	
	Applications for systems not capable of meeting the needs (quantity) of present consumers will receive	20
	or	
	Those systems not capable of meeting the needs (quantity) of new consumers will receive	20
(4)	Regional ~~War~~ Water System	
	If the proposed project is part of a regional system, the application will receive	20
	or	
	If the proposed project will become a part of a regional system, within two years, the application will receive	15
(5)	Distribution System	
	Applications for systems that must improve in order to meet the maximum demand of the present consumer will receive	15
	or	
	Application for systems that must be expanded to serve additional consumers will receive	10

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on _____ (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: 10/18/11

Rulemaking Hearing(s) Conducted on: (add more dates). 12/13/11, 12/14/11 and 12/16/11

Date: _____

Signature: _____

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

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

_____
Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

_____
Tre Hargett
Secretary of State

Public Hearing Comments

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

There were no comments made during the public comment period.

Regulatory Flexibility Addendum

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

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

The rule changes will have no impact. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

(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.

There should be no additional costs associated with the rule compliance.

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

The rule changes will not impact small businesses or consumers. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

(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 should be no additional costs associated with the rule compliance.

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

There is no comparable federal rule.

(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.

Not applicable. This rule is for a loan program.

Impact on Local Governments

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

The Department does not anticipate 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;

These rule amendments move the rules to Chapter 0400-45-04 from Chapter 1200-05-04 and make editorial/citation corrections.

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

The Tennessee Waterworks Construction Loan Rules are under T.C.A. §§ 68-221-501 et seq., Tennessee Waterworks Construction Loan Act. There is no comparable federal rule.

(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;

The affected parties are those municipalities that provided money for bonds or notes initially to establish the loan program.

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

The Department is not aware of any.

(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;

There should be no impact from the proposed changes.

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

Tom Moss Division of Water Resources 6th Floor L & C Tower Nashville, Tennessee

(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 Office of General Counsel

(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

Office of General Counsel Tennessee Department of Environment and Conservation 20th Floor L & C Tower Nashville, Tennessee 37243-1548 (615) 532-0131 Alan.Leiserson@tn.gov

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

The Department is not aware of any.