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# Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

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**Rule Type:**

- Emergency Rule  
 Public Necessity Rule

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Submitted herewith are proposed rules to Chapter 0800-08 Rules Pertaining to Public Records of the rules of the Tennessee Department of Labor and Workforce Development for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Commissioner of Labor and Workforce Development has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when “[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.”

Public Chapter 1179 of the Acts of 2008 amended the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503, *et seq.* (Public Records Act). Section 6 of Public Chapter 1179 establishes the Office of Open Records Counsel (“OORC”) and requires that the OORC, among other things, “shall establish a schedule or reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. Section 1 of Public Chapter 1179 amends Tenn. Code Ann. § 10-7-503 to provide that, while the OORC is developing such a schedule, a records custodian may require a requestor to pay the records custodian’s actual costs in producing requested public records. However, when such Schedule of Reasonable Charges is developed, then this provision will no longer be applicable and the provisions of section (a)(7)(C)(1) shall become effective. That section provides that “records custodian may require a requestor to pay the custodian’s reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.”

The Office of Open Records Counsel has now developed a Schedule of Reasonable Charges for Copies of Public Records. The Schedule of Reasonable Charges specifically states that “[i]f a records custodian

determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidence by a written policy authorized by the governmental entity's governing authority." The Schedule also states that "[a] records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy." The Schedule further states that "[t]he development date of the Schedule of Reasonable Charges is October 1, 2008, and notification of the development will be given to the Tennessee Code Commission on October 31, 2008." The instructions regarding the Schedule of Reasonable Charges prepared by the OORC for records custodians specifically states that "[a]ll governmental entities must comply with T.C.A. Section 10-7-506(a) in order to charge for copies or duplication of public records requested pursuant to the Tennessee Public Records Act.

Accordingly, the Department has promulgated this public necessity rule in order to meet the deadlines mandated by the General Assembly in Public Chapter 1179 and to comply with the requirements of Tenn. Code Ann. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the Office of Open Records Counsel. Without the adoption of the public necessity rule, the Department is faced with a period of time after October 31, 2008, during which it will be unable to charge any fee for copies of public records. The Department's inability to charge any fee for copies of public records defeats one of the primary purposes of the amendments to the Public Records Act to reaffirm the authority of agencies to charge fees for copies of public records and to standardize those fees through the development of the Schedule of Reasonable Charges by the Office of Open Records Counsel.

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here.)**

<b>Chapter Number</b>	<b>Chapter Title</b>
0800-08-01	Charges for Copies of Public Records
<b>Rule Number</b>	<b>Rule Title</b>
0800-08-01-.01	Purpose and Scope
0800-08-01-.02	Definitions
0800-08-01-.03	Charges for Copies

(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>)

Public Necessity Rules  
of  
Tennessee Department of Labor and Workforce Development  
Chapter 0800-08-01  
Charges for Copies of Public Records

New Rule

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0800-08-01-.01 Purpose and Scope  
0800-08-01-.02 Definitions  
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0800-08-01-.01 Purpose and Scope

- (1) The purpose of this chapter is to implement provisions contained in the amendments to Tennessee Code Annotated § 10-7-503 establishing a schedule which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to the Tennessee Public Records Act, Tennessee Code Annotated §§ 10-7-501 et seq.
- (2) This chapter applies to charges for public records released by all agencies within the Department of Labor and Workforce Development except for records of the Division of Employment Security as described in Tennessee Code Annotated § 50-7-701(d).

Authority: 2008 Tennessee Public Acts Chapter 1179, T.C.A. § 4-3-1411, T.C.A. § 10-7-506 and T.C.A. § 50-7-701.

0800-08-01-.02 Definitions. As used in this chapter unless the context clearly otherwise requires:

- (1) "Commissioner" means the Commissioner of Labor and Workforce Development.
- (2) "OORC" means the Office of Open Records Counsel.
- (3) "Public Record" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by this agency.
- (4) "Records Custodian" means the individual(s) responsible for the production and release of public records within each operating section of the Department.

Authority: 2008 Tennessee Public Acts chapter 1179, T.C.A. § 10-7-506 and T.C.A. § 4-3-1411.

0800-08-01-.03 Charging for Copies of Public Records.

- (1) Charges for copies of public records released by the Department of Labor and Workforce Development under the authority of the Commissioner will be assessed in accordance with the current OORC Schedule of Reasonable Charges for Public Records or in accordance with the provisions contained in Title 20 Code of Federal Regulations, part 603.8(d) for copies of public records released by the Division of Employment Security.
- (2) Any charges incurred in the production of copies not specifically listed or in excess of the amounts specified in the Schedule of Reasonable Charges must be documented by the Records Custodian to justify the extra charge(s).

- (3) Charges may be reduced or waived at the discretion of the Commissioner. Appropriate documentation must be submitted by the Records Custodian when a reduction or waiver of the charges is requested.
- (4) Delivery and/or shipping costs incurred may be included in the total amount charged for the records release if appropriate.
- (5) Payment must be made in advance in the form of a check or money order made payable to the "Treasurer, State of Tennessee".

Authority: 2008 Tennessee Public Acts chapter 1179, T.C.A. § 4-3-1411, T.C.A. § 10-7-506 and T.C.A. § 50-7-701.