

**RULES
OF
THE TENNESSEE HIGHER EDUCATION COMMISSION**

**CHAPTER 1540-01-10
REGULATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS WITH OPTIONAL EXPEDITED
AUTHORIZATION (OEA)**

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1540-01-10-.01 INCORPORATION OF RULES.

- (1) Rules 1540-01-02-.01, .02, .04, .09, .18 and .23 shall be incorporated into this Rule Chapter as if fully written herein.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
Administrative History: Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017. Original rules filed December 21, 2016; effective March 21, 2017. Emergency rules filed June 29, 2022; effective July 1, 2022 through December 28, 2022. Amendments filed September 30, 2022; effective December 29, 2022.

1540-01-10-.02 DEFINITIONS.

- (1) "Accreditation" is a non-governmental, peer evaluation of postsecondary educational institutions and programs by private educational associations that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. The date of accreditation is the date applicable to a location and includes approval, recognition, or similar designation of a branch, satellite, instructional, or other location descriptor used by an accreditor. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.
- (2) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.
- (3) "Articulation and transfer of credit agreement" means an arrangement between two (2) higher education institutions that is approved and signed by authorized institutional representatives and constructed by faculty in the discipline that (1) equates for transfer of a defined set or block of academic credits that will meet requirements of a specified program at a degree-awarding institution or (2) provides that a specific credential from one institution will meet the admission education requirement for a program leading to a higher credential at a second institution.
- (4) "Authorization" means approval of a postsecondary educational institution by the Commission for the institution to engage in activities or operations otherwise prohibited by T.C.A. § 49-7-2007. Authorization is for a specified time at a specified location. Institutions shall not use authorization to connote greater approval than simple permission to engage in allowed activities or operations. Terms which may not be used include, but are not limited to, "accredited by," "supervised by," "endorsed by," and "recommended by the Commission."
- (5) "Commission" means the Tennessee Higher Education Commission.

(Rule 1540-01-10-.02, continued)

- (6) "Division of Postsecondary State Authorization" or "DPSA" means the division within the Tennessee Higher Education Commission tasked with overseeing the implementation and enforcement of the Act and these rules.
- (7) "Enrollment" or "Enrolled" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.
- (8) "Federal student financial aid programs" means any of the various loans or grants offered to students, parents, or institutions through Title IV of the Higher Education Opportunity Act, as amended.
- (9) "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
- (10) "License" or "Licensure" includes similar terms, such as registration and certification, and means a designation from a subject matter expert state agency, board, or commission indicating that the recipient has met certain requirements for obtaining the designation, for example, a licensed massage therapist or educator.
- (11) "Location" means an address that may be used for purposes of a postsecondary educational institution in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons at the address. When physical presence activities or operations are not the result of instruction at a postsecondary educational institution location as determined by the Commission staff, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location.
- (12) "Optional expedited authorization" or "OEA" means the alternative optional authorization available pursuant to T.C.A. § 49-7-2022 and these rules to certain accredited postsecondary educational institutions.
- (13) "Other fees" means fees, other than tuition, paid to the institution or third parties for products or services, including, but not limited to, fees paid for tangible goods, laboratory fees, technology fees, student activity fees, graduation fees, or fees paid for housing, meals, or transportation.
- (14) "Ownership" and "Owner" mean:
 - (a) The individual, if the postsecondary educational institution is a sole proprietorship;
 - (b) All partners, whether full, silent, or limited, if the postsecondary educational institution is a partnership;
 - (c) All individuals and entities with an interest in the for-profit corporation or other for-profit legal entity, if the postsecondary educational institution is a for-profit corporation or other for-profit legal entity; or
 - (d) The executive committee of the governing board, if the postsecondary educational institution is a not-for-profit or nonprofit entity.
- (15) "Postsecondary educational institution" includes, but is not limited to, a school, college, university, or other type of entity offering educational credentials, instruction, educational

(Rule 1540-01-10-.02, continued)

services, or other activities as described in T.C.A. § 49-7-2007, primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for the attainment of educational, professional, or vocational objectives. The terms “location,” “postsecondary educational institution,” and “institution” may be used interchangeably such that determinations made pursuant to the Act and these rules are made in regard to the specific location.

- (16) “Primarily located” means the state recognized by the accreditor as the state in which the main campus is located;
- (17) “Prospective student” means a student who has been accepted for attendance at an institution but who is not enrolled as defined in subparagraph (7) of this rule.
- (18) “Supervised field experiences” means a student learning experience comprised primarily of the practical application of previously studied theories and skills, under the oversight of a supervisor, mentor, faculty member or other qualified professional who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. The supervised field experience is part of a program of study offered by the enrolling institution. Examples include, but are not limited to, practica, student teaching, clinical placements, or internships.
- (19) “These rules” means all rules contained in Rule Chapter 1540-01-10.
- (20) “Tuition” means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
Administrative History: Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017. Original rules filed December 21, 2016; effective March 21, 2017. Emergency rules filed June 29, 2022; effective July 1, 2022 through December 28, 2022. Amendments filed September 30, 2022; effective December 29, 2022.

1540-01-10-.03 ELIGIBILITY AND APPLICATION REQUIREMENTS.

- (1) In order to receive OEA, a postsecondary educational institution must submit a signed OEA Application demonstrating that the institution meets the following eligibility requirements:
 - (a) Be accredited by an accrediting agency recognized by the U.S. Department of Education; and
 - (b) Provide the following information and documentation:
 - 1. Evidence of institutional accreditation from an institutional accrediting agency recognized by the U.S. Department of Education indicating that the location for which authorization is being sought is accredited or properly recognized by the accreditor;
 - 2. Documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of student complaints. In order to be a comprehensive complaint process, the process must contain:
 - (i) A detailed explanation as to how a student escalates a grievance to the highest level at the authorized location, for example, to the institutional director;

(Rule 1540-01-10-.03, continued)

- (ii) An opportunity for all persons involved in the complaint to be heard at any final step at the authorized location level, including, but not limited to, an appeal;
 - (iii) An explanation as to how the institution will notify students that complaints not resolved at the authorized location level may be filed with the Commission; and
 - (iv) An explanation as to how students will be notified of the institution's comprehensive complaint process;
3. Documentation evidencing that the institution is authorized or exempt from authorization in the state where it is primarily located, if the institution is not authorized in Tennessee;
4. Documentation, if deemed necessary, evidencing that the institution meets and maintains financial standards and institutional stability acceptable by the accreditor for the purpose of maintaining accreditation or the United States Department of Education for the purpose of being a Title IV eligible institution;
5. A comprehensive list or verification of all programs offered at the institution along with, when applicable, documentation evidencing receipt of all requisite program approvals from subject matter expert state licensing agencies, boards, or commissions. Evidence shall be provided for any program designed to train a student for employment in a field where a license is required in order to be employed in that field. The evidence shall clearly demonstrate that the state agency, board, or commission has determined that the program meets the educational requirements necessary to receive a license or sit for a required exam. The comprehensive list or verification shall include, at a minimum, the following information:
 - (i) Program name;
 - (ii) DPSA assigned program code;
 - (iii) Credential awarded;
 - (iv) Credit hours or contact hours to be awarded;
 - (v) Length of time expected to complete the program;
 - (vi) Cost of program tuition;
 - (vii) Cost of other fees;
 - (viii) Program status;
 - (ix) A Classification of Instructional Programs (CIP) code;
 - (x) Whether programmatic accreditation is required for the program and the name of the accreditor that has reviewed and accredited the program; and
6. The website addresses to the most current version of the following information. The address should provide a reasonable person easy access to this information;

(Rule 1540-01-10-.03, continued)

- (i) Costs of attendance;
 - (ii) Information on whether academic credits attained are transferable to other institutions operating in Tennessee;
 - (iii) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee, if applicable; and
 - (iv) Federal student cohort default rates.
 7. A report of any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students with any corrective action and remedies taken by the institution;
 8. A description of the ownership of the institution and when applicable, a corporate flowchart or tree showing the institution's position in relationship to all affiliated legal entities;
 9. The most recently calculated three-year (3) official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education;
 10. Affirmation of the requirement to submit statistical data as described in Rule 1540-01-02-.18; and
 11. Other than public institutions, a continuous institutional surety bond on the prescribed form.
- (c) OEA will be granted for four (4) years, unless otherwise determined by the Executive Director or the Commission. Institutions with a four (4) year authorization term shall submit Certifications of Compliance as provided for in these rules in years one (1), two (2), and three (3) and an OEA Application as provided for in these rules in year four (4).
- (d) Commission staff will review an OEA Application to determine whether the application demonstrates that the institution complies with all requisite standards. Upon such a finding and in the case of an initial application, Commission staff will recommend that the Executive Director grant the institution provisional initial authorization.
1. An award of provisional initial authorization shall be subject to review and ratification by the Commission.
 2. If an award of provisional initial authorization is ratified by the Commission, authorization becomes OEA.
 3. If an award of provisional initial authorization is not ratified by the Commission, the institution shall cease all activities and operations as directed by Commission staff in accordance with the Act and these rules.
 4. An institution awarded provisional initial authorization may engage in activities and operations; however, limitations as to time, procedures, functions, or other conditions may be imposed as deemed necessary. Such limitations may include, but not be limited to, notifying prospective students in the enrollment agreement, or similar document, that the institution:

(Rule 1540-01-10-.03, continued)

- (i) Is authorized provisionally subject to ratification by the Commission, and
 - (ii) Must refund all moneys paid by or on behalf of prospective or enrolled students in the event that the Commission does not ratify the award of provisional authorization thereby requiring the institution to cease activities or operations such that students are unable to begin or complete the program of enrollment.
- (e) In the event that an OEA Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall provide written notice of the deficiencies to the applicant and provide applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application may be denied or Commission staff will recommend that the Executive Director take adverse action, including but not limited to placing the institution on conditional authorization status, or revoking authorization.
- (2) Certification of Compliance:
- (a) Annually during the authorization term, institutions with optional expedited authorization shall file a Certification of Compliance by a due date to be established by Commission staff and posted on the Commission's website.
 - (b) The Certification of Compliance shall require at a minimum that the institution self-certify that it is engaged in activities and operations in compliance with the Act and these rules, the institution provide an updated comprehensive program list, and the certification be signed by the institutional director and, if other than the institutional director, the owner or a representative thereof.
 - (c) Commission staff will review a Certification of Compliance and, upon finding that the certification demonstrates that the institution complies with all requisite standards, notify the institution of such. In the event that the Certification of Compliance fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the Certification of Compliance by providing written notice of the deficiencies to the institution and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff may recommend that the Executive Director take adverse action, including but not limited to, placing the institution on conditional authorization status or revoking authorization.
- (3) Change of Ownership Application:
- (a) Authorization must be issued to the owner or governing body of the applicant institution and is nontransferable.
 - (b) A change of ownership occurs when a transaction results in the controlling interest in the postsecondary educational institution changing from an authorized owner to an unauthorized owner. In the event of a change of ownership, the new owner must submit to Commission staff within five (5) business days after the change in ownership is finalized:
 - 1. A Change of Ownership Application and
 - 2. A request that the Executive Director grant the new owner conditional authorization until the new owner obtains provisional initial authorization.

(Rule 1540-01-10-.03, continued)

- (c) The new owner shall submit an Initial Authorization Application as provided for in Rule Chapter 1540-01-02 or an Optional Expedited Authorization Application thirty (30) calendar days after the notice of conditional authorization.
- (d) The Change of Ownership Application shall require that the new owner provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.
- (e) Commission staff will review a Change of Ownership Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant the change of ownership and recommend that the Executive Director grant conditional authorization. In the event that the Change of Ownership Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied and the closure process described in Rule .23 of Rule Chapter 1540-01-02 may commence.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
Administrative History: Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017. Original rules filed December 21, 2016; effective March 21, 2017. Emergency rules filed June 29, 2022; effective July 1, 2022 through December 28, 2022. Amendments filed September 30, 2022; effective December 29, 2022.

1540-01-10-.04 REQUIRED NOTIFICATIONS TO COMMISSION STAFF.

- (1) OEA institutions shall notify Commission staff, within five (5) business days, of the following:
 - (a) Action by an accrediting agency in regard to the institution's accreditation status, such as revocation, suspension, probation, warning, or similar action;
 - (b) Notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, related to the delivery of educational programming or student consumer practices, including, but not limited to, class action lawsuits;
 - (c) Utilization by the institution of a letter of credit or a cash management agreement with the U.S. Department of Education;
 - (d) Public announcement of investigation by any governmental agency. The institution shall notify Commission staff whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices;
 - (e) Change of ownership; or
 - (f) Change of institutional director.
- (2) Institutions shall submit a New Program Notification Form when the institution offers a new program. Once processed, Commission staff will issue the institution a program code for use when submitting statistical data.
- (3) At the request of Commission staff, the Executive Director, or the Commission, OEA institutions shall provide any information deemed necessary to monitor the institution's eligibility for OEA.

(Rule 1540-01-10-.04, continued)

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
Administrative History: Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017. Original rules filed December 21, 2016; effective March 21, 2017. Emergency rules filed June 29, 2022; effective July 1, 2022 through December 28, 2022. Amendments filed September 30, 2022; effective December 29, 2022.

1540-01-10-.05 DENIAL OR WITHDRAWAL OF AN APPLICATION OR CERTIFICATION OF COMPLIANCE.

- (1) When an application or certification is before Commission staff for consideration, Commission staff will provide the applicant written notice of its final determination. If, upon written notification of any action taken by Commission staff, an aggrieved applicant desires a review by the Executive Director, the applicant shall notify the Executive Director within ten (10) business days of the date of the action of the Executive Director, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (2) If, upon written notification of any action taken by the Executive Director, an aggrieved applicant desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the applicant shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (3) Any person, agent, group or entity aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
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1540-01-10-.06 CONDITIONAL STATUS OF OR REVOCATION OF OEA STATUS.

- (1) OEA may be made conditional or revoked for just cause or as otherwise noted in T.C.A. § 49-7-2022. Revocation can occur as a result of:
 - (a) A vote of the Commission on its own motion or
 - (b) A determination of the Executive Director pursuant to Rule 1540-01-02-.02(e).
- (2) Just cause includes activities where the institution acted contrary to the public interest, exhibits questionable financial strength, or is not operating educational programs with acceptable outcomes and includes, but is not limited to:
 - (a) Loss or failure to meet any of the listed criteria for eligibility in Rule .03(1) of these rules;
 - (b) Failure to fulfill the requirements in Rule .03 of these rules;
 - (c) A finding resulting from a complaint.

(Rule 1540-01-10-.06, continued)

- (d) Having an institution-level or program-level withdrawal, completion, placement, or in-field placement rate that is less than the state average rate for other OEA institutions or a program type for more than two (2) consecutive years;
 - (e) Providing false or misleading statistical data;
 - (f) Failure to comply with the requirements of the tuition guaranty fund under § 49-7-2018 and the related rules;
 - (g) A three-year federal financial aid cohort default rate as calculated by the U.S. Department of Education of thirty percent (30%) or higher for three (3) consecutive years or over forty percent (40%) for any single year;
 - (h) Retaliating against a complainant who exercises their right to complain; or
 - (i) Allowing OEA to expire without timely filing an OEA Application, Certification of Compliance, or Initial Authorization Application.
- (3) Upon revocation of any institution's OEA, the following shall occur:
- (a) The institution shall immediately be subject to all provisions of the Act and Rule Chapter 1540-01-02.
 - (b) The institution shall apply for Commission authorization under T.C.A. § 49-7-2008 and Rule Chapter 1540-01-02 thirty (30) calendar days after the notice of revocation.
 - (c) The Executive Director may grant the institution conditional authorization to continue its operation as a non-OEA institution. Such conditional authorization shall not be for more than six (6) months. Failure to fulfill all conditions of authorization within six (6) months may lead to revocation of authorization.
 - (d) Any institution whose OEA is revoked by the Commission shall be ineligible to reapply until the Commission determines that all bases for revocation have been resolved.
- (4) Notwithstanding paragraphs (1) through (3) of this rule, no immediate action should be taken to revoke an institution's OEA when the institution's accreditor is removed from the U.S. Department of Education's list of recognized accreditors. The Executive Director shall set a time period in which institutions may continue to operate under OEA, assuming all other OEA requirements are met. The time period should coincide with the provisional time period set by the U.S. Department of Education for affected institutions to seek a new accreditor.
- (5) Any action by the Commission or Executive Director under this rule shall be subject to review as provided in T.C.A. § 49-7-2012. All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
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1540-01-10-.07 COMPLAINTS.

- (1) Commission staff shall investigate any signed student complaint involving an OEA institution after verifying that the student has exhausted the institution complaint process.
- (2) Commission staff's investigation shall determine as necessary:
 - (a) Whether the institution followed its policies as represented to the student; and
 - (b) Whether the institution failed to disclose a fact or made a verbal or written inaccurate representation to the student that affected the student's ability to make an appropriate decision concerning the student's investment of time and money.
- (3) When determining whether a finding is appropriate, Commission staff shall take into consideration any reasonable offers the institution made to resolve the student's complaint at the institutional level.
- (4) The investigation will proceed as follows:
 - (a) Complaints shall be signed and submitted as provided for in Rule .08 of these rules.
 - (b) Any named institution will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
 - (c) Any named institution shall provide all information requested by Commission staff as part of the investigation.
 - (d) As part of the investigation process, Commission staff may work with the complainant and the named institution to effectuate a settlement.
 - (e) If there are no findings, the complaint will be closed, and the written determination shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.19(8)(g). Such date shall be ten (10) business days after the date of the written determinations. If no request for review is received, the complaint will be closed.
 - (f) If there are findings and proposed recommendations, the following process will be used:
 1. Commission staff shall provide in the written determinations and proposed recommendations a date by which either party may respond to the findings or recommendations. Such date shall not be earlier than ten (10) business days after the date of the written determinations.
 2. Following review of the responses, if any, Commission staff may:
 - (i) Determine that the complaint is closed by providing written notice to the parties. The written notice shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.19(8)(f); or
 - (ii) Recommend that the Executive Director take some action that is within the scope of the proposed recommendations. Any decision of the Executive Director to take action will be provided to the parties by letter and shall include a date by which an aggrieved party may submit a request for

(Rule 1540-01-10-.07, continued)

further review by the Commission as provided for in Rule 1540-01-02-.19(8)(f).

- (g) Any request for review shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (h) Any party to the complaint aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.

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1540-01-10-.08 FILING METHODS AND REQUIREMENTS.

- (1) Due dates, denials, deferrals, and withdrawals:
 - (a) For purposes of these rules, application refers to any application or certification.
 - (b) When a due date is provided by Commission staff, a complete application in the prescribed format shall be received at the Commission by the close of business on the due date. Applications received after the due date will be deemed late and will be reviewed after all timely filed applications or certifications are reviewed. For purposes of these rules, applications refer to any applications or certifications.
 - (c) Initial OEA Applications shall be filed in the prescribed format and may be filed at any time. All other OEA Applications shall be filed as provided for in these rules. Applications and certifications will be reviewed when complete. When received, Commission staff shall determine whether an application is complete and notify the applicant if the application is incomplete. An applicant will have thirty (30) calendar days to complete an incomplete application. Incomplete applications or certifications include applications or certifications submitted without all applicable fees or an attachment. An application that is not completed by the prescribed due date will be withdrawn.
 - (d) Denial or withdrawal of an application does not prevent the applicant from submitting a new application.
- (2) Applications shall be filed electronically as prescribed in the application or using DPSA's electronic forms portal.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.

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1540-01-10-.09 FEES.

- (1) An institution shall pay a fee of nine thousand dollars (\$9,000) to the Commission when filing an Optional Expedited Authorization Application or Certification of Compliance. Any convenience charge for electronic payments shall equal the amount charged by the vendor.

(Rule 1540-01-10-.09, continued)

- (2) If an institution withdraws an application within three (3) business days from receipt, then all fees assessed less the convenience charge for electronic payments shall be refunded. After three (3) business days from filing of the application, all fees are nonrefundable.
- (3) Institutions that fail to complete the application process described in Rule .08 of these rules shall forfeit all fees paid.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2022; Acts 2016, Ch. 868; and 2022 Tenn. Pub. Ch. No. 1044.
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