

**RULES
OF THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
WATER RESOURCES DIVISION**

**CHAPTER 0400-46-06
STATE REVOLVING FUND**

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0400-46-06-.01 INTRODUCTION.

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amended T.C.A. Title 68, Chapter 221, Part 10) is to facilitate statewide compliance with State and Federal water quality standards; to provide local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities construction through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health; and to establish fiscal self-sufficiency of wastewater facilities. It is intended that the revolving loan program be used in coordination with State and Federal assistance programs.

Authority: T.C.A. §§ 68-221-1001 et seq., 68-221-1005, and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.02 DEFINITIONS. As used in these rules:

- (1) Act. The Wastewater Facilities Act of 1987, T.C.A. §§ 68-221-1001 et seq.
- (2) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants or recover energy. Specifically, alternative technology includes land application of effluent sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.
- (3) Authority. The Tennessee Local Development Authority as created by T.C.A. Title 4, Chapter 31.
- (4) Best Management Practices. A practice or combination of practices which has been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals.
- (5) Borrower. Local government which has entered into a loan agreement with the Authority and the Department to fund a wastewater treatment facility.

(Rule 0400-46-06-.02, continued)

- (6) Clean Water Act. The Water Pollution Control Act of 1972, PL 92-500, as amended 33 U.S.C. §§ 1251 et seq., and rules and regulations promulgated thereunder.
- (7) Collector Sewer. Lateral sewers within a publicly owned treatment system, which are primarily installed to receive and convey wastewater for treatment. Service connections designed for connection with those facilities including:
 - (a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side; and,
 - (b) Pumping units and pressurized lines serving individual structures or groups of structures when such units are owned and maintained by the borrower.

This definition excludes facilities which convey wastewater on private property to the public lateral sewer.

- (8) Combined sewer. A sewer that is designed as a sanitary sewer and a stormwater sewer.
- (9) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater facilities, including preliminary planning to determine the economic feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures, and other similar action necessary in the building of wastewater facilities, and the inspection supervision of the construction of wastewater treatment works.
- (10) Department. The Tennessee Department of Environment and Conservation.
- (11) Depreciation. An element of expense resulting from the use of long-lived assets. It is conventionally measured by allocating the expected net cost of using the asset (original cost less estimated salvage value) over its estimated useful life in a systematic and rational manner.
- (12) Director. The Director of the Division of Water Resources within the Department.
- (13) Enforceable requirements of the Clean Water Act. Those conditions or limitations of permits issued under Sections 402 or 404 of the Clean Water Act or T.C.A. § 69-3-108 which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under Section 309 of the Clean Water Act or the Water Quality Control Act. If a permit has not been issued, or where no permit applies, the term shall include the requirements necessary to meet the provisions of the T.C.A. § 69-3-101 et seq.
- (14) EPA. The United States Environmental Protection Agency.
- (15) Excessive infiltration/inflow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.
- (16) Infiltration/Inflow Correction. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:
 - (a) Pressure testing and sealing procedures;

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- (b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent groundwater and replacement or repair of a sewer segment beneath a waterway; and,
 - (c) Trenchless technologies such as sliplining.
- (17) Initiation of operation. The date when all but minor components of a project have been built, all treatment equipment is operational and the project is capable of functioning as designed and constructed.
- (18) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.
- (19) Interceptor sewer. A sewer which is designed for one or more of the following purposes:
 - (a) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - (b) To replace an existing wastewater facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - (c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - (d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a wastewater plant.
- (20) Local Government. A county, incorporated town or city, metropolitan government, or state agency which has authority to administer a wastewater facility, or any combination of two or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any publicly owned utility district existing July 1, 1984, or if created after that date, any publicly owned utility district operating a wastewater facility and comprising at least 500 customer connections.
- (21) Major rehabilitation. Techniques which involve the removal of the existing pipes, pumps, or manholes from the ground and replacing them with new ones under one or more of the following conditions:
 - (a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken, or badly deteriorated and cracked;
 - (b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or
 - (c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.
- (22) Nonexcessive infiltration. The quantity of flow which is less than 120 gallons per capita per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.

(Rule 0400-46-06-.02, continued)

- (23) Nonexcessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.
- (24) Nonpoint Source (NPS) Pollution. Pollution emitting from sources other than point source.
- (25) Operation and Maintenance. Activities required to assure the dependable and economical function of treatment works.
 - (a) Operation is the control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management records laboratory control, process control, safety and emergency operation planning.
 - (b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.
- (26) Planning/Design Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of Rules 0400-46-06-.06 and 0400-46-06-.08. Design consists of those necessary drawings, plans and specifications which directly relate to wastewater facilities needed to comply with the approved facilities plan.
- (27) Priority Ranking List. A numerical listing of wastewater facility projects by priority points generated through the State Priority Ranking System, Chapter 0400-46-01, for which the State is authorized to provide financial assistance pursuant to T.C.A. Title 68, Chapter 221, Parts 8 and 10.
- (28) Project. The activities or tasks the Department identifies in the loan agreement for which the borrower may expend, obligate or commit funds.
- (29) Project Performance Standards. Performance and operational requirements applicable to the project, including the enforceable requirements of the Clean Water Act, and the design criteria upon which the plans and specifications are based.
- (30) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of facility plan, submittal of plans and specifications, advertising for bidding, notice to proceed, and project completion.
- (31) Security. That which is determined by the Authority to be acceptable to secure a loan to a local government under this Act and includes but is not limited to revenues of the facility, ad valorem taxes, state-shared taxes, letters of credit or bond insurance.
- (32) State Revolving Fund (SRF) Loan. Loan program as established in the Wastewater Facilities Act of 1987.
- (33) Useful life. The period during which a wastewater facility operates; this is not design life which is the period during which a wastewater facility is planned and designed to operate.
 - (a) For purposes of a cost-effective analysis the components of a wastewater facility shall have a useful life as follows:
 - 1. Land - permanent;

(Rule 0400-46-06-.02, continued)

2. Wastewater conveyance structures, including, but not limited to, collection system, outfall pipes, interceptors, force mains, and tunnels - 50 years;
 3. Other structures, including, but not limited to, plant building, concrete process tankage, basins, and lift station structures - 50 years;
 4. Process equipment - 20 years; and,
 5. Auxiliary equipment - 15 years.
- (b) Other useful life periods will be acceptable when sufficient justification can be provided to the Department. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.
- (34) User. A single municipal, domestic, commercial or industrial connection to a wastewater facility.
- (35) User charge. A charge levied on users of a wastewater facility, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and depreciation of such works.
- (36) Value Engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.
- (37) Wastewater facility. Any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater, including treatment or disposal plants, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes. "Wastewater facility" shall also include best management practice projects for controlling nonpoint sources of water pollution and the planning or replanning requirements of designated management authorities.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.03 PRIORITY.

- (1) General. The Authority will award loans to local governments for planning, design and construction of wastewater facilities under the provisions of T.C.A. Title 4, Chapter 31; Title 7, Chapter 82; and Title 68, Chapter 221, only for projects on the Priority Ranking List.
- (2) Obligation of SRF Loans. Funds will be allocated to projects based on the list established by the Priority Ranking Rules, Chapter 0400-46-01.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.04 ELIGIBILITY.

- (1) Loans shall be made only to local governments that:
 - (a) Have the authority to operate a wastewater facility that is on the Priority Ranking List.

(Rule 0400-46-06-.04, continued)

- (b) In the opinion of the Authority, demonstrate tangible financial capability to assure sufficient revenues to operate and maintain the wastewater facility for its useful life and to repay the loan;
 - (c) Pledge security as required by the Authority for repayment of the loan;
 - (d) Agree to adjust periodically fees and charges for services of the wastewater facility in order that loan payments and costs of the wastewater facility are timely paid;
 - (e) Certify to comply with a plan of operation approved by the Department regarding the quality, compensation, and number of facility personnel for the life of the loan;
 - (f) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records; and
 - (g) Provide such assurances as are reasonably requested by the Authority and the Department.
- (2) Projects funded in whole or part from the SRF must be consistent with plans developed under Section 205, 208, 303(e) or 319 of the Clean Water Act.
- (3) Loans may be made to provide local governments with funds to conduct facilities planning and design.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.05 USES OF THE FUND.

The SRF shall only be used:

- (1) To make loans; and,
- (2) To pay program administration costs (not to exceed 4% of the annual federal capitalization grant).

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.06 APPLICATION PROCEDURE.

- (1) Applicants for SRF loans must submit an application on forms furnished by the Department.
- (2) The Department shall review the loan application to ensure that it is complete and shall inform the applicant in writing of the determination and/or other information required.
- (3) The Department shall submit recommendations for loans to the Authority.
- (4) A facilities plan must be submitted and approved by the Department before approval of any loans which do not include planning. Potential loan applicants should confer with Departmental reviewers in the initial stages of the facilities planning process. A facilities plan shall contain the following information:
 - (a) identification of the planning area boundaries and characteristics, the existing problems and needs and problems for the next 20 or more years;

(Rule 0400-46-06-.06, continued)

- (b) demonstration that each sewer system is not or will not be subject to excessive infiltration/inflow;
 - (c) systematic identification, screening, study, evaluation, and cost-effective analysis of conventional technologies, as well as innovative, and alternative technologies;
 - (d) adequate evaluation of the environmental impacts of alternatives to support the cost-effective analysis;
 - (e) if collection lines are included, establishment of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the wastewater treatment works servicing the community, or they are for a new collection system in an existing or planned wastewater treatment capacity;
 - (f) documentation on the project's consistency with the approved elements of any applicable water quality management plan approved under Section 208 or 303(e) of the Clean Water Act; and,
 - (g) a concise description of the selected alternative with an appropriate level of detail.
- (5) User charge system.
 - (a) General. The borrower of an SRF loan must obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect at the time of the application, the borrower shall demonstrate that it meets the provisions of this paragraph or amend it as required.
 - (b) Rates. The user charge rate must produce adequate revenues to provide for the following expenditures:
 - 1. Operation and maintenance expenses;
 - 2. Interest; and
 - 3. Depreciation or principal payment, whichever is greater.

These costs shall be reviewed by the borrower on an annual basis as a part of the budget process and the rates adjusted accordingly for the life of the loan.
 - (c) Operating deficits. The user charge system will require maintenance of user rate structures necessary to fund the current expenditures in subparagraph (b) of this paragraph, and to liquidate any retained earnings deficit over a period of time to be determined by the Department.
 - (d) Rate resolution.
 - 1. Prior to loan approval, the applicant shall provide the Department with an adopted resolution which proposes a user rate that meets the requirements of the user charge system described in subparagraph (b) of this paragraph.
 - 2. Prior to ninety percent payment of loan proceeds, the local government shall submit for Departmental approval the enacted user rate which meets the requirements described in subparagraph (b) of this paragraph.
- (6) Intermunicipal agreements. If the project will serve two or more local governments, the borrower shall obtain Department approval of executed intermunicipal agreements prior to

(Rule 0400-46-06-.06, continued)

loan approval. These agreements may be in the form of contracts or other legally binding instruments necessary for the financing, construction, operation and maintenance of the proposed treatment works. At a minimum, it must include the basis upon which costs are allocated.

(7) Plans and Specifications.

- (a) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works. The borrower must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications for a construction loan will be approved by the Department.
- (b) Sewer Use Ordinance. All borrowers who do not have a Sewer Use Ordinance (SUO) in effect at the time of application are required to obtain the Department's approval of an enacted SUO prior to the approval of plans and specifications for the project. The SUO must protect the technical and financial integrity of the collection and treatment system including provisions for the control of inflow/infiltration, toxicity, and maximum system use by all eligible customers.
- (c) Pretreatment Program. If the borrower does not have a pretreatment program approved by the Department and the proposed project will result in the discharge of industrial wastes into the collection system, then an industrial survey in accordance with 40 CFR 403.8(f)(2)(i) (as amended) must be conducted. Results of the survey are to be submitted to the Division of Water Resources to determine if a pretreatment program must be developed.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.

0400-46-06-.07 CONDITIONS.

- (1) Federal Requirements. During the period the SRF is capitalized by EPA grant money, any project funded must meet the following requirements:
 - (a) Title II Requirements. Projects must comply with the applicable requirements of Title II of the Clean Water Act cited in 40 CFR 35.3135 (f)(1) (as amended).
 - (b) Environmental Review. An environmental review of the proposed project meeting the requirements of 40 CFR 35.3140 (as amended) must be conducted.
 - (c) Other Federal Authorities. Projects must comply with other applicable federal authorities cited in 40 CFR 35.3145 (as amended).
- (2) Loan Agreement.
 - (a) The loan agreement will be a legally binding contract between the State and the borrower. The agreement will contain general conditions and may, if necessary, contain special conditions.
 - (b) The general conditions will be requirements of law, regulations and policies of the State.

(Rule 0400-46-06-.07, continued)

- (c) The special conditions of the loan agreement will relate to specific provisions unique for an individual project including, but not limited to, time schedules and performance requirements.

- (3) Loan Amendments. A loan amendment must be approved by the Department and the Authority and shall be required when the final cost of the project is determined to be greater than the total amount approved in the loan agreement.

Loan amendments may be made to the original contract to include but not be limited to differences between the original construction cost estimate and the contract price.

- (4) Procurement. Procurement transactions for equipment and construction must be conducted in a manner providing full and open competition consistent with the standards of 40 CFR 31.36 (as amended). The Department will review proposed procurement transactions for equipment and construction which exceed \$25,000 prior to contract award. SRF loan participation for any project costs may be limited to amounts determined reasonable by the Department.
- (5) Inspections. During project construction the borrower shall provide continuous inspection by qualified inspectors in sufficient numbers to ensure the project complies with approved plans and specifications.

The Department will conduct interim inspections to determine compliance with approved plans and specifications and loan agreement, as appropriate.

The borrower shall notify the Department in writing within 30 days of Initiation of Operation so that an operation and maintenance inspection and final inspection can be made by the Department.

- (6) Loan Payments.
 - (a) Documentation. The Department shall review and certify the loan share of the appropriate project costs incurred and as certified and documented in the borrower's most recent payment request which includes proper invoices to support costs. The payment will be in accordance with Request For Disbursement of Funds form as provided by the Department. The Authority shall pay the loan share of the project costs as certified by the Department.
 - (b) Non-Compliance. Payments shall be limited to work that complies with approved plans, specifications, and project schedules as determined by the Department.
 - (c) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.
 - (d) Release. By its acceptance of final payment, the borrower releases and discharges the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.
- (7) Files and Records. All files and records pertaining to the project shall be maintained by the borrower throughout the project and made accessible to the Department and the Comptroller. These files and records must be retained by the borrower for at least three years after construction completion.

(Rule 0400-46-06-.07, continued)

- (8) Change Orders. Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan agreement do not require the execution of a formal loan amendment, however, where the change order will result in the expenditure of more funds than the loan amount, a loan amendment must be executed prior to the implementation of the changes. The Department will determine the reasonableness of cost for all change orders.
- (9) Project Performance.
 - (a) The borrower shall notify the Department in writing within 30 days of the actual date of Initiation of Operation.
 - (b) Following written notification to the recipient, the Department may unilaterally designate an Initiation of Operation date if the recipient fails to submit a reasonable date.
 - (c) One year after the date of Initiation of Operation, the borrower shall certify to the Department in writing whether or not the wastewater facility meets its project performance standards.
 - (d) The borrower shall take corrective action necessary to bring a project into compliance with the project performance standards.
- (10) Reservation of Rights. Nothing in this rule:
 - (a) Prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or,
 - (b) Affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.
- (11) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the wastewater facilities as required by law, regulations, permits and good management practices. The Department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.
- (12) Value Engineering. During the design of the project the Director will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Director shall be implemented by the local government and loan eligibility will be limited accordingly.
- (13) Operation and Maintenance Manual. Prior to ninety percent payment of loan proceeds, all construction loan borrowers shall submit to the Department a draft Operation and Maintenance Manual for its approval as to adequacy and completeness. This shall apply only to loans for wastewater treatment plants. A final, plant-specific Operation and Maintenance Manual shall be submitted to the Department for its approval one year after Initiation of Operations.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. . Rule originally numbered 1200-22-06.

0400-46-06-.08 FINANCING METHOD.

- (1) A construction loan, including loans made solely for equipment, shall be made for a period of time not to exceed 20 years or the useful life, whichever is shorter.
- (2) A Planning and Design loan shall not exceed five years.
- (3) Repayment of the interest of the loan will begin upon reimbursement to borrower of costs incurred.
- (4) Repayment of the principal amount of the construction loan shall begin within 90 days after Initiation of Operation, or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (5) Repayment of the principal amount of loans other than construction loans must begin within two years of loan approval or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (6) The interest rates for SRF loans shall be fixed for the duration of the loan.
- (7) The Department shall utilize the most current Ability to Pay Index (ATPI) developed by the University of Tennessee Center for Business and Economic Research to determine interest rates for SRF borrowers. Interest rates shall not exceed market values according to appropriate Bond Buyers Index. Local governments which fall within the lower scale of the ATPI will be offered the lower interest rate.
- (8) The Department will recommend interest rates to the Authority.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-06.